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The Main Amendments to the Brazilian Aeronautical Code (Law No. 7.565/1986) and Their Effects on the Rights of Airline Passengers

As principais alterações no Código Brasileiro de Aeronáutica (Lei 7.565/1986) e seus reflexos no direito dos passageiros aéreos

Las principales modificaciones al Código Brasileño de Aeronáutica (Ley n.º 7.565/1986) y sus efectos en los derechos de los pasajeros aéreos

Thiago Barbosa Ribeiro – Escola Superior Associada de Goiânia (ESUP),
thiagold7@gmail.com

Abstract:
This article specifically examines the permanent amendments introduced by Law No. 14,034/2020 to the Brazilian Aeronautical Code (Law No. 7,565/1986), as well as the recent recognition of general repercussion in Theme 1.417 by the Brazilian Supreme Federal Court (STF). The research is structured in two main parts. First, it investigates the legal uncertainty generated by Article 251-A of the Brazilian Aeronautical Code, which conditions compensation for moral damages on proof of actual loss. Nevertheless, it argues that presumed moral damages (in re ipsa) remain exceptionally applicable in cases involving excessive flight delays, lack of material assistance, overbooking, failure to provide information, and other similar situations. Second, it analyzes Theme 1.417 under the general repercussion regime, defending the absence of conflict between the Consumer Defense Code and the Brazilian Aeronautical Code regarding fortuitous events. The methodology is qualitative, based on bibliographic and documentary research, involving a review of legal doctrine, legislation, and case law.

Keywords:
Brazilian Aeronautical Code. Air passenger rights. STF Theme 1.417. Civil liability. Brazil.

Resumo:
O presente artigo examina especificamente as modificações permanentes e seus impactos trazidos pela Lei nº 14.034/2020 que alterou o Código Brasileiro de Aeronáutica (Lei n. 7.565/1986), e da recente repercussão geral reconhecida no Tema 1.417 do Supremo Tribunal Federal. A pesquisa estrutura-se em primeiro lugar, investigar a insegurança jurídica gerada pelo art. 251-A do Código Brasileiro de Aeronáutica, que condiciona a indenização por dano moral à demonstração do efetivo prejuízo, todavia sustentando que o dano moral presumido (in re ipsa) ainda permanece excepcionalmente viável, como nas hipóteses de atraso de voo demasiado, ausência de assistência material, overbooking, falha no dever de informação, entre outros. E em segundo lugar, analisar o Tema 1.417 da repercussão geral, defendendo a inexistência de conflito entre o Código de Defesa do Consumidor e o Código Brasileiro de Aeronáutica quanto a casos fortuitos ou força maior. A metodologia é qualitativa, de natureza bibliográfica e documental, com revisão de doutrina, legislação e jurisprudência.

Palavras-chave:
Código Brasileiro de Aeronáutica. Transporte aéreo. Tema 1.417 do STF. Responsabilidade civil. Brasil.

Resumen:
Este artículo examina específicamente las modificaciones permanentes y sus impactos introducidos por la Ley n.º 14.034/2020, que modificó el Código Brasileño de Aeronáutica (Ley n.º 7.565/1986), así como la reciente repercusión general reconocida en el Tema 1.417 del Supremo Tribunal Federal. La investigación se estructura, en primer lugar, para analizar la

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inseguridad jurídica generada por el artículo 251-A del Código Brasileño de Aeronáutica, que condiciona la indemnización por daño moral a la demostración del perjuicio efectivo, sosteniendo, sin embargo, que el daño moral presumido (in re ipsa) continúa siendo excepcionalmente admisible en hipótesis como retrasos excesivos de vuelos, ausencia de asistencia material, sobreventa de pasajes (overbooking), incumplimiento del deber de información, entre otras. En segundo lugar, analiza el Tema 1.417 de la repercusión general, defendiendo la inexistencia de conflicto entre el Código de Defensa del Consumidor y el Código Brasileño de Aeronáutica respecto de los casos fortuitos o de fuerza mayor. La metodología es cualitativa, de naturaleza bibliográfica y documental, con revisión de doctrina, legislación y jurisprudencia.

Palabras clave:
Código Brasileño de Aeronáutica. Transporte aéreo. Tema 1.417 del STF. Responsabilidad civil. Brasil.

Introduction

Air transport is one of the largest economic activities in Brazil, generating billions of dollars with over one hundred million passengers traveling annually (PODER 360, 2025). Alongside the market expansion, there is a growing trend of litigation in passenger/airline relations, particularly due to flight delays and cancellations, denied boarding (overbooking), failures in providing information, among other issues. The legal framework governing civil liability in air passenger transport is undergoing considerable changes within this context.

In this vein, Law No. 14,034/2020, originally enacted as a temporary measure due to the Covid-19 pandemic, introduced significant changes to the Brazilian Aeronautical Code (Law No. 7,565/1986). Among the modifications, the most notable are those of a permanent nature, especially the insertion of Article 251-A, which conditions compensation for moral damages on the demonstration of actual harm, and the amendment to Article 256, § 3, which now provides for cases of fortuitous event and force majeure. Nevertheless, the Supreme Federal Court recently recognized the general repercussion of Topic 1,417 (ARE No. 1,560,244/RJ), which deals with the exclusions of liability of airlines and the possible existence of conflict between the Consumer Protection Code and the Brazilian Aeronautical Code regarding the application of fortuitous event and force majeure.

These legislative changes, coupled with the recognition of the general repercussion of Topic 1,417 by the Supreme Federal Court (ARE No. 1,560,244/RJ), have reignited the debate on the limits of civil liability of airlines in passenger transport. On the one hand, it is questioned whether Article 251-A eliminated the possibility of recognizing presumed moral damages (*in re On the one* hand, there is debate about which legal regime should prevail in cases of

unforeseen circumstances and force majeure, given a hypothetical tension between the Brazilian Aeronautical Code and the Consumer Protection Code.

In this context, the research problem guiding this work consists of investigating whether presumed moral damages can still be admitted in Brazilian air transport after the insertion of article 251-A of the Brazilian Aeronautical Code, as well as which legal regime is applicable to cases of fortuitous event and force majeure in the air transport of people, considering the effects of Law No. 14,034/2020 and the controversy established in Topic 1,417 of the Supreme Federal Court.

It is argued, as a hypothesis, that moral damages *in re The principle of unavoidable liability (ipsa)* remains exceptionally applicable in situations that go beyond mere everyday annoyance, such as excessive delays, lack of material assistance, *overbooking* , and serious failures in the duty to inform. It is further argued that the hypotheses of fortuitous event and force majeure foreseen in the Brazilian Aeronautical Code do not preclude the application of the Consumer Protection Code, and both legal instruments should be interpreted harmoniously in light of the theory of unavoidable event.

Given the above, this article aims to analyze the main current problems of the civil liability of airlines in the transportation of people, focusing on the permanent changes introduced by Law No. 14,034/2020 and the general repercussion of Topic 1,417 of the Supreme Federal Court. To this end, it seeks to: (i) examine the controversy and legal uncertainty generated by article 251-A of the Brazilian Aeronautics Code in relation to presumed moral damages; and (ii) analyze Topic 1,417, arguing the non-existence of conflict between the Consumer Protection Code and the Brazilian Aeronautics Code regarding the exclusions of fortuitous event and force majeure.

The research adopts a qualitative method, with a dogmatic-legal, bibliographic, and documentary approach. Legislative changes, precedents from the STF (Supreme Federal Court) and STJ (Superior Court of Justice), exemplary state judgments, and recent legal/sectoral news were examined, selected for their thematic relevance to Article 251-A, Article 256, § 3, of the CBA (Brazilian Administrative Code), and STF Topic 1.417.

2. The controversy surrounding Article 251-A of the Brazilian Aeronautical Code concerning moral damages *in re ipsa*

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Law No. 14,034, of August 5, 2020, originating from Provisional Measure No. 925/2020, introduced Article 251-A into the Brazilian Aeronautical Code (Law No. 7,565/1986), with the following wording:

> Art. 251-A. Compensation for non-pecuniary damages resulting from a failure in the execution of the transport contract is conditional upon the passenger or the shipper or consignee of the cargo demonstrating the actual occurrence of the loss and its extent (BRAZIL, 1986).

The aforementioned provision was inserted as a permanent amendment to the Brazilian Aeronautical Code under the pretext of emergency pandemic legislation. However, as will be demonstrated, the provision has an extremely controversial wording, as it apparently prohibits any possibility of presumed moral damages in air transport, potentially leading those applying the law to erroneous interpretations.

Within the Superior Court of Justice, the interlocutory appeal in Special Appeal 1.269.246/RS summarized that the verification of moral damages does not reside precisely in the simple occurrence of the unlawful act, so that not every act that is inconsistent with the legal order gives rise to compensation for moral damages. In the words of Sérgio Cavalieri Filho, whose doctrine is constantly cited in the courts and in the Superior Court itself:

> Mere displeasure, annoyance, hurt feelings, irritation, or heightened sensitivity are outside the scope of moral damages, since, in addition to being part of the normality of our daily lives, at work, in traffic, among friends, and even in the family environment, such situations are not intense and lasting enough to disrupt the psychological balance of the individual (CAVALIERI FILHO, 2019, p. 119).

Along the same lines, the landmark Special Appeal 1,584,465/MG, authored by Justice Nancy Andrighi and published in Bulletin No. 638, established that:

In the specific case of a flight delay or cancellation operated by an airline, it is not foreseen that moral damages can be presumed as a result of **mere delay** and any discomfort, annoyance or displeasure (BRAZIL, 2018, emphasis added).

However, the Superior Court of Justice itself, in several rulings, has made exceptions to the rule that moral damages in air transport are not presumed and must be disregarded based on the facts themselves, depending on the specific case. Cases such as excessively long flight delays, overbooking, and lack of material assistance still fall under the presumption of moral damages. Minister Luis Felipe Salomão cited, as an example, a precedent from Minister Aldir Passarinho Junior, in a case involving a 24-hour flight delay combined with *overbooking,* where

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even material assistance would not be sufficient to preclude compensation for moral damages, given the extreme poor quality of service.

> It is worth noting that, unlike what occurred in the present case, **when the delay is substantial, causing real discomfort to passengers, the hypothesis of mere annoyance is no longer valid, giving rise to the right to compensation** : CIVIL. INDEMNIFICATION ACTION. **FLIGHT DELAY (24 HOURS). OVERBOOKING. MORAL DAMAGES.** AMOUNT. WARSAW CONVENTION. CONSUMER PROTECTION CODE. PREVALENCE. **I. Notwithstanding the infrastructure of modern airports or the availability of adequate hotels and transportation, this is not sufficient to eliminate moral damages when the flight delay is excessive** , causing significant discomfort and distress to the passenger, exceeding the situation of mere vicissitude , which is fully bearable. II. Unlike flight delays due to safety reasons, which, even when very long, give rise to the right to compensation for moral damages, **the practice of overbooking, consisting of selling tickets beyond the aircraft's capacity, which is done in the exclusive interest of the airline to the detriment of the consumer's rights, requires a greater pecuniary sanction** , without , however, reaching an excess that would produce unjust enrichment. III. Special appeal partially granted (BRAZIL, 2014, emphasis added).

Furthermore, it is necessary to cite the judgment reported by Minister Maria Isabel Gallotti, in the Internal Appeal in Special Appeal 2.256.063/SP, in which the airline's duty to indemnify for a six-hour delay was expressly recognized, rejecting the indiscriminate application of article 251-A of the Brazilian Aeronautical Code and admitting moral damages *in re ipsa* due to the absence of material assistance when a certain time period has elapsed:

> [...] in this case, the absence of material assistance is being considered, and there is no jurisprudential guidance to the effect that the causes that authorize the fixing of moral damages must be cumulative in order for them to be characterized. It is necessary to ascertain, in light of the specific case, the presence of elements that constitute moral injury, and, in this case, they are present, manifested not only in the **delay of approximately six hours** in an international trip, but also in the absence of material assistance due to the aggrieved party, which, in the understanding of the lower courts, constituted an extraordinary event capable of affecting the core of the appellee's personality. **The appellant fares no better with regard to what it alleges concerning Article 251-A of the Brazilian Aeronautical Code. It is unnecessary to demonstrate the harmful situations that the absence of material assistance may cause, considering that the very absence of material assistance, once a certain period of time has elapsed, is an autonomous cause to justify the award of moral damages , and it is unnecessary to demonstrate all the consequences that the company's failure to fulfill this obligation may have actually caused to the consumer** (BRAZIL, 2023, emphasis added).

Therefore, the Superior Court of Justice does not agree with the idea that moral damages in air transport are presumed in every single case. This applies only to cases of mere delay, as per the aforementioned Special Appeal 1.584.465/MG, published in Bulletin 638 in 2018.

However, I believe that a uniformity of jurisprudence is necessary, with minimum objective criteria regarding the valuation of moral damages, as well as a clearer position on

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exactly what the starting point should be for disregarding "mere delay," lest a "mere annoyance industry" be established in the country, in contrast to the already well-known "moral damages industry." In this sense, I echo the words of Judge Leonardo de Faria Beraldo, a dedicated scholar of the civil liability of airlines:

> The truth is that a 'mere annoyance industry' may have been created in Brazil. [...] In my view, there is no doubt that the consolidation of the 'mere annoyance industry' can be far more detrimental to the country's economic and social development than the supposed 'moral damage industry' (BERALDO, 2024, p. 176).

In turn, Article 251-A of the Brazilian Aeronautical Code, due to its poor wording in not expressly stating that, as a rule, moral damages in air transport are not presumed, creates enormous legal uncertainty if the legal practitioner is careless and fails to consider the rationale . *The decision should be made* in conjunction with a systematic interpretation of the Superior Court of Justice's jurisprudence on the subject. Since the aforementioned rule came into effect, it has allowed many judges to apply this provision blindly, as if moral damages in air transport were limited only to missed appointments or accidents—which is a misconception. In this sense:

> Now, it seems quite obvious to me that this provision only applies to cases where moral damages are not presumed. Thus, we are faced with two very distinct situations: if moral damages are presumed, Article 251-A does not apply; however, if it is not presumed, then Article 251-A does not *apply* . *ipsa* , then it will be necessary for the victim to demonstrate in detail which personality right was violated, so that the judge can verify the extent of the damage (BERALDO, 2024, p. 173).

In this vein, consumer law doctrine does not spare criticism of Article 251-A, since it cannot be demanded of the passenger that they prove the moral damage suffered, as the consequences of non-pecuniary injury are not confused with the violation of personality rights. Moral damages must be assessed based on the objective facts demonstrated in the specific case, analyzing whether they are sufficient to transgress the non-patrimonial interests of the victim (DANTAS, 2021). Along the same lines, Maria Luiza Baillo Targa, a prominent voice in the defense of the highly vulnerable , also argues for the unconstitutionality of Article 251-A, arguing that the attenuation of the right to compensation by law violates the principle of human dignity, the basis of personality rights and other fundamental rights, in the sense that human dignity is the true fundamental axiological vector that guides and justifies the mitigation of injuries to personality rights, with compensation for non-pecuniary damage as one of its main instruments of realization. In this sense:

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> The proposed mitigation of airlines' civil liability for moral damages **violates the fundamental principle of human dignity, a driving principle and source value of the Brazilian legal system, and the basis of personality rights and fundamental rights.** [...] It is worth highlighting that compensation for non-pecuniary damages is a concrete expression of human dignity, serving as a functional battering ram to mitigate injuries to personality rights. Thus, attenuating, by law, the right to compensation not only undermines this fundamental principle but also corrupts the State's duty to protect consumers (Brazilian Constitution, Article 5, item XXXII), disregarding the 'principle of vulnerability' as a connecting element between the Constitution and the Consumer Protection Code. Furthermore, the Constitution itself ensures civil liability as a 'guarantee' of the prevalence of fundamental rights: given that the passenger-carrier relationship is asymmetrical and vertical, and given that there is a norm that protects the rights of the admittedly vulnerable subject, civil liability operates as a fundamental legal relationship , contributing to the preservation of fundamental rights and highlighting the practice of unconstitutional offenses (TARGA; MARTINS, 2024, emphasis added).

Nevertheless, let us consider the understanding of the Superior Court of Justice (STJ) itself, in REsp 1.245.550/MG, regarding the irrelevance of proving psychological suffering in a specific way:

> [...] Moral damages are not revealed in pain or suffering, which are, in fact, their consequence, their result. The damage is a fact that precedes the feelings of affliction and anguish experienced by the victim, and is not necessarily linked to any psychic reaction of the victim (BRAZIL, 2015).

In light of these premises, I conclude that Article 251-A presents such glaring legal uncertainty that it even violates the principle of non-regression in social rights. After all, the suffering from non-pecuniary damage is an exclusively subjective sensation, such that "each human being receives life's blows in a unique way, implying that prosaic everyday events of little importance to some of us may represent great shocks to other people. Human subjectivity is an ethereal and impalpable dimension" (FARIAS; ROSENVALD, 2014, p. 332). The injured party must only prove the occurrence of the violation of the right to personality, and not the suffering itself, the proof of which is diabolical.

3. Supreme Federal Court Case 1.417 and the controversy between the Consumer Protection Code and the Brazilian Aeronautical Code.

In this context, the civil liability of airlines for delays, cancellations, or alterations of flights resulting from acts of God or force majeure has become, in recent years, one of the points of greatest tension between the consumer protection system and the aeronautical sector regime.

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The apex of this controversy is Topic 1,417 of the general repercussion of the Supreme Federal Court, which will decide which legal instrument should prevail in the regulation of the exclusions of liability of the air carrier. Before delving into the issue, it is worth transcribing the provision of the Brazilian Aeronautical Code (art. 256, §3º) that typified the hypotheses of acts of God or force majeure, inserted by Law No. 14,034/2020:

> Article 256. [...] § 3. For the purposes of item II of § 1 of this article, the occurrence of one or more of the following events constitutes a fortuitous event or force majeure, provided that they are supervening, unpredictable and unavoidable: I – restrictions on landing or takeoff resulting from adverse weather conditions imposed by an air traffic control system body; II – restrictions on landing or takeoff resulting from the unavailability of airport infrastructure; III – restrictions on flight, landing or takeoff resulting from determinations by the civil aviation authority or any other authority or body of the Public Administration, which will be held responsible; IV – declaration of a pandemic or publication of government acts resulting therefrom, with a view to preventing or restricting air transport or airport activities. (BRAZIL, 1986).

Topic 1.417 was recognized in the Appeal in Extraordinary Appeal 1.560.244/RJ, under the rapporteurship of Minister Dias Toffoli, with general repercussion being admitted in August 2025 (BRAZIL, 2025). The constitutional question consists of defining whether, in light of Article 178 of the Federal Constitution, the rules on air transport prevail over the rules on consumer protection in the discipline of civil liability for cancellation, alteration or delay of a flight due to fortuitous event or force majeure. The paradigmatic case originated from a domestic flight affected by smoke from fires in the Pantanal, which is particularly relevant because Article 178 of the Constitution expressly refers only to international transport.

On November 26, 2025, Minister Dias Toffoli ordered the nationwide suspension of all judicial proceedings on the subject, based on Article 1,035, § 5, of the Code of Civil Procedure. The decision was based on the proliferation of conflicting rulings and the phenomenon of mass litigation, alleging that Brazil concentrates 98.5% of all lawsuits against airlines worldwide (BRASIL, 2025). Subsequently, upon accepting a motion for clarification on March 10, 2026, the rapporteur clarified that the suspension exclusively covers cases of fortuitous event or force majeure as provided for in Article 256, § 3, of the Brazilian Aeronautical Code (situations of external fortuitous event), not encompassing cases of internal fortuitous event, which remain governed by the Consumer Protection Code. This clarification imposes on the Judiciary the duty to make the distinction (*distinguishing*) on a case-by-case basis (MIGALHAS, 2026).

The discussion engages with previous precedents. In Topic 210 (RE 636.331/RJ, Rapporteur Justice Gilmar Mendes, 2017), the Supreme Court established the prevalence of the Warsaw and Montreal Conventions over the Consumer Protection Code, but only regarding material damages in international air transport, expressly excluding moral damages. In other

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words, it established the understanding that the Consumer Protection Code should prevail even over international treaties (except in matters of human rights, obviously) regarding moral damages. And Topic 1,417 innovates by shifting the controversy to domestic transport and to the regulation of the very exclusions of liability.

The dogmatic root of the controversy originated in the list of exclusions in Article 14, § 3, of the Consumer Protection Code:

> Article 14. The service provider is liable, regardless of fault, for repairing damages caused to consumers by defects related to the provision of services, as well as for insufficient or inadequate information about their use and risks. (...) **§ 3. The service provider will only not be held liable when it proves: I - that, having provided the service, the defect does not exist; II - the exclusive fault of the consumer or a third party** (BRAZIL, 1990, emphasis added).

A first, now minority, view holds that the list is exhaustive and that the consumer protection legislator, by adopting the risk theory, would have excluded the possibility of the service provider invoking fortuitous events and force majeure not expressly provided for. This position is defended by authors such as Rizzatto Nunes and James Marins (MARINS, 1993; NUNES, 2021). The widely held view, on the other hand, spearheaded by names such as Sergio Cavalieri Filho, Bruno Miragem, Paulo de Tarso Vieira Sanseverino , Cláudia Lima Marques, Leonardo Roscoe Bessa, and Flávio Tartuce, argues that the list is merely illustrative, admitting external fortuitous events and force majeure as general causes of rupture of the causal link, applicable to any liability regime (BENJAMIN; MARQUES; BESSA, 2017; CAVALIERI FILHO, 2019; MIRAGEM, 2019; SANSEVERINO, 2010; TARTUCE, 2024).

This interpretation has been settled by the jurisprudence of the Superior Court of Justice since Special Appeal 120.647/SP (Rel. Min. Eduardo Ribeiro, 2000), in which the Superior Court established that the silence of Article 14, § 3 does not prevent the invocation of these exclusions, applying Article 393 of the Civil Code subsidiarily. However, the admissibility is modulated by the distinction between internal and external fortuitous events (ALVIM, 1980). Internal fortuitous events, which are events connected to the risk of the activity, do not exonerate the supplier. Only external fortuitous events, which are completely unrelated to the activity, break the causal link. This criterion was established in Summary 479 of the Superior Court of Justice and in Statement 443 of the V Civil Law Conference, according to which fortuitous events and force majeure only exclude liability when the event causing the damage is not connected to the activity carried out (BRAZIL, 2011).

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It was precisely at this point that Law No. 14,034/2020 intervened, by inserting paragraph 3 into article 256 of the Brazilian Aeronautical Code, specifying four instances of fortuitous event or force majeure, provided they are supervening, unpredictable, and unavoidable. This conditional clause is highly relevant, as it makes clear that the legislator's intention was to adopt the concept of force majeure based on the theory of unavoidable events (article 393 of the Civil Code). In other words, to constitute a fortuitous event or force majeure under paragraph 3 of article 256 of the Brazilian Aeronautical Code, the mere suspension of flights or the closure of the airport by the authorities in any and all weather events is not enough; nor is any airport infrastructure problem sufficient; it is necessary, for all these instances, that they result from *supervening, unpredictable* , and *unavoidable events* . This is why it is erroneous to understand that §3 of article 256 would be listing (with the exception of the pandemic) as force majeure situations that would essentially be internal fortuitous events . Furthermore, the provision provides greater legal certainty, as it prevents airlines from invoking dubious defenses of force majeure in court when canceling or delaying flights due to alleged weather events, without going through the scrutiny of an impartial third party.

In the case of the smoke from the Pantanal fires, in which the airline in RE 1.560.244/RJ alleged supposed force majeure due to "adverse climate changes," defending the application of the Brazilian Aeronautical Code (CBA), it is necessary to emphasize that in the case sub judice, the Appellant did not invoke any official order or letter restricting flights from airport authorities, nor any airport closure—which, in my view, weakens the argument that it would have been impossible to avoid operating the flight on that date, considering the application of §3 of article 256 of the CBA. There are other similar judgments (*e.g.* Ap. 1005723-76.2020.8.26.0003/TJSP) which illustrate this premise, but by way of example, even for didactic purposes, let us look at a similar case in RI No. 0007561-73.2018.8.16.0018 of the 2nd Appellate Panel of Maringá (PR), where the appeal filed by the airline (which invoked the argument of force majeure due to adverse weather conditions) was dismissed for the following reasons:

> SUMMARY : APPEAL. AIR TRANSPORT. FLIGHT CANCELLATION. **FORCE MAJEURE. BURDEN OF PROOF. BAD WEATHER NOT PROVEN** . INTERNAL FORTUITOUS EVENT THAT DOES NOT EXEMPT THE DEFENDANT FROM LIABILITY. AMOUNT OF MORAL DAMAGES THAT DOES NOT DESERVE ALTERATION. APPEAL DISMISSED. 1. The delay or cancellation of a flight due to force majeure exempts the service provider from any alleged injury to the consumer. **However, the burden of proof rests with the service provider to demonstrate the occurrence of force majeure, that is, the absolute impossibility of fulfilling the obligation assumed** . 2. In this case, the airline company did not satisfactorily prove the occurrence of force majeure, for the following **reasons: a)**

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> Any news extracted from the internet, which is limited to reporting weather conditions, as well as the METAR bulletin, is not suitable to prove unfavorable weather conditions for flight, since it lacks official support and analysis by a technician of the codes mentioned therein; **b)** the information contained in the ANAC VRA system is entered, altered, and deleted by the airlines themselves and not by a government agency; **c)** the weather conditions intended to guide aeronautical professionals are provided through tables, charts, maps, and climatological forecasts, material to which the appellant certainly has and had official access through the aeronautical authorities; **d)** the official communication from the airport tower in question could serve as proof of the risk of landing or takeoff. [...] 7. Appeal dismissed. [...] (PARANÁ, 2018, emphasis added).

It is worth noting that the aforementioned ruling is from 2018, a year in which the amendment to §3 of article 256 of the Brazilian Aeronautical Code (CBA) did not yet exist. The legal basis applied was perfectly logical regarding the burden of proof, without causing any harm to the consumer or subjecting the service provider to an impossible burden of proof. For this reason, I reaffirm that there is no conflict between the Consumer Protection Code and the Brazilian Aeronautical Code regarding this matter.

As Marques (2017) teaches, the application of the Consumer Protection Code, as a special norm regarding the subject, does not preclude the application of other special norms regarding the object, among which is the Brazilian Aeronautical Code itself. Therefore, there is no relationship of exclusion, but of complementarity: the two legal instruments are applied simultaneously and in a coordinated manner, with the norm most protective of the vulnerable party prevailing in each aspect.

From this perspective, the Brazilian Aeronautical Code should be understood as a special sectoral norm that technically defines the exclusions of liability, without excluding the Consumer Protection Code as a general protection clause, responsible for duties of conduct, objective liability, and protection against abusive clauses (ALBUQUERQUE, 2026). Furthermore, § 4 of article 256 of the CBA maintains the duties of material assistance, reaccommodation, and reimbursement intact, even in the event of fortuitous event or force majeure, which demonstrates that the legislator did not intend to revoke the core consumer protection, as follows:

> Article 256. The carrier is liable for damages arising from: [...] II - delay in the contracted air transport. § 1 The carrier shall not be liable: [...] II - in the case of item II of the **caput** of this article, if it proves that, due to **fortuitous event or force majeure** , it was impossible to adopt the necessary, sufficient and adequate measures to avoid the damage. [...] § 4. **The provision contained in item II of § 1 of this article does not exempt the carrier from offering material assistance to the passenger,** as well as from offering the alternatives of reimbursement of the amount paid for the ticket and for any services ancillary to the transport contract, reaccommodation or re-execu-

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> tion of the service by another mode of transport, including in cases of delay and interruption of the flight for a period exceeding 4 (four) hours as dealt with in articles 230 and 231 of this Law (BRAZIL, 1986, emphasis added).

Therefore, the classification in Article 256, § 3, does nothing more than codify, for the aviation sector, hypotheses already residually recognized by jurisprudence since Special Appeal 120.647/SP, and now subjected to the scrutiny of the requirements of supervening event, unpredictability, and inevitability.

It is concluded, therefore, that Topic 1.417 does not represent a genuine normative conflict, but rather an opportunity for the Supreme Federal Court to reaffirm the harmonious coexistence between the Consumer Protection Code and the Brazilian Aeronautical Code, in order to preserve both sectoral specificity and consumer protection, as guaranteed by articles 5, XXXII, and 170, V, of the Federal Constitution.

Starting from the premise that there is no normative conflict, an uncomfortable question arises: if the Consumer Protection Code and the Brazilian Aeronautical Code are indeed mutually exclusive, what was the real intention of the airlines in filing the extraordinary appeal that gave rise to Topic 1,417 — the Appeal in Extraordinary Appeal No. 1,560,244/RJ? The answer is revealed by the procedural behavior of the airlines after the national suspension order for proceedings.

Once the national suspension was obtained, it was also found that numerous suspended proceedings did not even deal with the hypotheses of external fortuitous events under Article 256, § 3, of the Brazilian Aeronautical Code (the exclusive criterion defined by Minister Toffoli for the suspension of proceedings); in reality, they concerned internal fortuitous events, such as operational failures, *overbooking* , and lack of material assistance—that is, matters unrelated to the subject of the general repercussion. Nevertheless, the audacity of the airlines was such that they went so far as to request the suspension of proceedings in the middle of the sentence enforcement phase or without even filing a defense. For example, in the 9th Special Civil Court of the Capital District in Vila Isabel (RJ), already in the sentence enforcement phase, the court warned the airline Azul of the possibility of being condemned for bad faith litigation if it continued to insist on the suspension of the proceedings (ROSA, 2026). Other examples, such as in the 2nd Special Civil Court of Londrina (PR), were quite frequent, as described in the ruling below:

> The decision of the Federal Supreme Court recognizing the general repercussion in Theme 1417 applies to cases of flight cancellation, alteration, or delay due to unforeseen circumstances (external factors). In the case at hand, **the defendant has not even**

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> **filed a response or presented the defense arguments.** Therefore, I will not analyze the request to suspend the proceedings (PARANÁ, 2026, emphasis added) .

The absurdities were of such magnitude that the Supreme Federal Court itself, when judging the motions for clarification on March 10, 2026, had to reiterate that the suspension only covered external unforeseen events and that it was up to the judges to perform the necessary *distinguishing* , releasing from the stay of proceedings those cases that did not fall under topic 1417 (MIGALHAS, 2026).

It is thus evident that, at least initially, the real intention of the airlines was not to give greater importance to establishing the legal precedent regarding force majeure, but rather to halt as many lawsuits as possible, for as long as possible.

This nefarious strategy can be further corroborated by the sector's economic data. According to a survey based on information from the National Civil Aviation Agency itself, court judgments represented approximately 1% of airlines' operating expenses in 2017; in the first quarter of 2025, expenses related to judgments (R$ 330 million) were equivalent to an amount close to that collected from baggage handling, approximately 1.5% (AERO MAGAZINE, 2025; FENELON JUNIOR; CATANANT; ALENCAR, 2019). Added to this is the fact that Brazil, according to the Brazilian Association of Airline Companies, concentrates 95% to 98.5% of lawsuits filed against airlines worldwide, even though it accounts for approximately 3% of global air traffic (ABEAR, 2024; CEDEÑO, 2025). Furthermore, recent data indicates an increase in flight cancellations of over 231% in the last two years (PODER 360, 2025).

With all due respect to the Supreme Federal Court, a hypothetical abusive litigation on the part of consumers in the context of mass litigation (a topic already addressed in STJ Case 1198) as one of the reasons for general repercussion seems to me a mistaken idea , since the aforementioned numbers contrast with an inverse reading of the much-touted "abusive or predatory litigation" in airline consumer lawsuits: precisely because the judicial cost is negligible, it becomes economically advantageous for airlines to maintain a deficient service standard and bear the burden of compensation, externalizing the costs of their inefficiency to the Judiciary and the passengers themselves, instead of investing in punctuality, material assistance, and failure prevention. In short, it is cheaper for the aviation sector to flood the Judiciary with lawsuits than to provide a quality service.

From this perspective, the broad and generic suspension of proceedings requested by airlines under the pretext of Topic 1.417 clearly does not hold up as an instrument of legal

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certainty, revealing itself instead as a delaying tactic that penalizes access to justice for thousands of consumers harmed by real failures in the provision of air services. This is the so-called reverse abusive litigation—a concept employed by Minister Herman Benjamin, where the absurdities reported here complement what had already been warned by the distinguished jurist (MIGALHAS, 2025). In short, the need to recognize that there is no conflict between the Consumer Protection Code and the Brazilian Aeronautical Code regarding exclusions of liability reinforces the need to give greater attention to the weaker party in the legal relationship.

Final Considerations

Law No. 14,034/2020 emerged with the promise of bringing more security and predictability to the aviation sector, especially after the impacts of the pandemic. However, after a few years, it is clear that the permanent changes inserted into the Brazilian Aeronautical Code, in particular articles 251-A and 256, § 3, ended up generating more debate than definitive solutions.

Throughout this work, it was possible to verify the serious legal uncertainty of article 251-A, given its technically problematic wording in excluding presumed moral damages (*in re (ipsa*). However, through a systematic interpretation, in light of the jurisprudence of the Superior Court of Justice (STJ), it is concluded that presumed moral damages remain exceptionally applicable in cases such as excessively long delays, lack of material assistance, overbooking, serious information failures, among other situations that go beyond mere everyday annoyance. However, the consumer, the more vulnerable party in the legal relationship, cannot be subjected to the imposition of an impossible burden of proof at the whim of each judge's subjectivity.

Finally, Supreme Court Case 1.417 brought to light the tension between the Consumer Protection Code and the Brazilian Aeronautical Code, which in reality does not even present a real conflict between the two legal instruments regarding the exclusions of liability due to fortuitous events or force majeure. The Brazilian Aeronautical Code adopted the theory of unavoidable events, allowing both legal instruments to coexist harmoniously without one canceling out the other. Although the national suspension of proceedings was justified by the multiplicity of actions and the risk of conflicting decisions, in practice it ended up stalling many cases that did not even deal with external fortuitous events, many of them resulting from mass suspension requests by airlines, forcing the Supreme Federal Court to take urgent measures.

In short, Law 14.034/2020 did not represent a complete setback in the protection of air passengers, but it was also not the progress that was expected. Its wording, especially that of article 251-A, left gaps and uncertainties that demand special attention from national jurisprudence on the subject of moral damages *in re ipsa* . The major challenge that remains, however, is to prevent the consolidation of an "industry of mere annoyance" in the name of legal security for airlines, an industry that is as, or even more, harmful to the country than excessive litigation itself.

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