Brazil's Superior Court Invokes *Forum Non Conveniens*: Is that Really What They Mean?

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On September 1, 2026, Brazil's Superior Court of Justice invoked the doctrine of *forum non conveniens* in declining jurisdiction to hear a dispute. It is the first time this court has done so in a transnational case. Does the judgment represent the reception of *forum non conveniens* into Brazilian law? The answer is less straightforward than the terminology used by the court might suggest.

The Dispute

The claim was brought before a local court in São Paulo by a former Argentine professional football player domiciled in Buenos Aires who sought damages for the allegedly unauthorized use of his image in the FIFA Soccer video-game series. The defendants were Electronic Arts Europe Ltd and Electronic Arts Nederland B.V., incorporated in the United Kingdom and the Netherlands, respectively.

The claimant relied on the fact that the games were sold in Brazil in order to establish jurisdiction under Art. 21(3) of the Brazilian Code of Civil Procedure (CCP), which provides for Brazilian jurisdiction where "the basis of the claim is a fact occurring or an act performed in Brazil." The first-instance court found it had no jurisdiction and dismissed the claim. The decision was upheld on appeal by the São Paulo Court of Appeals and, upon further appeal, by Brazil's Superior Court of Justice. Both courts invoked *forum non conveniens* in their decisions.

The approach of these courts to jurisdiction is highly relevant for transnational litigation practice in Brazil. São Paulo is Brazil's principal economic center, and its courts deal with a substantial volume of litigation involving foreign elements. The Superior Court of Justice, in turn, is Brazil's highest court for matters of federal law other than constitutional questions and is responsible for ensuring its

uniform interpretation throughout the country. The Superior Court's endorsement of the approach taken in São Paulo could therefore represent a recognition of *forum non conveniens* not only in one of Brazil's most prominent centers for transnational disputes, but also as part of Brazilian law.

Forum Non Conveniens Without a Basis for Jurisdiction

The Superior Court's reasoning began with an approach familiar to the civil law tradition. It first advanced a purposive construction (teleological interpretation) of Article 21(3) of the CCP, identifying the "principles of proximity and state interest" as underlying the requirement of a factual connection with Brazil.

The court emphasized that the claimant was an Argentine citizen domiciled in Argentina who had never played professionally for a Brazilian team; that the defendants were companies incorporated abroad; and that the video games were actually sold by third-party retailers, who were not parties to the proceedings. It added that exercising jurisdiction in this case would unnecessarily burden the Brazilian judicial system, which would be contrary to the purpose of the connection requirement. In light of those circumstances, the court found no basis for jurisdiction in the case.

Doctrinally speaking, this may have been sufficient to dismiss the claim. Yet the court immediately added: "Accordingly, the choice of the Brazilian forum must be regarded as abusive, given the absence of a substantial connection with Brazil, in light of the doctrine of *forum non conveniens*."

The role of *forum non conveniens* is unclear here. Under the common law approach, *forum non conveniens* presupposes that a court *has* jurisdiction but decides not to *exercise* it. Having found that jurisdiction does not exist under Article 21(3) of the CCP, nor under any other basis, the court had no occasion to consider whether to decline to exercise jurisdiction. Nor did it explain the doctrine's requirements, articulate a test, or identify an alternative forum better suited to hear the claim.

A Departure from Earlier Case Law?

The court also offered no explanation for invoking a doctrine that it had on

previous occasions expressly refused to apply. In two prior judgments, the court had highlighted that the common law origins of *forum non conveniens* are difficult to reconcile with Brazil's civil law tradition. In 2009, the court concluded that *forum non conveniens* "finds no support in Brazilian procedural rules"; in 2016, it stated that Brazilian law does not have a "positive rule capable of permitting this practice."

In 2023, however, the court applied *forum non conveniens* in a dispute concerning the allocation of domestic competence. The case concerned child custody, involving a parent alleged to have committed a crime against the child. Although the judgment is not publicly available, the court's official account states that it relied on *forum non conveniens* to refer the case to another judge better situated to hear it. The court recognized this as an "implicit exception" to the ordinary rules of domestic competence, applicable to cases where a competent court is not "adequate or convenient" for the hearing of the claim.

Now, the court has invoked *forum non conveniens* to decline jurisdiction in a transnational dispute, but without treating it as an exception to its jurisdictional rules.

Forum Non Conveniens as a Response to Forum Shopping

This case reveals a trend in the Brazilian approach to jurisdiction. Namely, Brazilian courts are increasingly seeking to curb forum shopping by invoking their reaffirmed or expanded powers to dismiss claims that do not engage local interests.

The reasoning of the Court of Appeals illustrates this point. It only briefly addresses the interpretation of Article 21(3) of the CCP, while focusing on the *motivations* of the claimant for bringing the claim in Brazil. Forum shopping is expressly identified as the court's main ground for dismissing the claim. The court states that the claimant sued in São Paulo for "purely strategic reasons, with the aim of obtaining a swift financial gain, given this Court's settled case law awarding moral damages against the respondents in favor of Brazilian athletes." The court even notes that the claimant's attorney was involved in several other similar cases, including in its ruling a link to an article in a local online newspaper in which the attorney is mentioned. Indeed, this type of claim has become

remarkably popular among (Brazilian) football players. Today, there are thousands of disputes on this issue pending in Brazil (see e.g. the Superior Court's Tema Repetitivo No. 1.289).

This was also not the first time that the Court of Appeals of São Paulo invoked *forum non conveniens*. In fact, this court has repeatedly invoked the doctrine in recent years, particularly to dismiss claims in domestic disputes where local interests are not concerned. The application of *forum non conveniens* is generally justified with reference to forum shopping, with courts noting the parties' wish to benefit from the (perceived) greater efficiency of courts in São Paulo in relation to other local courts in Brazil.

The 2024 Amendment to the Brazilian CCP

This anti-forum shopping trend can also be seen in another development in the Brazilian law of jurisdiction, which I have also reported on here: the 2024 amendment to the Brazilian rules governing (domestic) choice of court agreements.

That amendment restricts the enforcement of choice of court agreements in cases where the court selected by the parties has no connection to the dispute. The law now characterizes the act of bringing a claim before a court which has no connections to the dispute as "abusive" and gives courts the power to dismiss such claims on their own initiative.

Unsurprisingly, both the Superior and the Court of Appeals used the term "abusive" in the present case, which can be seen as a direct reference to the amended Article 63(5) of the CCP. In fact, the Court of Appeals expressly invoked this provision as an additional basis upon which the claim could be dismissed.

Forum Non Conveniens as a Rhetorical Tool

Taking all these considerations into account, what did the Brazilian Superior Court mean when it invoked *forum non conveniens*?

In this case, it can be concluded that *forum non conveniens* functioned principally as an oratorical reaction to (undesired) forum shopping. Its significance was more rhetorical than doctrinal. As has been shown, invoking *forum non conveniens* was doctrinally unnecessary once the court found no basis for jurisdiction. Yet the

court wished to emphasize its own role in declining jurisdiction where contacts with the forum are insufficient. From this perspective, *forum non conveniens* provided the court with an argumentative framework in which public and local interests could stand at the forefront the courts' reasoning rather than being disguised under certain methods of statutory interpretation.

In terms of a clear reception of *forum non conveniens* into Brazilian law, the decisive question remains whether the Superior Court will rely on the doctrine to decline jurisdiction in a case where a jurisdictional basis *does exist*. Until that day arrives, the Superior Court's use of the term in this case–and its repeated use by regional courts–reflects a growing emphasis by Brazilian courts on their own powers to decline jurisdiction on the basis of public or local interests.

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