

LATIN AMERICA *Mexico*

The Mayan effect: punitive damages claims are on the rise

Introduction

Most legal systems in Latin America, including Mexico, are civil law-based. They rely heavily on codified law, with precedent playing a secondary role.

In civil law-based systems, court decisions are judicial interpretations of codified provisions. Their primary role is limited to filling in some of the gaps in written laws. However, in Mexico, recent court decisions have gone further by offering a broader interpretation of codified provisions. That's what happened in 2014 in the "Mayan Case", a landmark decision where the Mexican Supreme Court ruled that punitive damages could be awarded to plaintiffs.

Background

The Civil Code (the Federal Civil Code and the Civil Code of each state) provides a general liability system, which applies to every kind of liability – from product liability, personal liability and moral damages to extra-contractual and strict liability. The general rule is that anyone acting against the law or contrary to public morals is liable for those acts. According to the Civil Code, damages should, when possible, aim to restore the previous situation of fact. Otherwise, they should reflect payment of any loss/lost profit.

Punitive damages and punitive compensation do not exist in the Mexican Civil Code or in Mexican legislation. That's why the 2014 decision was so significant: for the first time, the Supreme Court²⁵ had, many practitioners believe, implicitly recognized punitive damages as part of Mexican legislation.

The case arose from an accidental death in a five-star resort, the "Mayan Palace Resort". Moral damages were awarded, and justification for the amount of the indemnity was based on a two-part standard. First, as compensation for damages suffered as a result of the perpetrator's unlawful actions. Second, as compensation intended to discourage similar behaviour in future. The Supreme Court ruled that this second aspect should be termed "punitive damages" and accordingly, should be considered as part of the right to obtain fair compensation. This was the first court decision in Mexico to expressly refer to the concept of "punitive damages", as well as being the first in which a party was penalised in this way.

There is, however, nothing innovative about the concept of "fair compensation" – which the Court relied on as a basis for awarding punitive damages. Article 63.1 of the American Convention on Human Rights states that, in cases involving the violation of a right or freedom protected by the Convention, the injured party must be restored to full enjoyment of the violated right or freedom. It also states that, if appropriate, fair compensation should be paid to the injured party.

According to Articles 1 and 133 of the Mexican Constitution, the Constitution itself and international treaties concerning human rights should be considered as the supreme law. In other words, the American Convention on Human Rights has the same legal authority as the Mexican Constitution.

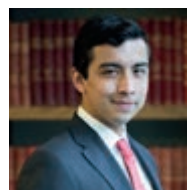
Comment

This case is still not binding precedent. And the lack of any regulation in the Civil Code governing punitive damages (and the scope of "fair compensation") may result in different interpretations from now on. It's possible, therefore, that future decisions may not recognise the concept of punitive damages at all.

That said, since the Mayan Case, we have seen an increase in the number of claims for punitive damages based on the precedent established in that decision. The Supreme Court may also rule on product liability claims for punitive damages soon. It's a fluid situation, and we'll be monitoring it closely.



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²⁵ First Chamber of the Supreme Court: Amparo Directo 30/2013 and 31/2013.