Punitive damages in Mexico

Jorge E De Hoyos Walther
In July 2014 several Court precedents were published, through which the existence of “Punitive Damages” in Mexico was recognized. This resolution will change the way in which civil liability is perceived in our country, and will have implications for individuals and companies doing business overseas.

Civil liability has been regulated in the Mexican legal system since 1928; moreover, it has its precedents in prior regulations. Civil liability has been in our statutes for a long time; however Mexico does not have a solid culture of restitution. The number of civil liability claims is not significant in Mexican Courts; it may be due to inefficient procedural aspects which complicate the claim, or to deficiencies in substantive laws.

In the early 80's, a step forward was given with the introduction of the legal concept of moral damages, which despite its several limitations, represented a breakthrough in civil law. Court precedents were constantly widening the Court powers in relation to this type of cases. Nevertheless, something was missing.

In other countries, in line with compensatory damages and moral damages, there is the legal concept of punitive damages. Mexico was behind in this matter. Punitive damages constitute an efficient instrument implemented in other legal systems that have promoted a more rigorous culture in terms of prevention. Detractors claim that Courts have incurred in excesses; however the exemplary aim of punitive damages has motivated decision makers to take the necessary actions to prevent illicit acts from happening against consumer or users of goods and services.

Due to the indifference of the Mexican Congress to update civil legislation, the Mexican Supreme Court of Justice (SCJN, for its acronym in Spanish), through legal precedents, has been updating different legal concepts. Recently, the Supreme Court, by ruling in two emblematic cases,
issued a series of criteria to be observed in assessing moral damages and through which punitive damages may be filed for in the Mexican legal system. The guiding principles established by the Supreme Court can be summarized as follows:

1. Punitive damages are implicitly recognized in civil legislation. On interpreting Section 1916 of the Civil Code for the Federal District (which is similar to the codes of the rest of the Mexican States), the SCJN recognized that the legal concept of punitive damages is implicit in our legal system, therefore, when determining the punitive damage award the Judge must assess, including but not limited to, the defendant's degree of responsibility and economic conditions. Punitive damages are not only about restitution for the plaintiff, but they also allow assessing the defendant's degree of responsibility.

2. Regarding damage legislation, there is a legal concept known as "punitive damages", which allow the plaintiff to be awarded "fair compensation" for the damages suffered; this legal concept is also intended to deter the defendant and others from engaging in actions or omissions that can cause damage. Punitive damages are aimed at recriminating the defendant's misconduct. This modification to civil law is intended to guarantee fair and full compensation to the plaintiff.

3. Moral damages are defined as the damages suffered by a person other than economic damages. Moral damages are thus focused on non-pecuniary or emotional aspects. In this regard, moral damages include anguish, humiliations, suffering and pain. Moral damages can be divided as follows: 1) Reputational damage, 2) Physical disfigurement and 3) Wounded feelings.

4. Moral damages have present and future projections. The judge should assess not only the current damage but also the future damage.

5. Moral damages will have to be proven, except from those cases where the existence thereof is obvious, such as in the case of a death. They can be proven through psychological or other tests, or, they can be indirectly inferred from other facts.
6. Legal action for moral damages is independent from any claim for compensatory damages. Therefore, it is not necessary that both claims are established in one single complaint.

7. Moral damages can occur both in contractual and tort liability.

8. Several aspects must be considered when assessing moral damages, which will enable Judges to determine the compensation award for full restitution. To determine the compensation award, the Judge will analyze the following aspects:

   a. Regarding the plaintiff, the following elements must be considered in order to assess moral damages: (i) the kind of right or interest affected and (ii) the existence of the damage and how severe it is. On the other hand, to assess the compensatory damages derived from moral damages, the following elements must be considered: (i) the expenses incurred as a result of the moral damage and (ii) the expenses to be incurred in the future.

   b. Regarding the defendant, the following aspects must be considered: (i) the degree of responsibility and (ii) the defendant's economic conditions.

9. When determining the compensation award for moral damages, the Judge may consider the plaintiff’s economic conditions, but only in terms of the moral damage pecuniary aspect. Nevertheless, when determining the compensation for moral damages, in emotional terms, the plaintiff's profile should not be taken into account. In such cases, the plaintiff's economic conditions should not be considered to assess the degree and intensity of the psychological damage, since this does not influence, increase or decrease the pain suffered.

   One of the collateral effects of these legal concepts is that from now on foreign sentences of punitive damages can be executed in Mexico. In the United States of America several State codes provide for punitive damages. Punitive damages are part of the American "judicial culture." Punitive damages have been reason for debate and criticism due to the "profitable business" that the associated multi-million lawsuits represent. Judges in the USA are used to impose severe penalties to wrongdoers.
But Judges in Mexico have trouble to recognize and execute foreign sentences imposing punitive damages. In trials related to this instance, defense attorneys typically claim that those sentences cannot be executed, at least in the part relating to punitive damages, since this legal concept is not set forth in the Mexican legislation. With this resolution of the Mexican Supreme Court of Justice the outlook changes, now this type of sentence is set forth in the Mexican statutes, and there won’t be any obstacles for Mexican Judges to recognize and execute sentences imposed by foreign Judges.

This change sets the beginning of a new era in Mexican law with respect to civil liability claims. The summary hereby presented contains only general guidelines; deeper research in the subject is advised, the literature available on it is abundant.