

NON-MATERIAL DAMAGE (TORT). WHAT IS IT IN MEXICO AND WHEN CAN YOU CLAIM IT IN COURT?

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Executive Summary:

- Moral damage in Mexico refers to the harm caused to a person's feelings, honor, reputation, private life, or physical or mental integrity, as defined by Article 1916 of the Federal Civil Code. When someone causes such harm, the law requires the harm to be repaired through compensation, regardless of whether there is also material damage. The amount of compensation is determined by considering factors such as the rights violated, the degree of responsibility, the economic situation of the parties involved, and the circumstances of the case.
- The Supreme Court of Justice of the Nation has issued key rulings to ensure fair compensation, aiming to restore the situation before the harm occurred. The essential elements to claim moral damage include the existence of an unlawful act, the resulting harm, and the causal link between the two. Common cases where moral damage claims can arise include defamation, violation of privacy rights, harassment, and discrimination.

Many of us have likely heard the concept of non-material damage or tort, under which, in general terms, a person who suffers a certain type of harm may claim compensation and/or reparations (usually monetary) from the person responsible for such harm. But what does it mean?

Article 1916 of the Federal Civil Code defines non-material damage as: "...the harm suffered by a person in their feelings, affections, beliefs, decorum, honor, reputation, private life, physical configuration and appearance, or in the esteem that others have for them. Non-material damage is presumed when a person's freedom or physical or psychological integrity is unlawfully violated or undermined...".

Thus, Mexican law establishes that whoever causes non-material damage has the obligation to compensate for it through monetary, regardless of whether material damage has also been caused, both in contractual and non-contractual liability.

How is the amount of indemnification determined?

The referred legal provision states that Judges must determine it, taking into account the following elements:

- (i) the rights that were violated;
- (ii) the degree of responsibility;
- (iii) the financial situation of both the responsible party and the victim; and
- (iv) other relevant circumstances of the case.

The Supreme Court of Justice of the Nation has issued important precedents on non-material damage and the right to fair compensation in Mexico. These rulings have been fundamental in guaranteeing adequate reparation for the damage caused[1], particularly in cases involving torts and their reparation according to the human right to just indemnification.

According to national jurisprudence and the criteria of the Inter-American Court of Human Rights, indemnification seeks, as much as possible, to eliminate the consequences of the wrongful act and restore the situation that would have existed had the damage not occurred. If this is not feasible, fair compensation must be granted, not as a gain for the victim, but as adequate restitution.[2]

In general terms, and in accordance with national legislation and jurisprudence, parameters for quantification have been established, as well as how they should be weighed to determine the amount of indemnification:

a. Factors related to the victim:

- Emotional impact: Determined through psychological evaluations.
- Economic consequences: Expenses derived from the damage, such as medical treatment or therapy.

b. Factors related to the responsible party:

- Degree of responsibility: The more serious the conduct, the higher the possible indemnification.
- Financial situation: Considered to determine a fair and proportional amount.

In this regard, the Supreme Court of Justice of the Nation has held that in modern tort law, priority must be given to the nature and extent of the damage suffered by the victims rather than the perpetrators, since it is the damage caused that will determine the nature and amount of the indemnification. Reparations must not result in either enrichment or impoverishment for the victim or their successors, as the objective is not to impose excessive liability.

Under this scenario, the elements that, according to law and judicial criteria, must be proven for a claim of this nature to be successful are: **(i)** the existence of an unlawful act; **(ii)** the occurrence of harm or adverse effect, as established in Article 1916 of the Federal Civil Code and other legal provisions; and **(iii)** the existence of a causal link between the first and second elements.

In this context, the clearest cases in which the right to claim non-material damage indemnification may arise include wrongful acts resulting in the death of individuals, but also, for example, conducts such as:

1. Defamation, slander, and libel.
2. Violation of the right to privacy.
3. Breach of contracts or employment relationships.
4. Discriminatory acts.
5. Harassment and psychological violence.
6. Unauthorized use of image or name.

[1] For reference and better understanding, see the following note published online: <https://arturozaldivar.com/sentencias/mayan-palace-danos-punitivos-dano-moral-indemnizacion/>, related to a landmark case for the knowledge of moral damage in Mexico, linked to a ruling issued against a prestigious hotel chain for the death of a person at one of its hotels.

[2] See the jurisprudence issued by the Supreme Court of Justice of the Nation, whose heading reads: "FUNDAMENTAL RIGHT TO COMPREHENSIVE REPAIR OR FAIR COMPENSATION. ITS CONCEPT AND SCOPE."