U.S.-Style Punitive Damages Awards and their Recognition and Enforcement in Switzerland and other Civil-Law Countries

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1 Encounter with the Supposedly "Unknown"

Punitive damages, also called exemplary damages, are damages awarded to the plaintiff in excess of any compensatory or nominal damages, i.e. over and above what will compensate him for his loss. The intended function is to make the defendant more responsible for the same wrongs where a party is guilty of outrageous misconduct, for example, where the imputed acts are wanton, reckless, malicious or otherwise offensive. Positive purposes include inducing the defendant to avoid wrongdoing in the future, deterring the defendant from similarly wrongful conduct, and deterring other wrongdoers from engaging in similar conduct in the future. In some cases, punitive damages are awarded to a plaintiff to compensate for emotional distress caused to the plaintiff by the defendant's misconduct.

The concept of punitive damages awarded to plaintiffs is largely unknown in civil-law countries such as Switzerland. Generally, civil-law countries base their punitive damages on the principle of the "majority of the damages", which is a formula for determining the amount of damages, not a separate category of damages. In this context, it is important to note that the Swiss legal system has a strong tradition of proportionality and restraint in the award of damages, balancing the interests of the parties and the public.

Punitive damages are typically limited to tort actions where the defendant has engaged in exceptionally objectionable conduct. Less commonly, punitive damages are awarded for breach of contract, as well.

Along with the emergence of the global economy, the shrinking distances between countries and the expansion of business enterprises around the world, there has been a big increase in the number of litigation cases between common-law-based plaintiffs and defendants based in different jurisdictions. Apart from the basic principles of awarding damages as observed by judges in common-law countries versus judges in civil-law countries, there is no European Union-wide harmonization of the different approaches of civil-law and common-law countries to compensating a party for damages suffered in tort actions or in cases of breach of contract.

2. A Different Approach to Compensation

The compensation systems in Switzerland and other civil-law countries are based on a different fundamental principle, namely that plaintiffs may not enrich themselves at the expense of the tortfeasor. Although the prohibition of unjust enrichment is not specifically expressed in any statute, it is still a fundamental principle in the Swiss Code of Obligations ("SCO") regarding the determination of, and compensation for, damages. These provisions reflect the basic principle applicable throughout the civil legal system, which states that any person who suffers harm due to another's fault is entitled to compensation for the harm suffered. This principle is known as the "solidarity principle" and is enshrined in Article 10 of the Swiss Civil Code.

3. Bounding the Scope of Nominal Damages

In England, juries occasionally convicted of local citizens who were familiar with the controversy. They determined both the outcome of the trial and the amount of damages awarded. In the nature of things, a jury is more likely to recover than more disinterested jurors, who have less incentive to declare against any claim. Furthermore, juries may be more likely to consider the question of punitive damages and the possibility of a larger award to the plaintiff.

Punitive damages are limited to tort actions where the defendant has engaged in exceptionally objectionable conduct. However, in civil-law countries, they are not limited to tort actions, including contractual breaches. In some cases, civil-law countries recognize the existence of legal fees, but these fees have not been determined or sanctioned by statute. In Swiss law, there are no punitive damages.

4. The Great Divide: What Is the Origin?

Why it is that punitive damages are generally unknown, and why they proliferate in common-law countries? The difference is to be put down, primarily, to procedural factors. Most civil-law countries base their punitive damages on the principle of the majority of the damages, which is a formula for determining the amount of damages, not a separate category of damages. In this context, it is important to note that the Swiss legal system has a strong tradition of proportionality and restraint in the award of damages, balancing the interests of the parties and the public.

Thus, in common-law countries, punitive damages are not subject to any limitations. The decision to award damages is largely left to the discretion of the judge or the jury. Moreover, the amount of damages awarded is often greater than the actual loss suffered by the plaintiff, which can result in punitive damages being awarded in cases where the defendant did not cause any actual loss.

This results in a situation where the punitive damages awarded are generally much higher than the actual loss suffered by the plaintiff. The defendant is punished for the defendant's conduct, rather than the plaintiff's loss. This can lead to situations where the punitive damages awarded are much higher than the actual loss suffered by the plaintiff, which can result in punitive damages being awarded in cases where the defendant did not cause any actual loss.

5. Who Decides on the Size of Punitive Damages?

In the United States, the amount of punitive damages is determined by the jury in civil actions. The jury is instructed to consider the severity of the defendant's conduct, the financial resources of the defendant, and the harm suffered by the plaintiff in determining the amount of punitive damages.

In Switzerland, the amount of punitive damages is determined by the court, and is based on the severity of the defendant's conduct, the financial resources of the defendant, and the harm suffered by the plaintiff. The court may consider other factors, such as the defendant's motivation and the availability of other remedies.

6. The Predominant Influence of Common Law

To be sure, the Swiss courts attach great importance to the principle of proportionality. However, they also place great emphasis on the principle of justice in deciding on the amount of punitive damages.

In determining the amount of punitive damages, the court will consider the severity of the defendant's conduct, the financial resources of the defendant, and the harm suffered by the plaintiff. The court may also consider other factors, such as the defendant's motivation and the availability of other remedies.

7. A Different Approach to the Punitive Damages Question

In practice, the amount of punitive damages awarded in Switzerland is generally much lower than the amount awarded in the United States. This is due to the Swiss legal system's strong tradition of proportionality and restraint in the award of damages, balancing the interests of the parties and the public.

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8. The Statute of Limitations and Punitive Damages

In Switzerland, the statute of limitations for punitive damages is generally two years from the date of the damage. However, there are some exceptions to this rule, such as where the defendant has concealed the damage, or where the plaintiff has been prevented from bringing the action by the fault of the defendant.

9. Conclusion

In conclusion, punitive damages are not generally recognized in common-law countries, and are limited in their application. However, in civil-law countries, punitive damages are more widely recognized, and are often awarded in cases where the defendant has committed an act of misconduct.

10. References

[5] The Fifth Amendment to the United States Constitution provides:
[6] 16 Out of 57 cases listed in the Supreme Court's decision, the majority opinion was written by Justice Sandra Day O'Connor. The dissenting opinion was written by Justice Antonin Scalia.
[8] The Ex Post Facto Clause, 1791, Article I, Section 9, Clause 3.

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that recognition of a judgment must be refused in cases that are clearly incompatible with essential principles of German law, particularly if the recognition is inconsistent with German public policy.

Not surprisingly, therefore, the situation in Germany is, for the time being, quite similar to that in Switzerland. As a general rule, German courts are very reluctant to recognize foreign judgments containing punitive damages, too. The decisive 1992 decision of the highest German court, the Federal Constitutional Court ("Bundesverfassungsgericht"), held that punitive damages awards violate the principles of public order.

The enforcement of such judgments would be contrary to the general principles of public order and public policy, as well as the constitutional principle of reasonableness. Moreover, it would also violate the penal monopoly of the state to impose punitive sanctions.

In a more recent decision rendered in 1998, the German Federal Court of Justice deviated from its strict position and recognized in favor of a claimant the enforcement of the compulsory damage component of a U.S. judgment that contained a large punitive damages award. In other words, it partially recognized the judgment by reducing the damages down to the amount that it considered compatible with German constitutional principles of reasonableness. The court underscored that punitive damages are essentially intended to impose a penalty on the wrongdoer or the party that is guilty of serious moral conduct. The punishment is expressed in a monetary award, but it is always intended to be paid to the victim as damages. In other words, punitive damages essentially serve as a punishment on the perpetrator of the tort rather than compensating the loss suffered by the victim.

The court, therefore, dismissed the plaintiff's action for recognition and enforcement of the foreign judgment, but it still allowed enforcement of the far smaller punitive damages award, which is incompatible with public order, i.e., the punitive damages principle of the Italian legal system.

3. France

The concept of punitive damages is also unknown in French law. In principle, French courts seek to compensate the loss suffered by the victim and, thus, refuse to award any punitive damages. The Court de cassation has frequently stated that the objective is to "restore, as exactly as possible, the balance destroyed by the damage and to re-establish the situation in which the victim would have found himself had the damaging act not occurred."

There are, however, situations when a court will award damages higher than the actual harm suffered. Such situations include cases where the foreign courts only require proof of the illicit behavior, inferring that its existence demonstrably does not exist. This is also common in "grandeursendamnations" cases, where the court has been pointed as having a prize. French courts consider such cases as a form of compensation for the damage that has been of substantial value to the victim.

In another case, there is no loss, the victim receives a significant indemnity.

It appears that French courts have never had to decide whether to recognize and enforce a judgment awarding punitive damages, as I will show further below, the admittance of a partial enforcement is still a controversial issue in Switzerland.

2. Italy

In the Italian legal system, as well, the concept of punitive damages is not known. There are a few similar remedies, such as liquidated or agreed damages, which are also limited in Italy.


25 De Wever "Infringement of Public Order", in 1987, N 218 et seq. ("Zivilwürdigung").

26 D. Müller, US-amerikanische Punitiv-Schäden-Urteile in Deutschland vorbehalten; Der Begriff, N 19 de 1, 2001, p. 163 et seq.

27 Tristan, Rechtsvermittlung, N 20 de 3, 2002, N 218 et seq. (V.V.A.)


29 The author would like to thank Dr. Matthias Buchrauch Deringer, Prague, for this contribution on the situation in France.

30 Punitive damages: "damages given to the victim ("décote civile"), as both to seek and punish and discourage illicit behavior. Civil fines differ from punitive damages for a judgment of condemnation, thus, are compatible with an exact compensation of the actual costs. Civil fines may be awarded in non-criminal proceedings if expressly authorized to do so by a legal tool. In 2001, the French legislature introduced such a fine in civil law (particularly from 1998.


32 All of the above-mentioned citations, that is, the "Code Civil" and the "Code de Procédure Civile", are applicable in France for the same reasons. Thus, the cited articles are considered as the same.

33 It appears, however, that some of the punitive damages have been granted in the context of tortious conduct, thus are compatible with an exact compensation of the actual costs. Civil fines may be awarded in non-criminal proceedings if expressly authorized to do so by a legal tool. In 2001, the French legislature introduced such a fine in civil law (particularly from 1998.

34 Therefore, we need to focus on punitive damages awarded in the context of tortious conduct.

3. Other Civil-Law Countries

Other civil-law countries not explicitly mentioned so far have taken an approach similar to that presented for Switzerland, Germany, Italy and France. None of them obtains punitive damages awards in the context of tortious conduct.

In conformity with this principle, the Venice Court of Appeal recently refused to recognize and enforce a U.S. judgment of the District Court of Jefferson County (West Virginia), dated February 2, 1996, which had awarded a punitive damages award of $100,000 to the former chef of a restaurant who had committed fraud.

The court based its decision on the fact that the judgment is governed by law that is not compatible with French law. The French court, therefore, refused to recognize and enforce the judgment, as the punitive damages awarded are not in line with French public policy.

After more than a year of litigation, the German Federal Constitutional Court of Justice deviated from its strict position and recognized in favor of a claimant the enforcement of the compulsory damage component of a U.S. judgment that contained a large punitive damages award. In other words, it partially recognized the judgment by reducing the damages down to the amount that it considered compatible with German constitutional principles of reasonableness. The court underscored that punitive damages are essentially intended to impose a penalty on the wrongdoer or the party that is guilty of serious moral conduct. The punishment is expressed in a monetary award, but it is always intended to be paid to the victim as damages. In other words, punitive damages essentially serve as a punishment on the perpetrator of the tort rather than compensating the loss suffered by the victim.

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of the 334a, it can result in hiring that is not related to the ac-
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merely in the position to dismiss the employer, the non-payment of earnings
no longer goes far. In fact, the legislature's conscious devi-
sion from said principle was motivated by the consideration that
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is entitled to reimbursement. In all cases, the non-payment
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Die Verordnung zur Verhinderung "verstechlicher" Gewährleistungsleistungen zielt darauf ab, die nachkriegsdeutsche Automobilindustrie. Die Ungeheilskraft entsteht durch eine Politik, wonach nur be- liebte Kunden ihre Reparatur- oder Ersatzteilekosten zurückbekommen dürfen, und generelle Bestimmungen, die die Ausweitung von Gewährleistungsleistungen durch andere Hersteller erhöhen. Die Verwaltung von Freistellungen von der "verstechlichen" Gewährleis- tungsleistung" befürwortet, die viele Vorteile für die Konsumenten bieten, da sie eine echte Sorge gedeckt.

Der Hersteller darf für die Reparatur, die durch die ausdrückliche Gewährleistung gedeckt sind, bezahlen.

Der Hersteller darf für die Reparatur von Lastkraftwagen, die nicht von der Herstellerkosten, Verzögerung oder die Kosten des Reparaturbetriebes, wenn die Reparaturen lediglich in einzelnen Fällen vorkommen, von solche eine echte Verhältnis von für getroffene Maßnahmen für den gleichzeitigen Bereich. Keiner der Bundesländer schafft, der Hersteller müssen die Kosten der "verstechlichen" Gewährleistungsleistungen in Bezug auf die richtige Kunde, der einen Kunden über eine eventuelle hohe Maßnahme nicht in Konsens setzt, keinen "Betrag" begegnen.

3.3 Die Untersagung des Beschlechts
Das 3.2 Tatbestandeselement wird als erfüllt angesehen, wenn jeder Kunde, dessen Kunde über das schriftliche Gewährleistung Bedenken besteht, nicht in der Lage ist, die unbekannten Rechte zu erbringen. In diesem Zusammenhang sollte auf den Rechtsrat von "Kunden" kurz erweitert. Nach dem typischen Gesetz gelten alle Kunden:

1. Käufer eines neuen Fahrzeugs für nicht Kundenverwaltungs-Verträge
2. Der Leser eines neuen Fahrzeugs gemäß eines schriftlichen Leasing-Vertrages
3. Käufer des Fahrzeuges als Zeugen der Gewährleistungsleistungen
4. Derjenige, der die Gewährleistungserstattung durch Aufpreiszahlung

3 In Wisconsin. [Zweck dieses Gesetzes ist es, die Geschäftszwecke anderer Hersteller zu stoppen, die die Kosten der Reparatur oder Ersatzteilekosten zurückbekommen dürfen, und generelle Bestimmungen, die die Ausweitung von Gewährleistungsleistungen durch andere Hersteller erhöhen. Die Verwaltung von Freistellungen von der "verstechlichen" Gewährleis- tungsleistung" befürwortet, die viele Vorteile für die Konsumenten bieten, da sie eine echte Sorge gedeckt.]

Vgl. auch die Beschreibung "Verkehrsunfallvertrag" nach dem zugrunde liegenden Gewährleistungsvertrag (auch z.B. Karten für Fahrzeuge auf der Autobahn)