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When should damages be determined?

Miquel Montaña (Clifford Chance) · Tuesday, December 18th, 2012

Historically, damages used to be calculated in the so-called “execution” (i.e. enforcement) phase of the proceedings, i.e. a second phase of the proceedings aimed at implementing the declarations and orders included in the judgment handed down after declaratory infringement proceedings. Due to the abuse of this system, in practice, the “execution” phase resulted in complex new proceedings which ultimately gave rise to a duplication of debates that could have been resolved in one shot during the declaratory phase.

To put an end to the abuse of this system, the new Spanish Civil Procedure Act approved in the year 2000 required damages to be determined during the declaratory phase of the proceedings, so that, in the “execution” phase, damages can be assessed by applying a simple arithmetic calculation as determined in the judgment. As an exception, the new Civil Procedure Act established that, in some circumstances, damages could be calculated in subsequent declaratory proceedings, although so far, our Courts have interpreted this exception rather strictly.

On 24 October 2012, the Civil Chamber of the Supreme Court handed down an “*en banc*” decision that may change this state of affairs. In this judgment, after noting that previous judgments had made an excessively strict interpretation of the new requirement, the Supreme Court declared that, depending on the specific facts of the case, the complainant may well be entitled to assess damages at the “execution” phase or even in new declaratory proceedings. Which route is to be followed will depend on the complexity of each case.

All in all, taking into account that, as mentioned, this judgment was approved by the full bench of the Civil Chamber of the Supreme Court, it may pave the way for a more flexible interpretation from lower level courts from now on.

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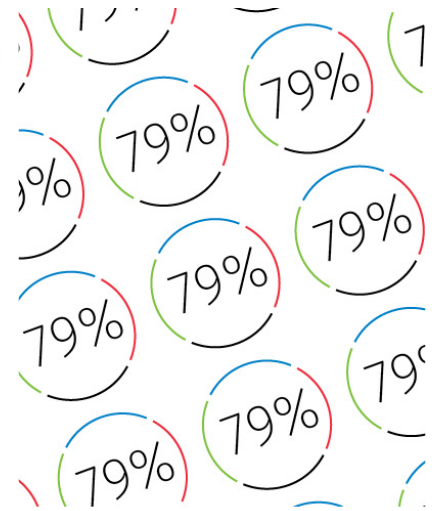
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This entry was posted on Tuesday, December 18th, 2012 at 6:46 pm and is filed under [Damages](#), [Enforcement](#), [Procedure](#), [Spain](#)

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