

How to Sue Someone in Costa Rica and Possibly Win

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August 10, 2018

Costa Rica has always had a Justice system that can be linked to a maze of epic proportions where it was often easy to get lost or simply abandon the challenge of bringing a lawsuit to an end; many lawsuits take between five and ten years to be resolved. The reasons are multiple; a few are the lengthy and formalistic procedures, excess of appeals allowed, slow times to resolve by the Courts of Appeal, and the lack of training of judges in courts located in rural areas.

The damage compensation system is also very unfair, sometimes breaking the balance of the scales of Justice. The country has established an all or nothing system to compensate for damages to the victim, and it benefits the person or entity responsible for repairing the damages, protecting them from liability of any kind. The problem is that civil jurisprudence has established that the damages must be certain and present, often ignoring the liability for potential future harm to those who were damaged.

As an example, "Person A" rents a farm for 10 years to grow pineapple, for which he or she acquires equipment and hire employees. Just before starting the operation, "Person B" invades the farm, destroys the machinery, and prevents the farm to be cultivated. "Person A" then sues "Person B" for damages, being likely to get the value of the machinery, starting salaries of the employees, plus statutory interest on that investment. The existing system, however, does not grant "Person A" any compensation for any future profits they have lost.

In recent years a trend of indexing certain amounts awarded by the judges was instituted. Indexing means computing past damage amounts into present value. The formula is based on changes in the Consumer Price Index carried out by the Institute of Statistics and Census. Thus a person who claims an amount of damages that should have been paid in 2008, and an award is granted in 2015, may request that the 2008 sum is converted to present value. However this does nothing to calculate present value of future damages.

In recent times, however, a tendency to award future damages, based on a theory called "lost opportunity", has been gaining strength. The loss of opportunity is defined as the disappearance of the real and serious chance of a favorable event. Under this category the Plaintiff can be compensated for present losses as a result of asset impairments of economic nature, and the loss of opportunities to earn a profit or save certain costs in the future. To be granted, the opportunity has to be serious and have a reasonable chance of realization.

In Costa Rica this theory was derived from the French doctrine proposed by a Costa Rican College Professor, Federico Torrealba Navas. For Navas, a main element of determining the amount of the future loss of opportunity is the interruption of the normal course of events by an

action attributable to facts which can be demonstrated as being the cause of the elimination, or weakening, of the existing opportunity.

Thanks to Professor Torrealba Navas's theories the Costa Rican courts granted such compensation in an arbitration process during 2001. The compensation was initially awarded in an arbitration procedure, and required that the same be approved by the courts. It was not until 2009 that the Supreme Court issued a ruling which mentions the possibility that the loss of opportunity theory applied. The decree stated there was a necessity for the Plaintiff to prove the previous existence of a situation of real advantage which was frustrated as a result of an unlawful action.

Finally, in 2012, the Supreme Court issued a judgment granting compensation for loss of opportunity arguing that, "...this Court considers that there is room for compensation of the financial injury resulting from unlawful conduct, which was following the allocation of a real and serious possibility of making a profit or future situation of advantage, not a mere chance, a hypothesis or a mere risk, as was said, but in a secured probability, a high degree certainty for the realization of the final energy supply contract".

The case was a lawsuit started by a producer of electrical energy which was affected by ICE – the Costa Rican electricity company – by ICE's cancellation of the possibility of participating in a contract, after the Plaintiff had made a sizable investment. The Plaintiff was granted the equivalent of 10% of the profits it would have generated from the project over the 15-year period that the contract would have lasted. This amount represents a lot of money that, under the past regulations, would have never have been granted.

There are other possible scenarios for damage claims resulting from loss of opportunity. One we can mention is the case of a person who studied medicine, achieving excellent grades and establishing great potential to become a great doctor. The student was struck by a careless driver and his injuries reduced his opportunity to achieve his potential as a doctor. In this example, a compensation claim was filed based on the lost, future income that could have been obtained by the Plaintiff for practicing in his chosen profession over a number of years. To obtain a favorable judgment, it is necessary to prove the serious existence of such opportunity.

From the above we can conclude that a door is finally being opened for the judicial system to award damage compensation in a more just and equitable manner than the current system, which grants only existing damages when an unlawful act occurs. Hopefully in the near future more claims will be resolved and accepted in this direction. This can only improve our justice system significantly and grant fair compensations to all of those victims who suffer major damages due to the illegal actions of others.

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)