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Layout & Distribution: Valéria Kozakova & Bernadette Curty

United Tort Laws of Europe - Blessing or Curse?

Bernhard Koch



Annual Liability Regimes Conference 2004
Zurich, 10/28/2004


B.A. Koch: United Tort Laws of Europe



Foreign but Equal?

Are tort laws throughout Europe **really similar**?

To a considerable degree: **YES!**



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 Zurich, 10/28/2004
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Common trends

- ✓ **Non-pecuniary loss**
 - Extent
 - Range of claimants
- ✓ **Professional duties of care**
 - Medical liability
- ✓ **State liability**



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Are tort laws throughout Europe **really similar?**

To a considerable degree: **YES!**

However: **Differences** remain,
 both among the **reasons** for liability
 as well as with respect to **remedies.**

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Foreign but Equal

Are tort laws throughout Europe
To a considerable degree
However: **Differences**
both among the reasons
as well as with respect to

- ✓ **Reasons for liability**
Countermovement
from strict to fault
and the reverse
- ✓ **Extent of damages**
Non-pecuniary loss

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Harmonization by Imposition

EU Directives and Regulations

- Inconsistent concepts
- Contradictory terminology
- Questionable jurisprudence




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Harmonization by
EU Directives and Regulations

- Inconsistent concepts
- Contradictory terminology
- Questionable jurisdiction

○ **Environmental liability**

Directive 2004/35/CE
on Environmental Liability with Regard
to the Prevention and Remedying of
Environmental Damage



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○ **Product liability**

Second Report on the Application of the Product Liability Directive (COM[2000] 893 final)


Veedfald v. Århus Amtskommune, ECJ
10 May 2001,
C-203/99

Harmonization by EU Directives and Regulations

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- Contradictory terminology
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Free Movement of Tort Rules?

European tort law on the move
Help from across the ocean?
Extremes on either side of the Atlantic
Growing tendency to consider comparative law
e.g. *Fairchild v. Glenhaven Funeral Services Ltd.*, [2002] UKHL 22





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Light at the End of the Tunnel?

Chances to overcome existing difficulties?

Top down or bottom up?

European Group on Tort Law:
"Principles of European Tort Law"
May 19-20, 2005