

EUROPEISATION OF TORT LAW

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Resumé

Article deals with legal aspects of europisation of tort law. The aim of this paper is to show individual methods of harmonization of tort law.

The term europisation can be analysed from two insights. Firstly, it refers to the general meaning often used on the field of political science and secondly this term contains intradisciplinary approach. Article focuses on the later one while dealing with europisation of law, particularly tort law.

Europisation of law may be understood as a phenomenon of broadening of the scope of European law, as well as the emergence of new legal disciplines in Europe, linked to European integration.

Europisation has three main consequences: a fundamental change in the systems of sources of law in the legal systems of European countries, a coming closer of legal systems which contributes to the break up of the common law family of legal system as well as of the legal systems derived from continental European countries, and changes in terms of methodology of legal sciences.

Harmonization of European tort law is conditional on regulatory processes by way of EC regulations and directives and on the other hand by way of spontaneous europisation of tort law.

Nowadays, regulatory europeisation in the field of tort law is only fragmentary and unsystematic. The European Union institutions followed the aim of creating a single European market without barriers to trans-border trade and exchange. However, the heart and soul of tort law remained outside the scope of scrutiny and control exerted by the European institutions. In the area of tort law, the activities of the European institutions were confined only to choice of law, partly to consumer matters and matters relating to insurance against civil liability in respect of the use of motor vehicles. Probably the most important is the Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

Spontaneous europeisation, also called harmonization in weak sense or soft law, means the effort of distinguished scholars and practitioners from several states to try to identify the common core of European systems of tort law and to restate the result in an accessible manner. This approach is not new but has long legal tradition beginning at Roman law.

Draft of the Common Frame of Reference (DCFR) also belongs to the soft law category. It contains principles, definitions and model rules of European private law. Book VI. of DFCR also contains rules of noncontractual liability arising out of damage caused to another. In contrast to other soft law projects DFCR does not include only general principles but also contains particular rules.

Principles of European Tort Law (PETL) project is one of the most interesting legal tool from the soft law category, therefore last part of the article focuses on their fundamental characteristic.

The European Group on Tort Law is a group of scholars in the area of tort law established in 1992. The group meets regularly to discuss fundamental issues of tort law liability as well as recent developments and the future directions of the law of tort. The Group has drafted a collection of Principles of European Tort Law (PETL) similar to the Principles of European Contract Law (PECL) drafted by the European Contract Law Commission. Within the framework of this cooperation, the Group has presented the Principles in a public conference on May, 2005, in Vienna.

In order to attain the necessary overview of the various legal systems, written country reports on the tort law have been prepared. Commentary was written from these country reports and was issued at the same time as PETL.

The goal of PETL is to serve as a basis for the enhancement and harmonization of the law of torts in Europe. They can serve as a kind of framework for the further development of a harmonised European tort law. The Principles of European Tort Law are a compilation of guidelines aiming at the harmonization of European tort law.

Under the PETL principles it is clear that a person has to compensate another person's harm only if certain requirements for liability are met. In other words, a person's obligation to render compensation is only established if the damage is legally attributable to him. The basis norm thus makes clear that "*casum sentit dominus*". The starting point is therefore that every person has to bear his loss himself, which is only departed from if there is a legal basis for shifting it to another. The second starting point is that damage has to be compensated. Damages serve primarily the aim of compensation but also prevention. The core and also the conclusion is that a person to whom damage to another is legally attributable is liable to compensate that damages.

Principles of European Tort Law may serve both as a source and as an anchor for law reform at the national level. Principles may stimulate the debate about the future of this tremendously important field of law in Europe.

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