

Friday 28 June

Morning

10.00 **Tort Law Reform in Belgium**

Speaker: Geert Jocqué
Section President in the Court of Cassation of Belgium and part-time professor at the Catholic University of Leuven, Belgium

10.45 **Tort Law Reform in France**

Speaker: Jean-Sébastien Borghetti
Professor of Private Law, University Paris-Panthéon-Assas, France

11.30 Coffee Break

12.00 Second set of papers presented as a result of the call for papers.

12.45 Questions and debate

13.30 Closing words and end of the conference



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CALL FOR PAPERS

The organisers kindly invite the presentation of papers to this Symposium:

- Abstracts of papers proposals should be in English and no longer than 3.000 words. They should be submitted before 15. April 2024 to the Scientific Committee of the Symposium to the following e-mail: secretaria.iecpl.dret@udg.edu
- Among the presented proposals, the Scientific Committee will select up to fifteen papers before 30. April 2024.
- Selected papers should be presented to the Scientific Committee in full (between 6,000 to 9,000 words) before 15. June 2024.

Attendance is free, but requires registration before June 15, 2024, at the following address: secretaria.iecpl.dret@udg.edu

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TORT LAW REFORM IN EUROPE AND BEYOND

Why is Tort Law Reform So Difficult?

Girona
Thursday 27 and Friday 28
June 2024



Organised by:

Universitat de Girona
Institut de Dret Privat
Europeu i Comparat

I. INTRODUCTION

The Symposium aims to analyse the reasons why it has been relatively uncomplicated in some countries to adapt tort law to the demands of the times, whereas in others the reform attempts -if any- are still lost in ministerial or academic drawers.

In the first decade of the 21st century, a reform of non-contractual liability was carried out in acts and civil codes of the Baltic states and, a decade later, in countries of Central and Eastern Europe, such as in Romania (2011), in the Czech Republic (2012) or in Hungary (2013). Türkiye (2012), closely linked to the Swiss tradition, can also give some insights into the difficulties of codifying non-contractual liability. China (2021) offers a contrasting point of view from cultural and socioeconomic perspectives which are quite remote from European ones.

By contrast, some European countries such as Austria, Switzerland or France have already developed quite detailed and complete reform plans, sometimes through successive drafts or projects, neither of which has so far become law. In France a reform of the general part of the law of obligations was adopted in 2016, while that of non-contractual liability is still pending. In Belgium, however, the reform of the general part of the law of obligations took place in 2023 and the reform of non-contractual liability has finally been adopted very recently and after much debate. In other countries, as in the case of Spain, despite some private projects, there is apparently no urgent call for amending this part of the law of obligations.

II. QUESTIONS TO BE EXAMINED

What follows is not a questionnaire in the traditional sense of Comparative Law works, but simply an open list of questions, which will apply in some countries and not in others, and which are intended to serve as a kind of a very loose guidelines for the authors of the corresponding papers.

Among the possible issues to be analysed, the following could be highlighted:

- Why it may have been so difficult to agree on a reform of non-contractual liability law?
 - Is the current regulation so perfect that there is a widespread feeling that there is no need for any reform?
 - Have interest groups (associations of insurers, victims, legal professionals - lawyers, judges, etc.) opposed it?
 - What have been the reasons for such opposition (political, cultural, academic, practical, etc.)?
- Have the proposals presented been limited to codifying the judicial practice of existing law or have they incorporated substantial new developments with respect to the law in force?

- Has adaptation to new technologies (such as digitalisation, IoT, AI, etc.) played an important role in the need to amend the legislation?
- Has soft law (PETL, DCFR, etc.) had any impact on the drafting of the new provisions and if so, to what extent?
- Has legislation of other countries had a clear and important impact on the drafting of the new provisions? Which foreign legislation?
- What are the innovations that have prompted the greatest rejection or the warmest applause?
 - Relationship between non-contractual liability and contractual liability (or property law, family law, succession law, etc.).
 - Relationship of non-contractual liability with other branches of Law, such as [compulsory] insurance, relationship with compensation funds, etc.
 - Regulation of prescription issues, related insurance issues, related special liability schemes for medical damages (or other sorts of damage), new technologies, etc.
 - Expansive criteria for compensation for non-pecuniary losses.
 - Regulation and assessment of bodily harm, including proposals for tariffication or scales (*barémisation*) for personal injuries.
 - Regulation with a common character that goes beyond the civil jurisdiction (rules applicable both to private individuals and public bodies).
 - Redistribution of powers between jurisdictions or channelling of claims to the civil jurisdiction.
 - Incorporation of new developments in relation to
 - Damage / damages (types of damage and types of losses). Aggravated, exemplary or punitive damages, restitutionary damages, symbolic or nominal damages. Environmental damage. Collective damage.
 - Other remedies, such as injunctions or apologies.
 - The rules of causation (facilitation of the proof of causation; expansion of proportional liability to the detriment of joint and several liability).
 - The rules of attribution of responsibility (for example, expansion of liability independent of fault to the detriment of liability for fault).
 - Extension or limitation of liability for others, including an expansion of the field of vicarious liability), etc.
 - Defences, including prescription rules.
 - Collective or class actions.
- Regarding the countries that have already conducted their reform, ¿What is the real impact it has had? Have ex post analyses already been conducted and if so, what was their result?
- Regarding countries that have not yet conducted this reform, what are the prospects that a reform can occur?

Thursday 27 June

Morning

- 9.30 **Tort Law Reform in the Baltic States**
Speaker: Julija Kiršienė
Professor of Civil Law, Vytautas Magnus University, Kaunas, Lithuania
- 10.15 **Tort Law Reform, in the Czech Republic**
Speaker: Luboš Tichý
Professor of European International Private Law and Civil Law, Charles, University, Prague, Czech Republic
- 11.00 Coffee break
- 11.30 **Tort Law Reform in Central and Eastern European Countries**
Speaker: Ewa Bagińska
Professor of Law, University of Gdańsk, Poland
- 12.15 **Tort Law Reform in Türkiye**
Speaker: Başak Baysal
Professor of Civil Law, Kadir Has University, Istanbul, Türkiye
- 13.00 **Tort Law Reform in China**
Speaker: Lei Chen
Professor of International Arbitration and Chinese Law, University of Durham, United Kingdom.
- 13.45 Cold lunch served in situ.

Afternoon

- 15.00 **Tort Law Reform in Austria**
Speaker: Bernhard A. Koch
Professor of Civil and Comparative Private Law, University of Innsbruck.
- 15.45 **Tort Law Reform in Switzerland**
Speaker: Bénédicte Winiger
Professor of Law, University of Geneva, Switzerland.
- 16.30 **Tort Law Reform in Spain**
Speaker: Miquel Martin Casals
Professor of Civil Law, University of Girona, Spain.
- 17.15 Questions and debate
- 18.00 First set of papers presented as a result of the call for papers.
- 19.00 End of the first day