

Conference Report, 12th Annual Conference on European Tort Law, 4 April to 6 April 2013, Vienna, Austria

Thiede, Thomas; Bell, Andrew

Veröffentlichungsversion / Published Version
Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Thiede, T., & Bell, A. (2013). Conference Report, 12th Annual Conference on European Tort Law, 4 April to 6 April 2013, Vienna, Austria. *European Review of Private Law (ERPL)*, 21(5/6), 1359-1369. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-50883-3>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-NC-ND Lizenz (Namensnennung-Nicht-kommerziell-Keine Bearbeitung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:

<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-NC-ND Licence (Attribution-Non Commercial-NoDerivatives). For more information see:

<https://creativecommons.org/licenses/by-nc-nd/4.0>

Conference Report, 12th Annual Conference on European Tort Law, 4 April to 6 April 2013, Vienna, Austria

THOMAS THIEDE & ANDREW BELL*

After some warm words of welcome from the dignitaries of the Austrian Ministry of Justice, the conference began, as the conference always does, with a keynote lecture by a luminary of the tort law world. This year, the former president of the Austrian Supreme Court (Oberster Gerichtshof (OGH)), Irmgard Griss, delivered the lecture on the enthralling topic ‘How Judges Think – Judicial Reasoning in Tort Cases from a Comparative Perspective’. Griss based her observations most convincingly on judgments handed down in four major jurisdictions, namely Austria, France, Germany, and the United Kingdom. In essence, she pursued the question whether judges disguise their ‘political’ considerations as legal considerations. Alongside, and closely connected with, the aforementioned question, she addressed whether judges are entitled, or even obliged, to develop the law; are judges, as Montesquieu had it, merely *la bouche de la loi* or, to quote Blackstone, the *living oracles* of the law?

Of course, Griss was quick to stress the importance of culture; judges do not live in an ivory tower and their thinking is shaped by their immediate environment, their training, their (legal) role model(s), and their legal cultures – and at the same time they create and shape the legal culture of a state (at times arguably even unknowingly). According to Griss, this all becomes most obvious in tort cases where fact patterns are most closely intertwined with human nature, for example, when a judge has to address a person’s negligence. Confronted with the strikingly simple example of wrongful birth, all those attending agreed almost immediately.

Pursuing her research question, Griss first addressed the idea of the need, or even the duty, to provide sufficient reasons for a judgment. In her experience, judges often act out of their intuition. Nevertheless, she held, it is one of the judge’s responsibilities to make the appropriateness and justice of the decision at hand clear to the parties involved; it is an essential aspect of the right to a fair trial and is thus not only a matter of national law but also of human rights as enshrined in the European Convention on Human Rights (ECHR) and democracy as such. First, the judge needs to explain his or her judgment to the parties in order to gain their acceptance. By engaging the agreement of the citizens through persuasive judicial reasoning, the judiciary respects the citizens’ role as the core of democratic government. Second, by such reasoning and the inherent need to

* Thomas Thiede, University of Graz, and Andrew Bell, University of Birmingham.

justify the decision, judges are at the same time restrained from any arbitrary misuse of their power. Griss, continuing, drew some first conclusions by comparing the aforementioned jurisdictions from the perspective of the need to give reasons. Different styles of judgments may further or hinder the publication of the decisive reasoning and are good indicators of how judges think. Whereas in the United Kingdom, where judges tend to provide individual opinions, extensively reasoned judgments, and thus the development of the law, are encouraged by this style, French judgments in particular are formalist; judgments mostly state only whether a provision has been correctly interpreted by the lower court – no legal doctrine or previous cases are discussed nor any explanation given why a certain legal principle is applied. As a consequence, Griss found, judges have wide discretion, especially as their names are not provided in the said judgments. To some extent, Austrian and German courts are also stuck in rigid stylistic formalism; the legal rule is the major concern, the facts the minor one, and thus the conclusion obvious – judges hide behind the product of this syllogism, furthered by the overly impersonal language of their decisions. In summary, UK judges state overtly what they think, French judges are silent about their motives, and Austrian and German judges tend to use legal doctrine as both shield and weapon at the same time.

These observations were helpful for Griss' second research question about whether judges are obliged or even entitled to develop law. For the United Kingdom, the answer is obvious, as the whole system is based on the willingness of the judges, particularly in the Supreme Court, to develop law. In France, a virtually identical result is achieved, however, not by overly extensive rulings but by the total freedom of judges from the need to provide a foundation or reason for any change to the legal system. Finally, in Austria and Germany, legal development by judges may not seem that obvious, but it is even accepted by the legislator, especially in situations where a political consensus cannot be achieved. This led Griss to the conclusion that differences in style do not necessarily reflect differences in the commitment to, or the results of, legal development by the judiciary. As judges strive everywhere to arrive at fair and appropriate decisions, they almost inevitably do develop the law.

Griss did not end her keynote there, but added her personal observations as a president of a supreme court. She encouraged judges to be active but not activists, as they should always respect the boundaries inherent in their task. Judges should be aware of their thought patterns and set of values in order to keep a critical distance away from persuasions, positions, beliefs, and preconceptions. Further, indeed, they should disclose the real motives leading to a judgment. In her opinion, one essential part in all of this would be the language used in judgments. She asked for a heightened sensitivity to and overall clarity of the language used. She described two questions as helpful in this regard: What exactly does that mean? And: Wherefrom do I know this? In any case, only those arguments that the judge is willing to disclose in his or her judgment should be taken into account.

The lecture triggered an excited discussion, only two points from which will be reiterated here. Starting with a question from Lucian Bojin (Romania), the relationship between the law and the parties, with the judge as intermediary, came into focus: Griss answered Solomon-like that the judge will, at the same time, look up to the law and look down to the parties. The essential point is that, even if one agrees that judges rule according to their feelings towards one or other of the parties, even the facts taken as relevant (and the judge's resulting emotional distance or closeness) are inevitably shaped by that judge's legal knowledge. On a remark by Christiane Wendehorst (University of Vienna), Griss emphasized that Germanistic scholastics are a hindrance to better judgments. Indeed, that legal education must be changed, which is not easily achieved. Nevertheless, legal education must establish that providing motives and decisive reasons in judgments is no weakness, but rather a judicial strength.

The real bread and butter of the conference, and its unique addition to the world of tort law scholarship, comes on the Friday, when reports are delivered from every jurisdiction within the European Union (EU) along with a number of additional non-Member States. Reporters, respected national scholars in their own right, are asked to give a brief overview of the developments within their system in the previous year. It would be overly optimistic to try and reflect in a few short paragraphs the rich diversity of material that, as with every year, was presented for 2012, but attention will be drawn here to some of the authors' personal favourites.

In Austria, Barbara C. Steininger showed the OGH yet again extending compensation for mental shock caused by information about the life-threatening injury of a primary victim. Previously, such compensation had only been awarded to the secondary victim in cases involving the death of the primary victim. However, the OGH carefully carved out some distinct prerequisites for liability, namely the requirement of acute peril to the primary victim's life or concrete danger of permanent nursing care dependency of the primary victim and highly dangerous conduct on the part of the tortfeasor in respect of the secondary victim.

In Belgium, where courts have a reputation for extremely slow court procedures, Isabelle Durant showed that, as a result of legislation prompted by a pipeline accident, courts will now be replaced in cases of technological catastrophes of great extent (i.e., with more than four victims). Here, the Belgian motor insurance fund will – without the need to establish legal liability – step in and provide damages additional to social security payments.

Viktor Tokushev presented a case involving a personality right's infringement for Bulgaria. A reader's letter published in a newspaper contained slanderous and offensive allegations about the claimant. An action was brought against the publisher of the newspaper on the basis of vicarious liability, which was accepted by the Bulgarian Supreme Court. The decision met fierce criticism,

as no ‘assignment of a task’ by the publisher (the relevant statutory test)¹ could be assumed and such a broad interpretation of the law carries the danger of serious abuses, especially with a view to Internet websites.

For the Czech Republic, a disagreement between the Czech Constitutional Court and Supreme Court was presented by Jiri Hrádek. In an apartment owned by the claimants, an under-floor heating pipe burst, resulting in damage to the whole apartment. However, the claimants did not restore the apartment to the original condition, making alterations to undamaged parts of the apartment. The Constitutional Court had held in an earlier case involving a car accident and the subsequent replacement of a car with a new one that any windfall profit on the part of the victim is justified, as a car that had undergone repair work would generally be of lower value than before. The Supreme Court dismissed this finding and held in the apartment case that the claimant is only entitled to the actual cost of repairs.

Political changes regarding access to justice were the theme of the presentation by Annette Morris for England and Wales. Previously, the Labour government abolished legal aid for the majority of personal injury claims and instead extended conditional fee (no-win, no-fee) agreements. Accordingly, a winning claimant was able to recover his or her lawyer’s fee, the lawyer’s success fee, and the after-the-event insurance premium from the losing defendant. Losing claimants would use their after-the-event insurance policy to pay the defendant’s legal costs and had no liability to pay their own lawyer. As a result, in order to claim compensation, claimants only had to pay the cost of the after-the-event insurance, which was often even absorbed or paid upfront by their lawyers. As is generally known, this system was critically reviewed in 2010 by Sir Rupert Jackson, who recommended that neither success fees nor after-the-event insurance premiums should be recoverable and, moreover, that success fees should instead be paid from the claimant’s damages. The Conservative-LibDem coalition elected in May 2010 made the implementation of Jackson’s proposals a priority, as politicians took the view that the system had become too claimant friendly. In the face of substantial concerns raised by claimant lawyers, trade unions, consumer organizations, and academics, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill was enacted in May 2012. It remains for future Annual Conferences on European Tort Law to show whether the concerns raised, namely over an overall reduction in access to justice, the creation of inequality of arms, and potential under-settlement of claims, will be realized. In any case, the presentation featured a more than interesting snapshot of the politics surrounding the tort system.

1 See Art. 49 of the Bulgarian Law on Obligations and Contracts: ‘He who has assigned any task to another person is liable for the damages inflicted by the latter in or in connection with performing the said task’.

Points on access to justice – from a civilian angle – were raised by the report by Irene Kull on Estonia. Here, a new State Fees Act was implemented, considerably lowering the rates of state fees charged for filing an action.

The theme of violation of personality rights was then revisited by the German report from Florian Wagner-von Papp. As a result of the famous *Lebach* judgment of the Federal Constitutional Court (*Bundesverfassungsgericht*) in Germany, case and press reports about criminal investigations and convictions generally only use the initials of names to protect the suspect's or convict's personality rights. The court demanded a balancing of the freedom of the press and the broadcast media with the suspect's personality rights on a case-by-case basis. Only when an overarching and legitimate public interest exists can the publication of names be justified. In recent years, German courts have repeatedly struggled with the balancing exercise, as the *Lebach* judgment provides rather vague guidelines. That said, the case presented involved the sons of a well-known German actor, who were part of a group that demolished flower beds and a telephone booth on 1 May, a night during which practical jokes have some tradition in Germany. Lower courts had granted the sons injunctions against press reports providing the full names of the suspects. The Constitutional Court quashed the judgment, as the lower courts had considered the fact that only petty crime was involved and that the perpetrators were juveniles as an automatic bar against publishing their names. The court stressed that the factors need to be balanced on a case-by-case basis. As the juveniles themselves were singers and actors, and as such had sought the limelight, and only petty crime was involved, any stigmatizing effect and thus the gravity of reputational loss was limited. Hence, their names could be published.

For Ireland, Eoin Quill reported a rare case of misfeasance in public office. In an investigation regarding an alleged child abuse, the investigating officers deliberately failed to comply with constitutional disclosure obligations and misled the plaintiff's employer as to the level of risk, as well as other agencies about the veracity of the allegations. It was held by the court that the misfeasance in question can be by way of targeted malice and by knowledge of lack of authority and probability of injury to the plaintiff. For the latter, recklessness will suffice.

For Italy, Elena Bargelli submitted that the *Corte de Cassazione* finally reversed its original view denying any claim by a congenitally disabled child following mistakes in prenatal diagnosis. In the reported judgment, it was affirmed that, in cases of mistaken prenatal diagnosis and consequent wrongful birth, both parents and even the child are entitled to damages. Denying the child's claims (based on the 'right not to be born') is now seen as illogical and unacceptable.

Giannino Caruana Demajo presented a case of joint liability for Malta. The plaintiff had intervened to stop a quarrel between the first defendant and his wife, was attacked by the first defendant, and hit in the eye with a brick. The second defendant joined in and hit the plaintiff on the back of his head with a metal

chair. The plaintiff lost his sight in one eye, caused by the strike with the brick, while the blow with the chair arguably did not cause any permanent damage. The liability of the first defendant was not in doubt. However, due to the lack of causation, the action against the second defendant was denied by the lower courts. The Court of Appeal disagreed and held that joint liability is given when the defendants act with a common purpose and are accomplices in the incident taken as a whole and not necessarily in the specific act that caused the damage. Only when the defendant acted without malice is his or her liability limited to such part of the damage as he or she may have caused. This judgment may not come as a surprise for many continental lawyers. Nevertheless, from a comparative perspective, two points are highly interesting. First, this was found in a common law hybrid system, and second, the judgment was based on comparative observations on Article 1049 of the Austrian Allgemeines Bürgerliches Gesetzbuch.

In Norway, a case presented by Magne Strandberg of high school bullying had made its way to the Supreme Court. Fellow class members exposed a pupil to prolonged bullying for his first five years at a local authority school. Years later, he developed a serious mental illness that eventually forced him to drop out of further studies and rendered him unfit for any employment. As no contractual basis for his claim was available, the claimant based his action on vicarious liability. For this, however, Norwegian tort law foresees liability only where the action of one employee results in damage. Here, a group of employees, i.e., teachers, headmasters, and the psychological-pedagogical service, omitted to grant the necessary help in the school. Hence, the liability of the school's owner was in question. The Norwegian Supreme Court held the school's owner liable on the doctrine of cumulative mistakes. The court held that in cases where no single employee made a mistake severe enough to qualify for negligence, the sum of mistakes made by several employees suffices for a claim in negligence. It should not be omitted here that in discussion several speakers noted that from their perspective an organizational fault on the part of the school's owner was present and that he would thus be liable in any case.

In Poland, the Polish Supreme Court extended the availability of damages for the inability to make use of a car due to its destruction in the course of a road traffic accident. Ewa Baginska submitted that, whereas in earlier cases those damages were awarded only when the car was in professional use, damages are also now available for privately used cars. However, she duly noted that those damages are only available when the expenses were, in fact, incurred. Baginska also discussed a case involving the enforcement of a foreign judgment awarding punitive damages. A weekly magazine infringed the personality rights of the daughter of a well-known politician running for presidency. Domiciled in the United States, the daughter and her husband filed for compensation and punitive damages in a US court. The jury awarded USD 1,000,000 in compensatory damages and an additional USD 4,000,000 as punitive damages in a default

judgment. The claimants now filed for enforcement in Polish courts. The courts denied such enforcement on the basis that, first, the award for non-pecuniary loss was exorbitant in light of established case law and, second, punitive damages are not available in Polish law and the award would thus clearly violate public policy. As a result, the judgment was not enforced and the claimants were left with an earlier, pre-trial settlement figure of USD 4,500. It must be noted from the discussion that the magazine was widely available in the United States, but the company had no branch office there.

In Portugal, a case involving arguably dangerous slides in water parks emerged. Against the advice of the water park, the claimant changed position onto his knees during descent and then to lying with his head forward. As a result of this, he gained considerable speed and was not slowed down when entering the end of the slide. His impact was brutal and he was rendered quadriplegic. Subsequently, he sued the owner and operators on the basis that the damage resulted from deficient maintenance of the slide, namely inadequate water levels in the means used to slip into the pool. As the operation of a waterslide is considered a dangerous activity and the fault of the operators would be presumed, the legal question was whether the obvious fault of the claimant would result in the denial of liability. The Portuguese Supreme Court answered in the affirmative: 'The presumption of fault is not established to be a perversion to impose inadequate and unfair duties on the shoulders of the explorers of dangerous activities'. Indeed, as duly noted by Filippa Almeno de Sá, it would be entirely inadequate if a person who had placed himself voluntarily and culpably in a situation of danger, in clear violation of the rules of utilization of the slide, could blame the defendants, who had taken all necessary measures to prevent precisely that situation.

For Scotland, Martin Hogg presented two contradictory cases on the interpretation of statutes in cases of transmission of delictual liability. The legal question in each case was whether liability in delict for asbestos-related mesothelioma transferred from a now defunct local authority to its successor. In both cases, the deceased had worked for local authorities and were exposed to asbestos. Both workers died of mesothelioma and the families sued for damages. In the first case, the relevant statutory provision for the successor authority at which the claim was directed stated that 'all rights liabilities, and obligations . . . shall . . . be transferred to and vest in the new authority', whereas in the second case the statutory provision did not mention obligations and read that liabilities were vested in the successor authority. The difficulty at hand was that, at the relevant date, there had been *injuria* (the negligent exposure to asbestos) but as yet no *damnum* (as at the time of exposure no harm was suffered by the deceased). Was this enough to give rise to a 'liability' or an 'obligation'? In the first judgment, it was held that in the context of the legislative provision liability and obligation did not mean the same thing; any obligation would require both *injuria* and *damnum*, but for liability it was necessary to have only *injuria*.

Hence, the successor authority was liable. In the second judgment, it was held that liability meant a party being bound or obliged to do something, and for any liability (i.e., obligation) to exist, again, there had to be a concurrence of *injuria* and *damnum*, which was not given in the case at hand. As no obligation was in existence at the time of transmission, the local authority did not inherit any liability of its predecessor towards the deceased/the family. Given these arguably contradictory judgments dealing with contingent obligations, the reader is asked to be patient and wait until the appeal launched against the later decision is decided. The result will most likely be presented at next year's conference.

In Spain, the result of more fierce fights regarding the virtues of intellectual property and the delicate weighing of interests in cases concerning personality rights were made obvious by Albert Ruda. A blogger had dubbed the general society of authors and editors 'thieves' and provided his readers with knowledge about so-called Google bombs, by which the website of the society would be hyperlinked with the word 'thief'. A multitude of hyperlinks with the wording came into existence and the society sued the blogger in an action for violation of honour. At first sight, the requirements for such an action were satisfied, especially as the blogger had actual knowledge and intention regarding the result. Nevertheless, the courts denied liability, as free speech, public interest, and the honour of the society needed to be balanced. It was submitted that the society had already faced a huge amount of criticism in the preceding years, and thus the wording, though seeming inappropriate when considered in isolation, was not so when seen in the general public context. As the reputation of the society was considerably lowered to start with, a further reduction by the blogger was not proven. As a result, the blogger was not liable.

With regard to developments in tort law in the EU, Bernhard A. Koch chose the case of *Folien Fischer v. Ritama SpA* for his splendid presentation. In this case, the Italian company Ritrama claimed that the Swiss Folien Fischer AG and its (likewise Swiss) sister company Fofitec AG illegitimately refused to grant certain patent licences to Ritrama in violation of competition law. The two Swiss addressees of these allegations subsequently brought an action against Ritrama in Hamburg, Germany, for a negative declaration effectively stating that the defendant had no claim against Folien Fischer or Fofitec in tort or delict. Both the Court of First Instance and the Court of Appeal dismissed the action as inadmissible for lack of international jurisdiction in Germany. The German Federal Supreme Court stayed proceedings and asked the Court of Justice of the European Union (CJEU) for a preliminary ruling, essentially on the question whether Article 5, No. 3 Brussels I Regulation provides special jurisdiction in proceedings for (negative) declaratory relief. The Court answered that question in the affirmative. The effects of the ruling may not be overestimated, as a side effect may be an almost inevitable rupture in the European system of competent courts; the CJEU gave the starting signal for a race to the court in those cases where it makes a difference, despite the Rome II Regulation, in which jurisdiction the

matter is decided. Koch argued convincingly that whoever makes it first to the doorstep of the most attractive court will effectively be able to cut off access to the other forum. Such forum shopping will now almost inevitably result in all cases where Article 28 Rome II Regulation applies and was already apparent in the case at hand; why did the two Swiss companies (and not their German subsidiary) file suit in Germany against an Italian company, thereby not including the latter's Swiss subsidiary, which was apparently the only one active in the German market?

Of course, one of the highlights of the Friday session is the concluding Comparative Summary, this year again delivered by Ken Oliphant, Director of the Institute for European Tort Law, highlighting common themes and making the often needed links with developments in previous years. For 2012, Oliphant identified four general topics for closer scrutiny, the first being claims for wrongful life. Oliphant held that such claims have been a *leitmotif* of the Annual Conference since almost its very first year. In fact, it was the year before the conference began (i.e., the year 2000) when the French *Cour de Cassation* handed down its judgment in the now notorious *Perruche* case. However, already at the second Annual Conference the audience was to learn that the French legislator had intervened and reversed *Perruche* by statute. Over the following years, a contradictory picture came into existence: courts in Belgium, the Netherlands, and Spain proceeded to allow claims for wrongful life, whereas the majority of the European legal systems reject such claims. A development to be noted for 2012 is the change in Italy, where – as mentioned above – the law now in fact allows claims for wrongful life. A second paradigm mapped out by Oliphant was problems of causal uncertainty, i.e., cases where a precise causal link between damage and wrongful action is difficult to establish. The classic example of mesothelioma was presented for Scotland by Martin Hogg and is mentioned above; other cases were presented for the Netherlands and Hungary. Oliphant highlighted the range of different legal techniques that are used to overcome the practical impossibility of proving the necessary causal link, including reversal of the burden of proof, proportional liability for contribution to risk, and damages for loss of chance.² The third overarching topic singled out by Oliphant was mental harm to secondary victims. He addressed the above-mentioned cases of Austria, Greece, and Switzerland and described thoughtfully the boundaries of any liability enclosing claims of people who are only remotely connected with the accident for which the tortfeasor is responsible. The fourth and final comparison was drawn for torts for violating privacy. As the learned reader knows, this question has traditionally been addressed differently in almost every European jurisdiction. Referring to cases presented for Finland and Germany, Oliphant

2 The same problem is addressed by a new study, 'Proportional Liability: Analytical and Comparative Perspectives', in Israel Gilead, Mike D. Green, Bernhard A Koch (eds), published by deGruyter on behalf of the ECTIL/Institute for European Tort Law, 2013.

noted, however, the now well-established trend towards the incremental harmonization of national approaches, prompted in particular by the jurisprudence of the European Court of Human Rights.

As always, the entirety of the Saturday session was given over to examination of a single topic by a select group of commentators. This year's timely chosen theme was Tort Law and the Financial Crisis.

Ernst Karner, Deputy Director of the Institute for European Tort Law, gave a first insight into the topic, presenting the basic questions at hand. In his presentation, he singled out several main players and addressed tort law issues accordingly. First, the main originator of the financial crisis, banking institutions and their risky and unsustainable market behaviour, was given close examination. Karner dutifully explained the role of Collateral Debt Obligations (CDOs) and Residential Mortgage-Backed Securities (RMBSs) in the crisis, especially the resulting domino effect leading to the breakdown of the housing market in the United States. However, the resulting damage would not have been so enormous but for the failures of the rating agencies, which were then also addressed, as their support for highly hazardous financial market behaviour and the downplaying and soft-selling of the risks at hand misled not only their customers but also society at large. Finally, Karner introduced the discussion of liabilities of supervisory agencies, as they failed to provide the necessary safeguard against the reckless behaviour of the other actors.

The scene having been set, Peter Loser stood to discuss the liability of banking institutions. His paper will not be reiterated in detail here, but, nevertheless, it became very clear that tort law in its current form could only contribute in a rather limited way to handling the enormous damage the sub-prime collapse and financial crisis brought forth. Even if no-fault liability was assumed for investment products, due to the manifold issues regarding causation tort law cannot offer a substantial controlling function in order to prevent such damaging behaviour by banking institutions in the future.

Following this, Alessandro Scarso was asked to discuss the liability of rating agencies for their erroneous ratings. Rating agencies cannot be liable merely because their ratings were wrong and did not predict the future correctly, but because they severely fell short of those procedural standards that are simply indispensable for the making of a well-founded prognosis. In essence, two constellations had to be distinguished: liability towards subscribers to rating publications and liability towards third parties. If the loss-suffering investors had subscribed to the rating agency's publications, damages could be based on contractual liability. More obstacles have to be cleared if a responsibility towards third parties is at stake. Not even the basis of such a liability is resolved – is it contractual, tortious, or quasi-contractual (and thus in-between)? Indeed, who is protected if such liability exists at all? Scarso addressed all of these points.

Donal Nolan rendered the final topical report on the liability of supervisory authorities. His conclusion, based on extensive comparative research, was in the

negative: the special protection often afforded to financial supervisors by legislators and conceptual obstacles standing in the path of legal redress in respect of supervisory failure result in a very low chance of successful actions for damage, whichever legal system is under scrutiny.

The esteemed Jaap Spier gave the final lecture, arguing that tort law is not the answer to the current financial crisis. He argued that damages paid in this context are eventually taxpayers' money, and thus that actions in tort would just slip the money from one pocket into another. Instead, he envisaged a broader scope for legislation regarding crises like climate change and financial disturbances. He accused actors in the legal, financial, political, and insurance arenas of remarkable stubbornness and denial of reality. In his opinion, today's paradigm of short-term profits must be changed and decisive action finally taken nationally and internationally, formally and informally.

As always, a brief summary of proceedings at the Annual Conference is no substitute for the rich and rewarding final efforts of those national reporters published in the accompanying European Tort Law Yearbook. Case abstracts will subsequently be available in the European Tort Law database at www.eurotort.org. Furthermore, the papers from the special session, along with a revised version of the opening lecture, will be published during the course of 2013 in the *Journal of European Tort Law (JETL)*.

Next year's Annual Conference will take place from 24 April to 26 April 2014 in Vienna. All materials from the last conference as well as information on the next conference are available at www.acet.ectil.org.