

# **Compensation for Personal Injury in Europe**

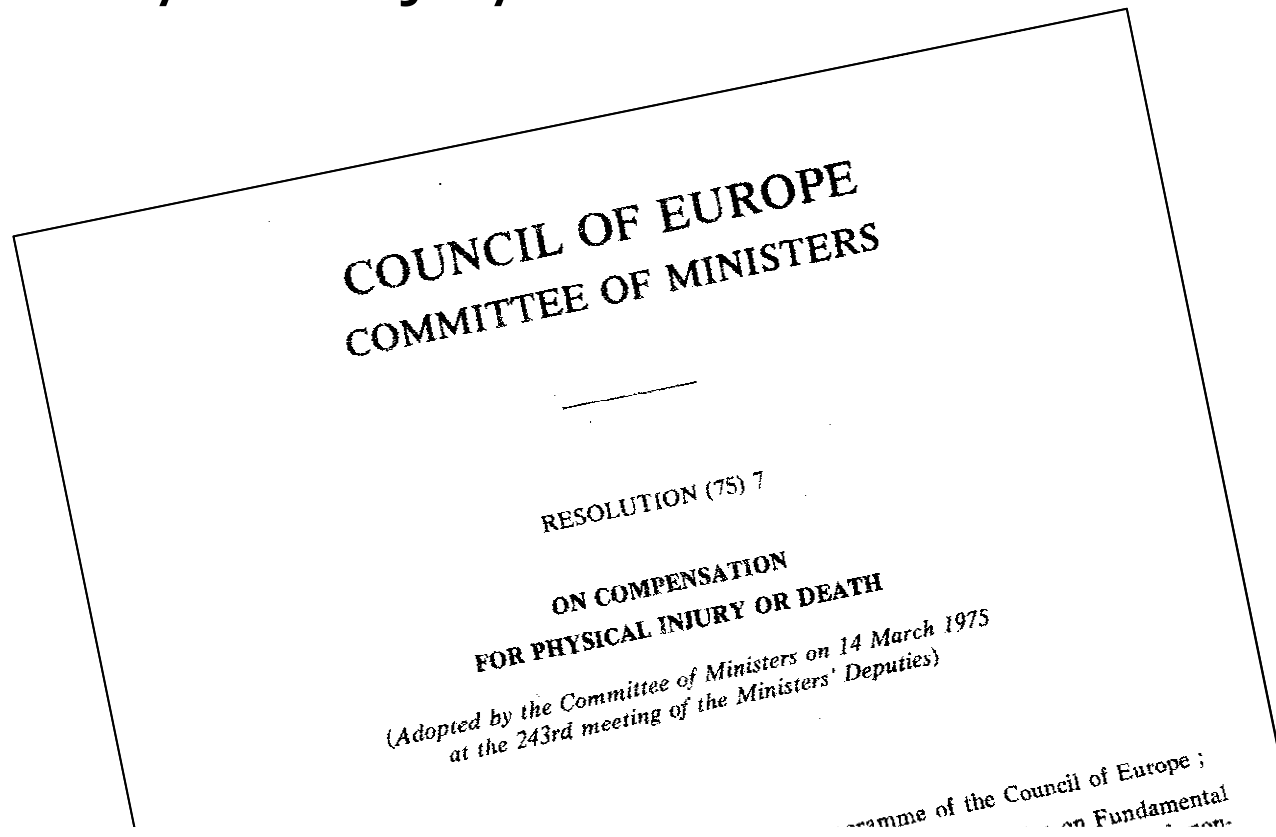
## **Where Shall We Go?**

**Bernhard A. Koch**



## Harmonizing Damages for Personal Injury?

- Council of Europe Resolution 1975 on Compensation for Physical Injury or Death





## Harmonizing Damages for Personal Injury?

Council of Europe Resolution (75) 7

Annex: „**Principles Related to Compensation for Damage in the Case of Physical Injury and Death**”

### III. Compensation in the case of death ... injury ...

19. Legal systems which at present do not recognise a right to compensation for **mental suffering** of a third party as a result of the **death of the victim** should not extend compensation to persons other than the **spouse** of the victim or his **children, parent or fiancé**; even in these cases, compensation should only be granted subject to the condition that these persons have maintained close bonds of affection with the victim at the time of his death. ...



(Annex)  
at the 243rd ...

... of the Council of Europe ;  
... Fundamental ...



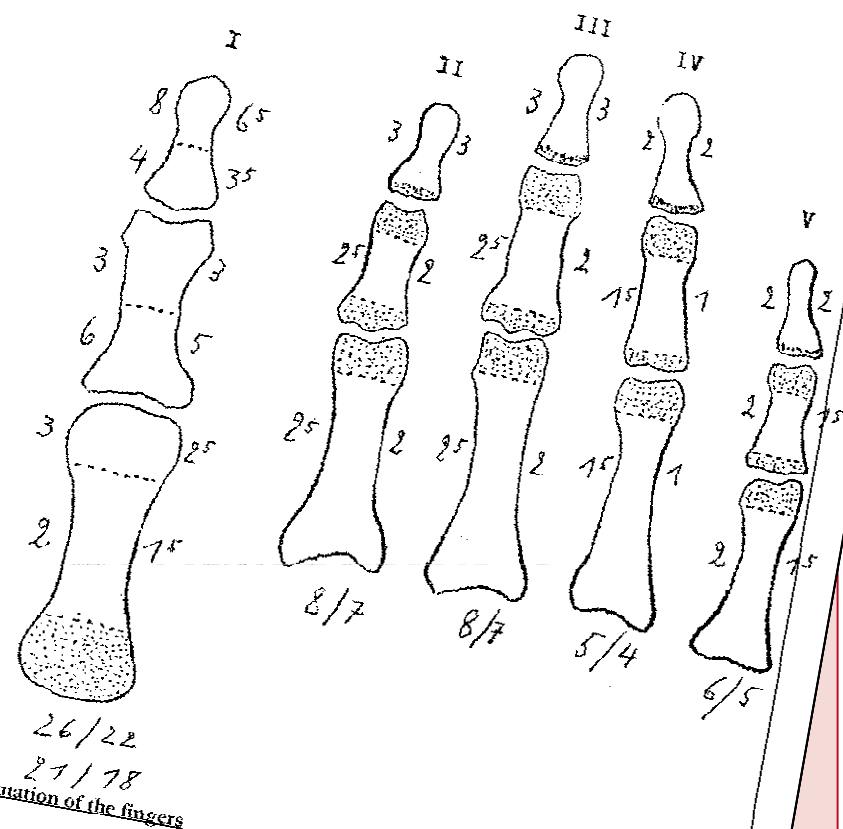
## Harmonizing Damages for Personal Injury?

- Council of Europe Resolution 1975 on Compensation for Physical Injury or Death
- Draft of a „European Disability Rating Scale“ (initiated at the the First European Traffic Law Conference of June 2000 in Trier)



## Harmonizing Damag

### European Disability Rating Scale („Rothley Group“)



In this diagram:

- the dotted areas are valued at nil
- the rating attributed to each segment covers the whole of that segment
- partial loss of a segment is calculated pro rata as a proportion of the rating for total loss



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- Principles of European Tort Law (PETL) vs. DCFR



## Harmonizing Damages for Personal Injury?

**Art. 10:301 PETL [Non-pecuniary damage].** (1) ... Non-pecuniary damage can also be the subject of compensation for **persons having a close relationship** with a victim suffering a fatal or very serious non-fatal injury.

(2) In general, in the assessment of such damages, all circumstances of the case, including the **gravity, duration and consequences of the grievance**, have to be taken into account. The degree of the tortfeasor's fault is to be taken into account only where it significantly contributes to the grievance of the victim. ...



## Harmonizing Damages for Personal Injury?

**Art. 10:301 PETL [Non-pecuniary damage].** (3) In cases of personal injury, non-pecuniary damage corresponds to the suffering of the victim and the impairment of his bodily or mental health. In assessing damages (including damages for persons having a close relationship to deceased or seriously injured victims) **similar sums should be awarded for objectively similar losses.**





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- Backdoor attempt via Rome II Regulation



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- Outlook



## Harmonizing Damages for Personal Injury?

### Outlook

- No price tag on feelings
- What is „equal treatment“?
  - within a jurisdiction
  - in comparison
- Where to draw the line?
  - Financial limits
  - Personal scope
- Predictability vs justice in the individual case

