The Importance of Comparative Law for the Development of Contemporary Law

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Abstract

Comparative law is a distinct discipline in the framework of legal sciences that deals with the study, examination, and legal comparison of different legal systems to identify similarities and differences between them and better comprehend the typology of contemporary legal systems worldwide. In addition, comparative law helps to deepen the understanding of legal principles and institutions of different states, offering a broad transnational perspective on how legal systems function and affect different societies. A state can adapt and apply successful models in its national context through the comparative study and analysis of legal solutions adopted in other countries. The legal comparison of different legal systems can improve, reform, and modernize national legislation.

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1. Introductory remarks

Societal relations are of different character; therefore, each of the branches of law represents a set of legal norms, which regulate social relations of a certain type within the framework of the legal system of a particular state. This means that the legal system in a state is constituted by a variety of branches of law, which with the support of their own legal norms regulate specific areas of societal relations. The branches of law are distinguished among themselves from the sphere of societal relations that are regulated by the legal norms that belong to a particular branch of

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positive national law. In this case, a question arises: "*Is comparative law a branch of law or is it only a legal scientific discipline*"?

Comparative law[3] is not a branch of law, but it is an applicable scientific legal discipline. This attitude is scientifically supported and juridically argued because comparative law does not have a normative substance in itself, i.e. it does not contain legal norms as does constitutional law, administrative law, and other branches of law. Consequently, comparative law does not have as its object of regulation any specific field of social relations. When we take the example of comparative administrative law[4], we do not refer to a set of legal norms that regulate social relations that are related to the structure, functions and legal control over the institutions of state administration; but we simply refer to the fact that the legal acts on the organization and work of the state administration of two or more states are used in a process of comparison with the aim of exploring and discovering similarities and differences and between them from an organizational, structural, and functional aspect, including the advantages and shortcomings of each of them.

Comparative law in its most general sense is "the comparison of different legal systems of respective states of the world"[5]. The process of comparison as a logical-legal operation does not itself create normative acts, but it indirectly contributes to the creation of legal acts within one or more legal systems.

It should also be noted that the legal literature identifies the existence of horizontal and vertical legal comparison. On the one hand, the horizontal comparison deals with the comparison of legal systems (eg. at the national level USA–Finland–France) which are at the same level in terms of quality.[6] It is about legal comparison between the legal systems of concrete countries. On the other hand, the vertical legal comparison is made between legal systems that are at qualitatively (quality) different levels, so the legal comparison can be about, let's say, the modalities of legal guarantee and protection of the freedoms and rights of individuals in international law, in the supranational law of the European Union, or in the legal system of the United Kingdom.[7]

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[3] The term "*Comparative law*" responds to the terms: *Droit comparé* (fr.), *Diritto comparator* (it.), *Derecho comparado* (spa.), *Poredbeno pravo* (cro.), while it is interesting to note that only in the German language it is called *Rechtsvergleichung – comparison of laws* and not comparative law.

[4] Susan Rose-Ackerman, Peter L. Lindseth, Blake Emerson, *Comparative Administrative Law*, Edward Elgar Publishing 2019; Peter Cane, Herwig C. H. Hofmann, Eric C. Ip., Peter L. Lindseth, *The Oxford Handbook of Comparative Administrative Law*, Oxford University Press 2021; René Seerden, *Comparative Administrative Law*: *Administrative Law of the European Union, Its Member States and the United States*, Intersentia 2018; Frank Johnson Goodnow, *Comparative Administrative Law*: *An Analysis of the Administrative Systems, National and Local, of the United States, England, France and Germany*, Forgotten Books 2018.

[5] Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, p. 2.

[6] Jaakko Husa, *A New Introduction to Comparative Law*, Bloomsbury Publishing, 2015, pp. 22-23.

[7] Maurice Adams, Dirk Heirbaut, *The Method and Culture of Comparative Law*, Hart Publishing 2014, p. 59.

2. The definition of the notion of comparative law

In the doctrine of comparative law, there have been several attempts to define the notion of comparative law by different authors. Konrad Zweigert and Hein Kötz, the authors of a classic textbook on comparative law, describe comparative law as "an intellectual activity that has law as its object and legal comparison as its process".[8] On the other hand, Peter de Cruz affirms the view that "comparative law" involves the systematic study of specific legal traditions and legal norms on a comparative basis. Furthermore, Peter de Cruz states that, when speaking about comparative law, it is understandable that it is based on a range of disciplines, but it is eclectic in its selection. As such, comparative law acknowledges the important relationships between law, history and culture and operates on the basis that each legal system is a specific amalgam of the spirit of the people and is the product of various historical events which have produced a distinctive national character and environment.[9] According to Professor Radomir Lukić, comparative law deals with the synchronous study of at least two legal systems, either in their entirety, or a particular segment of them.[10]

The comparative law scholarship is dominated by the view that the expression "comparative law" is used in two meanings: *the first*, as a specific scientific legal discipline and, *secondly*, as an academic discipline within the curricula of faculties of law.[11] As a scientific discipline, comparative law deals with the study, analysis and comparison of two or more legal institutes or legal systems of particular states in order to identify and interpret the similarities and differences between them, for theoretical or pragmatic purposes. Comparative law includes the entirety of systematic knowledge that refers to particular legal institutes from different fields of law, as well as the contemporary major legal systems around the world.[12] Accordingly, comparative law has developed as a branch of legal sciences, and in terms of its legal nature it is interdisciplinary and subsidiary. This means that comparative law is divided into several applied scientific legal disciplines, such as comparative constitutional law, comparative administrative law, comparative criminal law, comparative civil law, comparative commercial law, etc. It has a subsidiary role *vis-à-vis* them, because they use the achievements of comparative law.[13]

Comparative law deals with foreign positive law. The cognitive aspect of a

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[8] Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, p. 2.
[9] Peter de Cruz, *Comparative law in a Changing World*, Routledge-Cavendish, 1999, pp. 3-6.
[10] Radomir Lukić, *Metodologija prava*, Beograd, 1979, p. 152.
[11] Nora V. Demleitner, *Comparative Law in Legal Education*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 321-326.
[12] Major legal systems indicate a set of national legal systems of more countries that form a concrete legal family. A major legal system can only be that legal system, which has exceeded the space of its origin and which has exerted a significant impact on different national legal systems around the world. – Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, pp. 146-149.
[13] Mathias Reimann, Reinhard Zimmermann, *The Oxford Handbook of Comparative Law*, Oxford University Press 2008, pp. 900-1209.

foreign law is a preliminary step for any comparative legal study and at the same time represents the foundation on which the comparative law is established.[14] On the other hand, the study of a foreign law presupposes not only knowledge of a foreign language, but also familiarity with the legal terminology of that specific foreign law being studied.[15] However, what should be considered is that "the study of foreign law itself cannot be comparative law". We can talk about comparative law in action only when "there are comparative legal reflections on the specific legal phenomenon to which the activity is dedicated". Therefore, "experience has shown that this is done better when the author presents the essential points of foreign law, for each particular country separately, and then uses this material as a basis for critical legal comparison". Then he draws conclusions regarding the legal policy that might be adopted, which may include a reassessment of its own legal system.[16]

Comparative law, as practiced today, can be conceptually treated from two distinct approaches: *first*, "legislative comparative law", when foreign laws are explored to create qualitative national legal acts", but also for to create legal codification in a certain area of positive national law, as it has been successfully used in modern codifications, such as those of France, Austria and later Germany, Switzerland, etc.)[17], and; *second*, "scholarly comparative law", when the comparative study of different legal systems of the world is undertaken to improve and expand the epistemological horizon on the typology of existing legal systems from a transnational perspective and thus to create a better and integrated understanding of the typology, structure and functioning of the existing legal systems in the world.[18] In addition, scholarly comparative law is related to the idea that of the need of legal comparison that leads to legal harmonization/unification of national legal systems, in order to avoid legal barriers to the international exchange of goods and services in the regional and global markets. This is mainly a result of the development of mutual cooperation between states in the area of international relations, but also of the expansion of economic activities, as well as the growing need for the development of rules to facilitate commercial transactions on transnational level.[19]

The increased interest in comparative scientific law during the 19th century was reflected in the creation of various scientific institutes dedicated to the

[14] Mary Ann Glendon, Paolo Carozza, Colin Picker, *Comparative Legal Traditions*, West Academic Publishing 2008, pp. 10-11.
[15] George Mousourakis, Matteo Nicolini, *Comparative Law and Legal Traditions*, Springer 2019, p. 110.
[16] Stefan Vogenauer, *Sources of Law and Legal Method in Comparative Law*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 884-886.
[17] Jan M. Smits, *Comparative Law and its Influence on National Legal Systems*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 516-520.
[18] Konrad Zweigert, Ulrich Drobnig, *International Encyclopedia of Comparative Law*, Brill 2006. *International Encyclopedia of Comparative Law*, published in 17 volumes, it is written by the world's leading experts in comparative law. It is arguably the most extensive survey of international comparative law ever published, and as such, it includes detailed descriptions and comparative legal analyzes of the legal systems of more than 150 countries throughout the world.
[19] George Mousourakis, Matteo Nicolini, *Comparative Law and Legal Traditions*, Springer 2019, p. 72.

comparative study of general legal phenomena, such as: British Institute of International and Comparative Law founded in 1894[20], the Max Planck Institute for Comparative and International Private Law established in 1926[21], the Institute for Comparative Law in Paris created in 1931[22]. In this context, it is worth highlighting the fact that in the Federal People's Republic of Yugoslavia (FPRY) the Institute for Comparative Law (*Institut za Uporedno Pravo*) was founded by a decree of the Federal Executive Council in 1955, signed by the then President of the FPRY, Josip Broz Tito. The Institute for Comparative Law in the FPRY began work on January 1, 1956, as one of the first institutions of its kind in the world.[23] According to the same model, scientific institutes for comparative law were founded in Japan (The Institute of Comparative Law in Japan) in 1948 and in Switzerland (Swiss Institute for Comparative Law) in 1978.

Today, comparative law has made possible an international communication of opinions and doctrines, constitutions and laws. For example, comparative constitutional law[24] is an autonomous scientific discipline, which deals with the study of the constitutional laws of different states in the comparative plane,[25] and offers students' knowledge on the constitutional systems of countries which have developed and advanced constitutional law as a branch of law, i.e.: France, USA, Germany, Switzerland, Italy, Spain, England, etc.[26] Moreover, the interest in comparative constitutional law has been growing continuously, especially in recent decades. This

[20] See: John W. Cairns, *Development of Comparative Law in Great Britain*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 142-143.

[21] See: Ingeborg Schwenzer, *Development of Comparative Law in Germany, Switzerland, and Austria*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 69-70.

[22] See: Bénédicte Fauvarque-Cosson, *Development of Comparative Law in France*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, p. 36.

[23] https://iup.rs/en/about/background/, accessed January 20, 2025.

[24] Tom Ginsburg, Rosalind Dixon, *Comparative Constitutional Law*, Edward Elgar Publishing 2013; Michel Rosenfeld, Andras Sajo, *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press 2013; Roger Masterman, Robert Schütze, *The Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press 2019; Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law*, Edward Elgar Publishing 2018.

[25] Zsolt Szabó, *Constitution and Government at the Western Balkans*, Berliner Wissenschafts-Verlag 2023. The legal scholar Zsolt Szabó in this book has applied a comparative and analytical-critical approach by describing and evaluating the status and functioning of the systems of constitutional governance and the rule of law of the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia), and their potential membership in the European Union. This book systematically covers all the main institutional areas of constitutional and administrative law: the electoral system, ethnic issues, organization of the state, separation of powers (legislative, executive, judicial), administrative procedures, the system of administrative officials and the constitutional judiciary.

[26] See: Michel Rosenfeld, Andras Sajo, *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, 2013; Roger Masterman, Robert Schütze, *The Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, 2019; Aalt Willem Heringa, *Constitutions Compared: An Introduction to Comparative Constitutional Law*, Eleven International Publishing, 2021.

has happened because of the recent developments that new constitutions have had in the framework of the transition in the direction of constitutional democracy, in countries of Eastern Europe, Africa and Latin America. This interest is also dedicated to the internationalization of constitutional law, starting after the Second World War. With the expansion of the internationalization of human rights, several regional charters were created for their protection. Such was the European Convention on Human Rights, as well as its equivalents in Africa and the Americas.[27]

3. The origin and historical development of comparative law

Comparative law, as a distinctive legal discipline, appeared in the 19th century. Several factors stimulated this development. Of particular importance was the consolidation of the idea of the nation-state and the spread of national legislation; the expansion of international trade, which brought litigants and legal practitioners into contact with foreign legal systems; and the growing interest in the scientific study of legal phenomena in a broader historical and comparative context.[28]

The beginnings of comparative law can be found as far back as ancient Greece. In the ancient Greek world, many scholars were interested in foreign laws. Such is the case of Lycurgus in Sparta and Solon in Athens, who traveled to Mediterranean countries to get knowledge of the local laws more closely before issuing laws in their countries.[29] In his work "Laws", Plato makes a comparison of the laws of the Greek city-states; he not only describes them, but also examines and analyzes them against his "ideal constitution". Before writing his "Politics", Aristotle also analyzed the constitutions of no less than 153 poleis, although only a section dedicated to Athens has survived. This work can be considered as a philosophical speculation based on comparative law.[30]

A well-known example of an alleged foreign influence on the drafting of legislation from the early Roman period concerns the Law of the Twelve Tables, the oldest codification of Roman law adopted in mid-fifth century BC. The writings of the orator and philosopher Cicero (106-43 BC) and the jurist Gaius (second century AD) seem to suggest that they believed that before work on the code began, a commission of three was sent in Greece to learn from the laws of the famous Athenian lawmaker Solon and those of other Greek city-states. Contemporary historians now accept the view that it is unlikely that a delegation was sent to Greece. This view is supported by the fact that the surviving fragments of the Law of the Twelve Tables reveal little evidence that can be directly traced to a Greek influence, although some parallels with the laws of other early societies exist. However, as the history of the Law of the

[27] Andrea Buratti, *Western Constitutionalism: History, Institutions, Comparative Law*, 2nd ed., Springer, 2019, pp. 246-249.
[28] George Mousourakis, Matteo Nicolini, *Comparative Law and Legal Traditions*, Springer, 2019, pp. 71-75.
[29] Roberto Scarciglia, *A Brief History of Legal Comparison: A Lesson from the Ancient to Post-Modern Times*, 6 Beijing Law Review, 2015, p. 297.
[30] Jan M. Smits, *Elgar Encyclopedia of Comparative Law*, Edward Elgar Pub, 2014, p. 57; René David, John E. C. Brierley, *Major Legal Systems in the World Today*, Free Press, 1978, pp. 1-2.

Twelve Tables shows that the influence of ancient Greek civilization on Roman culture is undeniable, even though the prevailing tendency among Roman jurists was to focus exclusively on the internal law of Romans.[31] In fact, among the Roman jurists, there existed a legal subjectivism and selfishness, because they did not accept any law (even the Greek law) as equal to the Roman law. This means that Roman jurists had a negative and pejorative approach towards the laws of other peoples, which is best reflected in Cicero's work: "De oratore". Cicero, comparing Roman law with the laws of Lycurgus, Draco and Solon, says: "*Incredible est enim quam sit omne jus civile præter hoc nostrum, inconditum et poene ridiculum*" — "*It is indeed incredible how undigested and almost ridiculous is all civil law, except our own*".[32] The political-economic superiority of the Roman state and its legal system over other states and legal systems is assumed to have been the principle reason for the attitude of the Roman jurists, who did not show any attention and interest in foreign laws.

Philosophers Francis Bacon and Gottfried Leibniz have made a valuable contribution to the development and advancement of comparative law. In his essay "*De dignitate et augmentis scientiarium*" (1623), Bacon said that a jurist must free himself "from that legal egoism and narcissism", from the connection with his national legal system before he can appreciate its true importance: the object of judgment — national law cannot be the standard of judgment.[33] This perception, which is now as valid as it has always been, justifies comparative legal research. Leibniz views comparative law from the prism of universal history: his plan for a "Legal Theatrum" included a comparative presentation of the laws of all peoples, countries and times.[34]

Comparative law is a relatively new legal scientific discipline. The First International Congress of Comparative Law organized by the French Society of Comparative Legislation (*Société française de législation comparée*) was held in Paris in 1900, during the Paris World Fair and the International Congress of Higher Education was a crucial event for the development of the theory and the practice of comparative law.[35] In fact, the Paris International Congress on Comparative Law in 1900 marked a historic and decisive moment for the inauguration of the conceptual and methodological aspects of modern comparative law as an autonomous legal discipline. The French scholars Édouard Lambert and Raymond Saleilles considered comparative law as the "common stock of legal solutions" from among all the advanced legal systems of the world.[36]

Furthermore, Lambert and Saleilles affirmed the idea of comparative law in

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[31] George Mousourakis, Matteo Nicolini, *Comparative Law and Legal Traditions*, Springer, 2019, p. 52.
[32] James H. Richardson, Federico Santangelo, *The Roman Historical Tradition: Regal and Republican Rome*, Oxford University Press 2014, p. 262.
[33] Roberto Scarciglia, *Methods and Legal Comparison*, Elgar, 2023, p. 17.
[34] Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press 1998, p. 50.
[35] Jaakko Husa, *A New Introduction to Comparative Law*, Bloomsbury Publishing, 2015, p. 9.
[36] George Mousourakis, Matteo Nicolini, *Comparative Law and Legal Traditions*, Springer, 2019, p. 4, 94; Mathias Siems, *Comparative Law*, Cambridge University Press 2018, p. 37; Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, pp. 2-4.

the name of universalist, cosmopolitan, internationalist, humanist and progressive social motives and visions, for states around the world to make maximum efforts and develop a systematic and long-term strategy in the plan of legal harmonization and unification of the concept of legal norms and legal institutes in the framework of their national legal systems. The ultimate goal was to create a "single and common law for humanity" or "*universal ius commune*" in the future.[37] The essence of the ideas of Lambert and Saleilles consists in accepting and applying a unique and universal juridical propulsive approach within the scope of the different legal systems of the world, so that legal norms, principles, concepts, and categories would have the same unitary sense of justice in the legal systems of the countries of the world. The aspiration of the above-mentioned "ideological creators" to create a single uniform law at a global level, which could be valid for all states, peoples and all humanity, is unfeasible in practice. Hereupon, "their ambitious project can be qualified as an impossible mission, i.e. utopian, and as such, it can only be elaborated as a legal discourse on the theoretical-academic level".[38]

The dynamic process of international cooperation in the second half of the 20th century, which developed in parallel with intensive scientific and technological progress and changes in the political, economic and cultural life of most states and their societies, the development on the Law of the European Union and the idea on the European legal order, have resulted in the inclusion of comparative law in the academic programs in many universities in Europe and the USA.[39] Otherwise, the ever greater global interdependence of states has influenced the study of the typology of legal systems, and positive national law cannot be understood, if it is observed exclusively within rigid national legal frameworks. This seems to prove the thesis that comparative law opposes and fights parochialism/localism, or provincialism, dogmatism and narrow observations of legal phenomena within state borders encouraging the legislator to actively develop a sense of vigilance and responsibility for reforming and improving national law. In addition, comparative law makes a jurist of a state more modest, regarding the standards of justice of his state, and consequently relativizes a kind of chauvinism that every local might have.[40]

Moreover, it is very difficult to think in the contemporary world of the enactment of laws in any legal area without the support of comparative law. Comparative law is given great importance by legislators, when drafting and adopting legal acts, and the best practices from other countries are taken into consideration.[41] Also, during the process of drafting the Constitution of the Republic of North Macedonia, which was adopted on November 17, 1991 by the Assembly of the Republic of North Macedonia, legal solutions offered by comparative constitutional

[37] Jaakko Husa, *A New Introduction to Comparative Law*, Bloomsbury Publishing, 2015, p. 20.
[38] Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, p. 27.
[39] Tan Cheng-Han, Alan Koh, Topo Santoso, Umakanth Varottil and Jiangyu Wang, *Comparative Legal Education* in Mathias Siems and Po Jen Yap (eds), *The Cambridge Handbook of Comparative Law*, Cambridge: Cambridge University Press, 2024, pp. 713-720.
[40] Mathias Siems, *Comparative Law*, Cambridge University Press 2018, p. 1; Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, pp. 15-23.
[41] Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, p. 53.

law were consulted and used as a guide in issues related to the field of constitutional law.

4. Object of study and methods of comparative law

Every legal discipline contains two elements interconnected in a dialectical way: the object of study and the method. In this regard, the object of study and method are necessary conditions for the creation and existence of a branch of law. Moreover, an object of study can be analyzed from different perspectives and using different methods. Comparative law as a specific legal discipline has as its object of study, the legal systems of at least two or more states in comparative perspective. It is of great interest and importance to point out the fact that in comparative law in terms of its object of study, an important feature prevails, that of transnational dimension. This means that the object of comparative law from the perspective of the study of legal systems is not limited in terms of geographic extent, i.e., it studies existing legal systems all over the world.[42]

The method of a scientific discipline includes the actions and tools with the help of which the object of a certain legal discipline is studied. The method and object of study are closely related and mutually dependent on each other. This means that the method must conform to the object of study, although the object determines the method by absorbing it into itself, while the method appears only as an external expression of the object in the consciousness of the one who applies it.[43] The vast majority of legal disciplines use some general scientific methods. This is also the case with comparative law. It does not have any autonomous and exclusive method through which it would be identified. In this case, it should be noted that the methods of comparative law are conditioned by the object of study of comparative law.

Comparative law as a legal discipline, in the study of its object applies: the comparative-legal method, the historical-legal method, as well as the method of legal logic (analysis, synthesis, abstraction, deduction, induction). In fact, comparative law can in principle use any method to find answers to questions that interest comparatists.[44]

Comparative law applies the comparative method, because during the study of legal phenomena, it is exclusively interested in their comparative dimension. Consequently, the comparative method is a scientific method that studies the national laws of other states. The comparative legal method is suitable for the synchronous observation of legal norms, as well as solutions of identical or analogous legal issues in different cases, places, and times.[45] Moreover, the tendency of legal harmonization

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[42] John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*, Durham, NC: Carolina Academic Press, 2011, p. 21.
[43] Roberto Scarciglia, *Methods and Legal Comparison*, Elgar, 2023, pp. 86-89.
[44] Maurice Adams, Dirk Heirbaut, *The Method and Culture of Comparative Law*, Hart Publishing 2014, p. 56.
[45] Stefan Vogenauer, *Sources of Law and Legal Method in Comparative Law*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, p. 881.

of different national legal systems on a European scale, in order to reach a common European legal system, makes necessary the development and cultivation of the comparative method as an applicative scientific method.[46] The importance of comparative-legal method is expressed in the process of harmonization of the legal systems of the states aspiring for membership in the European Union, including the legal system of the Republic of North Macedonia, the Republic of Albania, and the Republic of Kosovo. This correlates with the Copenhagen criteria that must be met by states applying for membership in the European Union, in order to avoid legal divergences with the legal systems of European states, as their legal systems should be approximate and analogous to each other.[47]

Finally, it is recommended that "all law professors" apply "the comparative method with the aim of enriching the fund of professional legal knowledge". Roscoe Pound, as far back as 1934, had suggested "that the law professor of the future should base himself in comparative law, with the sole purpose of better understanding and mastering the legal issues".[48]

Comparative law uses the historical method to discover the early origins of the development of legal traditions and to study the chronological evolution of legal systems from antiquity to our days. In other words, the historical method is used by comparative law, because it enables to accumulate knowledge about the legal systems that were created and developed in particular historical circumstances.[49]

5. Applicability of micro-comparison and macro-comparison in the comparative law

Lawyers who deal with comparative law are called comparative lawyers. They are inclined to compare and explain legal phenomena, namely legal concepts, legal institutes as well as legal systems of different countries, either for theoretical or for pragmatic-empirical purposes. Regarding the methods of legal comparison, it should be noted that there are two main approaches in comparative law: micro-comparison and macro-comparison.[50] A legal micro-comparison deals with the legal comparison of normative legal acts, case law, thematic legal issues, and specific legal institutes in narrower contexts in two or more legal systems. For example, administrative litigation/disputes, as a special legal institute in the legal systems of the Western Balkan states.[51] The legal macro-comparison deals with the comparison on a

[46] See: Maurice Adams, Dirk Heirbaut, *The Method and Culture of Comparative Law*, Hart Publishing 2014, p. 38-57; Pier Monateri, *Advanced Introduction to Comparative Legal Methods*, Edward Elgar Publishing 2021.
[47] Jaakko Husa, *A New Introduction to Comparative Law*, Bloomsbury Publishing, 2015, pp. 77-81.
[48] David S. Clark, *American Comparative Law: A History*, Oxford University Press, 2022, pp. 321-323.
[49] Jean-Louis Halpérin, *Historical-Jurisprudential Methods* in Mathias Siems and Po Jen Yap (eds.), *The Cambridge Handbook of Comparative Law*, Cambridge: Cambridge University Press, 2024, pp. 32-47.
[50] Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, pp. 30-31.
[51] Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, pp. 5-6; Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method*, Hart Publishing 2014, pp. 50-53

wider scale of the general spirit and style of the legal systems of different countries. The systematization, grouping and classification of the legal systems of the world into several large legal families' lies at the heart of legal macro-comparison: it deals with the comparison of national legal systems *en bloc*, or families of legal systems as a whole and not with specific thematic issues of a small scale.[52] As obvious example of macro-comparison, is the comparison between the continental European legal system (civil law) and the Anglo-Saxon legal system (common law).

The continental European legal system (civil law) is mainly based on written law and codified law, which originates from Roman law. The continental European legal tradition is the oldest and most widespread legal tradition[53] in the world today, including the legal systems of Continental Europe, Latin America, and those of many African and Asian countries. These legal systems are influenced by the Roman law as taught in universities since the Middle Ages, then by the school of natural law and, later, by process of codification. It is characterized by the use of abstract legal concepts and the formulation of general legal norms, the primacy of written legal sources and the separation of material norms from procedural norms.[54] The main method of legal reasoning of the jurists of continental European is syllogism (deduction), a process which consists in applying the abstract (general) legal norm to a concrete case in practice.

In this regard, it is worth emphasizing the Latin legal maxim: "*iudicis est ius dicere, non dare*", which means that the role of the judge is not to create law, but only to interpret and apply law it through the enactment of concrete individual legal acts in particular cases.[55]

On the other hand, the Anglo-Saxon legal system (common law)[56] was created as a result of the expansion, consolidation and centralization of the royal power and sometimes of the activity and work of the royal courts which have been completely dependent and subordinated to the royal power. They have performed their functions on the basis of the common law, which has been applicable throughout the territory of England. This represents an original legal system, since it developed spontaneously

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[52] Jan M. Smits, *Elgar Encyclopedia of Comparative Law*, Edward Elgar Publishing 2014, pp. 382-383.

[53] Legal tradition is not a set of legal norms, on the contrary, it is a set of deeply rooted, historically conditioned attitudes about the nature of law, the role of law in society and in the state, the organization and proper functioning of a legal system, and how the law should be created, applied, studied, developed and taught. H. Patrick Glenn, *Legal Traditions of the World*, 4th ed., Oxford University Press, 2010, p. 33-35. John Henry Merryman, Rogelio Pérez-Perdomo, *The Civil Law Tradition*, Stanford University Press 2018, p. 2.

[54] John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*, Durham, NC: Carolina Academic Press, 2011, p. 157.

[55] See more: Mathias Siems, *Comparative Law*, Cambridge University Press 2018, pp. 50-68; René David, John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, Free Press 1978, pp. 21-22; Mary Ann Glendon, Paolo Carozza, Colin Picker, *Comparative Legal Traditions*, West Academic Publishing 2008, pp. 16-150; John Henry Marryman, *The Civil Law Tradition An Introduction to the Legal Systems of Western Europe and Latin America*, Stanford University Press, 2007, pp. 1-67.

[56] While the term "Anglo-Saxon legal system" prevails in the British legal literature, the term "Anglo-American legal system" prevails in "American legal literature".

and autonomously without any influence from Roman law and the *European ius commune*. It appeared initially in England and later spread to other countriesthat were under the control or influence of England. English jurists with special pride emphasize the uniqueness of its national identity and its inheritance of the authentic and autochthonous English law. Today, almost 1/3 of the world's population lives according to the legal principles whose foundation was laid down in the structure of Anglo-Saxon law.[57] The Common law system mainly includes the law of countries such as: Great Britain, Ireland, USA, Canada, Australia and New Zealand. There is no doubt that Anglo-Saxon law is a jurisprudential law because it is created and elaborated by the courts and their decisions over the past centuries. It is characterized by the use of less abstract legal concepts, the primacy of casuistic rules and the intertwining of substantive with procedural legal norms. The previous judicial decisions whose legal arguments are used to decide a new case is called judicial precedent, while the law created on the basis of judicial precedents is called case law or judge–made case law. As a consequence, the inductive approach to law is also reflected on the Anglo-American legal doctrine, where law is defined as a set of rules created by the courts.[58] In addition, there is also a statutory law as a set of legal norms adopted by the parliament in the form of legal acts to regulate various social relationships. The logical reasoning of Anglo-American lawyers is rational-pragmatic, and the use legal analogy, as a process which consists in the application of an existing legal norm in similar or analogous cases that will appear in practice by placing it in correlation with previous cases that have legal epilogue in practice (inductive reasoning). In this regard, it is worth emphasizing the Anglo-American legal maxim: "*judges follow previously decided cases where the facts are of sufficient similarity*".[59]

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[57] John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*, Durham, NC: Carlona Academic Press, 2011, p. 370.

[58] H. Patrick Glenn, *Legal Traditions of the World*, 4th ed., Oxford University Press, 2010, pp. 265-267.

[59] Precedent law has its starting point the legal principle called stare decisis, which originates from the Latin legal maxim: "stare decisis et non quieta movere" which translated literally means "to stand by decisions and not disturb the undisturbed". The judge is obliged to take care that in a case that is brought before him for judicial hearing, if there exists any judicial decision and if it does so, it should be considered binding for the judges of the same rank or of a lower rank. This ensures stability, consistency and predictability in the application of law in practice. In this context, judges in the Anglo-Saxon legal system are not considered only "a machine or a mouth that applies and pronounces the words of normative legal acts, on the contrary, they are also their creators, because they develop them through the judicial decisions, giving legal epilogue to particular cases that parties bring before them (judge-made case law). Judges of English courts when do reach a decision on a specific case take into consideration the previous court decisions in analogous cases when they are brought up for judicial review. Judicial practice means the process in which a legal norm is applied in the same way in more cases or analogous situations. When speaking about judicial practice, there had been a legal maxim in Roman law: "Cursus curiae est lex curiae" - judicial practice is considered as law for the court. The court decision by which a specific case was settled in practice has binding force for all future analogous cases which should be settled in identical manner. This means that a court decision as a concrete individual legal act is transformed into a general legal norm as a result of frequent repetitions of analogous cases in judicial practice and it is called judicial precedent, while the legal system itself is a system of precedent law. In few words, judicial precedent is the settlement of a concrete case by the court, which serves as a model for the subsequent decisions in analogous cases before the courts. – see: Timothy Endicott, Hafsteinn Dan

6. Functions of comparative law

As every legal discipline, comparative law also has its functions, which could be summarized in a few main ones. In this case, a brief explanation will be given for the following main functions:

First, knowledge — the central intention of the study of comparative law in the law faculties is to equip students with a universal legal culture and acquire fundamental theoretical knowledge in the field of legal systems that belong to different legal families throughout the world.[60] According to a maxim: "all forms of higher knowledge consist of comparison" (*comparativa est omnis investigation*).[61]

Second, as an aid to the legislator — legislators, around the world, "have seen that in many cases good laws cannot be created without the help of comparative law", therefore they do legal borrowings according to the specific needs from the legislations of other countries.[62] However, great care must be taken in the case of "accepting a foreign legal solution", because, according to German authors Zweigert and Kotz, "whenever there is a proposal to accept" a foreign legal solution which is considered to be "superior," two questions could come to contention: *first*, "whether it was proven to be useful in its country of origin," and, *second*, "whether it will function effectively in the country where it is accepted". Otherwise, it may turn out, not infrequently, that a legal solution proven in another country may not be suitable and effective for another country due to the different social, economic, cultural and religious background and context.[63] There could appear resistance or reactions from certain social groups, which may challenge the acceptance or implementation in practice of any foreign legal solution that contradicts the relevant common valuesof the society and the concrete state. Therefore, the success and challenge of legal transplantation is conditioned on the compatibility with the specific conditions and circumstances of the particular social environment.[64]

Kristjánsson, Sebastian Lewis, *Philosophical Foundations of Precedent*, Oxford University Press 2023; Paul Brand, *The Making of the Common Law*, Hambledon Press 1992; H Patrick Glenn, *On Common Laws*, Oxford University Press 2007; René David, John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, Free Press 1978, pp. 23-26; R. C. Van Caenegem, *The Birth of the English Common Law*, Cambridge University Press 1988, pp. 1-28; Roscoe Pound, *The Spirit of the Common Law*, Routledge 1998; W. W. Buckland, Arnold D. McNair, *Roman Law and Common Law: A Comparison in Outline*, Cambridge University Press 2008; Peter Collin, *Dictionary of Law*, Bloomsbury Pub Ltd, 2004, pp. 41-55; H Patrick Glenn, *On Common Laws*, Oxford University Press, 2007; Herbert Lionel Adolphus Hart, *The Concept of Law*, Oxford University Press 2012.

[60] See: Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, pp. 15-16.

[61] Mads Andenas, Duncan Fairgrieve, *Courts and Comparative Law*, Oxford University Press 2019, p. 28.

[62] See: Alan Watson, *Legal Transplants*: *An Approach to Comparative Law*, University of Georgia Press, 1974.

[63] John W. Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*, Durham, NC: Carolina Academic Press, 2011, p. 23.

[64] Konrad Zweigert, Hein Kötz, *An introduction to Comparative Law*, Oxford University Press, 1998, pp. 16-21.

Third, legal education — is considered an important function of comparative law because it contributes to the academic and professional development of lawyers, given the fact that "focusing only on national law in legal education, as well as in legal science is a very restrictive approach". The study of the laws of different states helps in increasing tolerance and encourages dialogue between different legal cultures, recognizing and respecting the pluralism of legal traditions, etc.[65] Comparative law offers law students "a whole new dimension, so that they can learn and acquire the habit of respecting the legal cultures of other peoples, so that they can better understand their own". It also helps in developing the critical standards that can lead to the improvement and perfection of the legal culture of his country. In other words, only those who "learn to respect the legal cultures of other peoples" can be expected to "understand their own better".[66]

Fourth, unification — means the creation of a single legal system in the territory of one or more states in which legal particularism has dominated. In fact, the unification of law is about adopting the same legal norms of substantive and procedural law, with validity in the territory of one state or more states. There is no doubt that comparative law can have an impact on unifying national legislations different states. It systematically contributes to the process of unification of law in the field of private law although in limited "quantities and proportions".[67]

The unification of the law takes place on a twofold plan: first, as the unification of the law on the national level is realized through legal codification; and second, as the unification of the law on the international level (by international treaties between a number of states in international diplomatic conferences). The unification of law at the national level represents a systematic formulation of legal norms into a coherent legal text[68] (usually a legal code, such as the Electoral Code of the Republic of North Macedonia of 2006, the Code of Administrative Procedures of the Republic of Albania of 2015, the Civil Code of the Republic of Albania of 1994, the Uniform Commercial Code (UCC) of 1952 in the United States). The unification of law at international level represents a systematic formulation of legal norms into a compact legal text (usually an international treaty, such as the 1969 Vienna Convention on the Law of Treaties, the 1950 European Convention on Human Rights, etc.). It is created by an international organization based on certain legal principles. The unification of law on the international level is realized through multilateral international treaties[69] at

[65] Nora V. Demleitner, *Comparative Law in Legal Education*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 322-326.

[66] Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, pp. 51-52.

[67] See: James Gordley and Arthur Taylor von Mehren, *An Introduction to the Comparative Study of Private Law: Readings, Cases, Materials*, New York: Cambridge University Press, 2006.

[68] Jan M. Smits, *Comparative Law and its Influence on National Legal Systems*, in Mathias Reimann and Reinhard Zimmermann (eds.) *The Oxford Handbook of Comparative Law* (2 ed.), Oxford University Press, 2019, pp. 504-511.

[69] International treaties are legal acts, through which the subjects of international law (states, international organizations), get mutual rights and obligations for the regulation of relations between them, either of public or private nature. Otherwise, an international treaty consists of the agreement of the will of two or

international diplomatic conferences.[70] The uniform legal norms contained in a multilateral international treaty after the act of their ratification by the parliament of each state party become an integral part of the internal legal order of those states, through the principle *pacta sunt servanda*. It should be noted that in all the international diplomatic conferences that have been held until today, it has not been possible to achieve the comprehensive legal unification of law, but only a partial legal unification in certain legal relations.[71] An illustrative example is the unification of legal provisions in the field of private relations with a foreign element that include personal law, copyright, industrial property, bill of exchange, etc. These conventions include: The Hague Convention Governing Conflicts of Laws Concerning Marriage (1902); The Hague Convention relating to the settlement of guardianship of minors (1902); The Berne Convention for the Protection of Literary and Artistic Works (1886); The Paris Convention for the Protection of Industrial Property (1883); Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes (1930).[72]

Seen from a futuristic perspective, the law in the global plan is generally associated with convergent and not with divergent tendencies. In this regard, certain international organizations and associations provide great assistance to the process of the unification of law. Few of them could be mentioned: the Academy of International Law, the UN Commission on International Trade Law (UNICITRAL), the International Institute for the Unification of Private Law in Rome (UNIDROIT), The Hague Conference on Private International Law, World Intellectual Property Organization, etc. The Hague Conference on private international law has as its main mission, "the progressive unification of the legal rules of private international law". The activity of the Conference consists in the preparation of texts of multilateral conventions subject to signature and ratification by its member states. It is worth noting that 34 conventions have been approved to date: Convention relating to the settlement of the conflicts between the law of nationality and the law of domicile (1955); Convention concerning the recognition of the legal personality of foreign

more subjects of international law with the aim of achieving a certain legal effect according to international law, which creates rights and obligations between its parties – Vladimir Đuro Degan, *Međunarodno Pravo*, Zagreb, 2011, p. 113.

[70] Depending on the number of state parties that have signed them, treaties can be bilateral (bilateral) and multilateral (multilateral). The conclusion of international bilateral treaties, is done with the formal signing of the documents by the authorized official representatives of the respective states. Meanwhile, the conclusion of international multilateral treaties at an international conference, as a rule, is done by the vote of two-thirds of the state respresentatives who are present, unless they decide with the same majority to apply another rule (Article 9, paragraph 2 of the 1969 Vienna Convention on the Law of Treaties).

[71] Oliver Moreteau, Augustin Parise and Jacques Vanderlinden, *Contemporary Period (1900-Present)* in Aniceto Masferrer, Cornelis Hendrik (Remco) van Rhee, Sean P. Donlan & Cornelis Heesters (eds.), *A Companion to Western Legal Traditions: From Antiquity to the Twentieth Century*, Leiden: Brill Nijhoff, 2023, pp. 498-499.

[72] Danielle Hanna Rached and Conrado Hubner Mendes, *Comparative International Law* in Mathias Siems and Po Jen Yap (eds), *The Cambridge Handbook of Comparative Law*, Cambridge: Cambridge University Press, 2024, pp. 561-570.

companies, associations and institutions (1956), etc.[73] The UN Commission on International Trade Law (UNCITRAL) was established in 1966 with the aim of advancing, harmonizing and progressively unifying the rules of international trade law, taking into account the interests of all peoples and states in general and particularly those of developing peoples and countries. Its greatest achievement so far is the Convention on Contracts for the International Sale of Goods (CISG) signed in Vienna in 1980.[74]

7. Conclusions

Comparative law is not a branch of law, but it is an applied legal discipline. This position is scientifically supported by the fact that comparative law does not have a normative substance in itself as does constitutional law, administrative law, and other branches of law. As a result, comparative law does not have any specific field of social relations as object of legal regulation.

As a scientific discipline, comparative law deals with the study and comparison of at least two or more legal institutes or legal systems of particular countries on a comparative basis in order to identify and interpret the similarities and differences between them, whether for theoretical research purposes or for empirical purposes. Comparative law includes systematic scientific knowledge with comparative-legal content that refers to legal phenomena or institutes from different areas of law, as well as the major contemporary legal systems in the world.

Comparative law has developed as a branch of legal sciences and its legal nature is interdisciplinary and subsidiary. This means that comparative law is divided into several applied legal disciplines, in accordance with the specific branches of law, such as comparative constitutional law, comparative administrative law, comparative criminal law, comparative civil law, comparative commercial law, etc. It has a subsidiary role *vis-à-vis* them, because they use the achievements of comparative law.

In any country of the world, numerous comparative-legal studies are usually undertaken before the enactment of legal acts, with the aim of ensuring "adequate legal solutions" for "local legal issues", as well as encouraging to develop and advance public policies by proposing and undertaking legal reform in any specific field of national legislation in accordance with the array of pragmatic and progressive legal solutions offered by comparative law.

Comparative law can contribute to the improvement, reformation and modernization of national legislation and public policies of states, including the impact on the development of legal doctrine and judicial practice. It promotes the convergence of legal systems by reducing the divergences of national laws that have reached a certain degree of social-economic and cultural-political development. Comparative law can also help in the process of approximation and harmonization of legal systems, especially in regional or international contexts, such as the European

[73] Yuko Nishitani, *Comparative Conflict of Laws* in Mathias Siems and Po Jen Yap (eds), *The Cambridge Handbook of Comparative Law*, Cambridge: Cambridge University Press, 2024, pp. 674-690.
[74] Uwe Kischel, *Comparative Law*, Oxford University Press, 2019, pp. 65-66.

Union.

The study of comparative law contributes to the spread of international human rights standards and their advancement, enabling a better understanding of their application in different legal and cultural contexts. By comparing and analysing the legal systems of different countries, the best practices for legal protection and promotion of human rights can be identified. The study of comparative law helps to facilitate and strengthen international cooperation through the harmonization and unification of legislation in certain areas of law, especially in areas such as international trade, human rights and environmental protection.

Legal comparison helps to understand the diversity of national legal systems and to discover alternative solutions for specific needs of regulating legal relations in the local context. Globalization has increased the importance of comparative law, requiring lawyers to be familiar with different legal systems and to be able to operate in an increasingly interconnected international legal environment.

There are two legal traditions that exercise most influence in the contemporary world: continental European law and Anglo-American law. The legal tradition of continental European law is today the dominant legal tradition in Europe, Latin America, in many parts of Asia and Africa, and even in some provinces in the Anglo-American legal world. The dominance of the above-mentioned legal traditions is the direct result of European imperialism in earlier centuries, just as the dominance of Roman law in an earlier era was a product of Roman imperialism. Continental European law and Anglo-American law have not been isolated from each other. As an integral part of Western legal history and culture, they have had numerous interactions and mutual influences. This is also reflected in the existence of hybrid legal systems of certain parts of the world that include blending of cumulative legal features that belong to both the continental European and the Anglo-Saxon legal system.

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