Methods and Functions of Comparative Law

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Abstract: The purpose of this research paper is "*to explain the topic*" whose reviews are made. Hence, reviews of this research article refer to the legal content of the thematic area of comparative law, first and foremost, to methods and functions of comparative law. The elaboration of methods and functions of comparative law, as a starting point, has the historical origins and development of comparative law. However, the approaches did not stop to methods and functions of comparative law, but are extended and focused on the principle of functionality, also in macro-comparison and micro-comparison concept as a central juridical category of comparative law as an autonomous scientific juridical discipline. Otherwise, this article is of particular interest, overall and above all, to the development of theoretic, legal-comparative reasoning, as well as the professional applicative reasoning.

Keywords: comparative law methods; comparative law functions; micro-comparison; macro-comparison

1. General Considerations

Seen objectively, comparative law[3] is not a recent branch of law, but it represents in itself a legal scientific discipline. This attitude is supported and explained scientifically by a very significant and powerful fact that the law system does not have in itself legal norms, and in consequence does not have a normative-legal regulation object and no societal relationship or issues regulation (Gutteridge, 1946, pp. 1-2). Hence, comparative law is, in a more general sense "*the critical*

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[3] "*Comparative law*" terminology is related to the following terms: *Droit comparé* (fr.), *Comparative law* (eng), *Diritto Comparato* (it.), *Derecho comparado* (spa.), *E drejta e krahasuar* (alb.) *Sporedbeno pravo* (mac.), *Poredbeno pravo* (cro.) It is interesting to note that only in German language is named *Rechtsvergleichung - Legal Comparison* and not Comparative Law.

comparison of the different legal systems of the world". Reportedly, comparative law is, in the general sense of it, "*critical comparison of the different legal systems of the countries of the world"* because "*critical-legal comparison*" is a fundamental concept of comparative law (Zweigert & Kottz, 1998, p. 2). Regarding this, we express the authorial attitude that "*critical-legal comparison*" may be qualified as a versatile and comprehensive overview and assessment of an attentive (careful) comparative-lawyers, during the comparison of legal institutions or legal systems of at least two or more the concrete states, coming to consistent scientific conclusions regarding "*the common essential features*" on one side, and "*special distinguishing features*" on the other. In comparative-juridical doctrine several authors made different efforts to explain the comparative law notion. However, in comparative-juridical doctrine predominates the concept that the expression "*comparative law*" in comparative-juridical literature, is commonly used in two senses: *first*, as a special juridical scientific discipline and, *secondly*, as a specific discipline of academic learning.

First, as a specific juridical scientific discipline, the comparative law includes the entirety of scientific knowledge that refers to fundamental notions of comparative law, as well as the comparative-legal method and the most major legal systems in the contemporary world.[1]

Second, as a specific academic discipline, the comparative law includes the entirety of thematic units, taught to law students during their university studies.

2. Origins and Historical Development of Comparative Law

Seen historically roots of comparative law can be traced back to ancient Greece. It is in Greece, owing to the characteristic interest of Greek thinkers in political structure, that we find the earliest comparative researchers. In other words, in the ancient Greek world, many scholars were interested in foreign laws. Such is the attitude of Lycurgus in Sparta and Solon's in Athens, who made "*excursions*", (voyages) to the Mediterranean states to know the legislation of these countries closely before they disclose any laws in their own. In his *Laws*, Plato makes a comparison of the laws of the Greek city-states; he not only describes them, but also tests them against the ideal constitution he constructs out of them. Prior to writing his *Politics*, Aristotle also examined the constitutions of no less than 153 city-states, though only the portion devoted to Athens and Sparta has come down to us. This work can be described as philosophical speculation on the basis of comparative law (Aristotel, 1948). Meanwhile, the Roman Empire did not provide

[1] Most major systems of law include national legal systems of many countries that compose a concrete legal family. Major legal system can be only one legal system, which has exceeded his origins and that has exercised a great influence over the legal systems of the whole world - quoted by (Popoviç, 2008, p. 51).

examples of attempts that have been made to comparative law. Roman jurists never considered or accepted any other law (even the developed Greek law) as equal to Roman law (Gutteridge, 1946, pp. 11-12). This means that Roman lawyers have denied and underestimated other national laws, which is best explained in Cicero's masterpiece "*De oratore*". Cicero, comparing Roman law with Lycurgus, Draco and Solon laws says: "*Incredible est quamc sit omne ius civile praeter hoc nostrum inconditum as poene rediculum" – The incredible is that every private law, in addition to our law, as is so incoherent is ridiculous* (Bilalli & Kuçi, 2008, p. 23). Indeed, Cicero described all non-Roman law as "confused and quite absurd". The occasional references to foreign rules of law are just historical footnotes or theoretical amusements (Zweigert & Koetz, 1998, p. 49). Political and economic superiority of the Roman state and the Roman legal system to other states and other legal systems has certainly been a reason for this attitude of the Roman lawyer that had shown no interest for foreign laws.

In the *Age of Humanism*, when lawyers were interested in *elegantia juris*, there were more serious attempts at comparative legal analysis. Special mention should be made of Struve and Stryck in the late seventeenth century, for their comparisons of Roman and German private law. The first representatives of the *Age of Enlightenment and Natural Law*, scholars like Wolf and Nettelbladt, were very little likely to help comparative law on its way. For them, natural law was an intellectual construct to be produced by speculation *a priori* without reference to any empirically discovered material, though one is entitled to wonder whether behind their supposedly *a priori* system there does not lurk some" concealed comparative law". Yet two leading spirits of the age, Bacon and Leibniz, emphatically advanced the cause of comparative law without actually practicing it. In his essay "*De dignitate et augmentis scientiarium*" (1623) Bacon stated that the lawyer must free himself from the "vincula" of his national legal system before he can estimate its true worth: *the object of judgment (national law) cannot be the standard of judgment*. This perception, as valid now as ever, justifies all comparative researches. For his part, Leibniz endorses comparative law from the standpoint of universal history: his plan for a "*Theatrum Legale*" involved a comparative portrayal of the laws of all peoples, places, and times. (Zweigert & Koetz, 1998, p. 50)

Comparative law is a relatively new juridical scientific discipline. Its contemporary form emerges from the early twentieth century. French eminent jurists, Édouard Lambert and Raymond Saleilles, have been sponsors and organizers of the First Congress of International Comparative Law in Paris in 1900, as one of many more events of the world exhibition framework. Congress developments laid the foundation of a very new science, such as Comparative law. At this congress, the prominent scientists Lambert and Saleilles, displayed and affirmed their ideas and visions, that all states currently existing in the world should make maximum efforts

to develop long-term strategies in terms of harmonization and unification of the substantial concept of the legal norms and legal institutions within their national legal systems, having as ultimate intention (the latter purpose) the creation of a perspective "*worldwide unique legal system*", that can and should create a "*one law of all humanity*" thus , "*a global law*"; "*universal ius commune*";"*droit commun de l'humanité*"; "*common law of mankind*". A world law must be created – not today, perhaps not even tomorrow – but created it must be, and comparative law must create it (Koshutiç, 2002, p. 13). One conclusion can be drawn about this, fair, logical and consistent: the admission and application of a unique and universal juridical approach with the aim that legal systems of different countries of the world, including legal norms, legal principles, legal notions (concepts), legal institution or categories have identical meaning or unitary sense in legal systems of all countries in the world. This is the essence of the idea of the prominent protagonists Saley and Lambert's theory. Although the huge ambitions and claims of the aforementioned "initiators" to create a legal system that should be uniformly applied in the international plan, and which can and should be applied to all states, for all people and all mankind, actually, it has been not achieved, and it is very doubtful whether it will be achieved in a foreseeable future. Consequently, "*their project idea can be treated and qualified as highly futurist, respectively utopian, and as such, can be tackled only through theoretical and academic levels."* However, the dynamic process of international cooperation in the second half of the twentieth century, which run parallel to intensive scientific and technological progress, and changes in the political, economic and cultural life, in most of the states and their societies, the integration of European countries in the European Union, the development of legal sciences on the European Union Law and the idea European Union legal order, has resulted in the inclusion of comparative law in academic programs in many universities of Europe and the U.S.A.[1] Otherwise, the increasing global interdependence of states in large, planetary dimensions has influenced the research of different legal systems, hence positive national law cannot be explained exclusively within national boundaries (Shehu, 2004, p. 15). This confirms the thesis that, comparative law opposes and fights provincialism, positivism, dogmatism and the narrow nationalism in observations of the legal phenomena within state borders, and thus encourages the legislator to develop a sense of responsibility to the reformation and improvement of national law (Zweigert & Koetz, 1998, p. 15, p. 23). In addition, the comparative law makes a national lawyer more modest, about standards of justice in his country, and therefore attenuates a kind of chauvinism that could appear to any national (local) lawyer. In addition, in modern the world it is very difficult to imagine the enactment of laws in every legal area without the support of comparative law (Popoviç, 2008, p. 21). Thus, for example, nations give great importance to comparative law, especially when they prepare, enact or amend provisions relating

[1] *Pravni Leksikon*, Zagreb, 2007, pp. 1128.

to criminal law. In addition to existing social and economic circumstances, foreign legal experiences can be used for as means for taking "lessons", considering the existing normative solutions in criminal laws of other states, (especially Western European countries such as Germany, Switzerland, Italy, France, United States of America and England). The reception of valuable and progressive foreign solutions in the criminal law of specific states could effectively protect the most vital human values such as: life and human dignity, fundamental freedoms and individual and collective rights, territorial integrity, state security, etc. (Salihu, 2003, p. 55). Likewise, during the drafting process of the Constitution of the Republic of Macedonia, which was adopted on 17 November 1991 by the Republic's Assembly, there were consulted and taken as a referential-point the juridical solutions that comparative constitutional law (Jackson & Tushnet, 1999, pp. 144-150) accords to issues and problems from the area of constitutional law. There is no doubt that comparative law is necessary to legislators of continental Europe countries to draft their legal norms after the basis of international or European Union legal standards, respectively under the light of comparative law. According to comparative law, a modern legislator has to consult or refer increasingly and systematically, and take into account normative solutions that comparative law provides in a wider international perspective, thus, legal solutions that give different legal systems of other countries regarding any legal matter that is subject of interest, examination and regulation by the legislator of a particular state. In this regard, the legislator by analyzing and assessing in a synchronic, critical-constructive, rational manner all possible legal solutions, finally, he selects the legal solution that is most appropriate and optimal, which corresponds better to the specific circumstances and political, socio-economic conditions of his society, respectively of his country.

3. Reflections on Comparative Law Methodology

The method of a juridical scientific discipline consists in a research procedure, applied to study and recognize its own object. Otherwise, a method includes actions and devices with the help of which the object is studied in one juridical scientific discipline (Lukiq, 1975 p. 12). Most juridical scientific disciplines or the vast majority, apply some general scientific methods of research. Such is comparative law. Thus, comparative law does not have any autonomous and exclusive method by which it can be identified. In this case, it should be noted that comparative law methods, are conditioned by the study of legal phenomena, which is namely the aim of comparative law. Comparative law as a juridical scientific discipline, in studying his object mainly applies: *firstly*, comparative-legal method, *secondly*, dogmatic-legal method, and *thirdly*, the historical-legal method.

Firstly, comparative law applies comparative-legal method, because during the study and research of legal phenomena is exclusively interested in their comparative-legal dimension. In fact, comparative law applies comparative-legal method in case of study and review of various legal phenomena (legal norms, legal institutions, legal systems) in comparative-legal dimensions. In accordance with this, comparative law method is nothing but a scientific method applied to the study and recognition of domestic laws of other states. Precisely for this reason, in some cases there are more likely comparative-juridical studies of legal systems (for example: the study of French law and German law), than comparative law. Otherwise, comparative-legal method is suitable for the full or complete observation of the legal norms and solutions forms of identical or analogous legal issues at different times, in various cases and countries. In addition, the tendency to harmonize different national legal systems at European level, to reach a common and unique pan-European legal system, makes immanent (and required) the development of comparative-legal methods as scientific applicative method (de Cruz, 2007). Comparative law method is applied under particular conditions and circumstances of the harmonization process of the legal systems of European countries, including positive legal system of the Republic of Macedonia according to the requirements and demands of the European Union. Indeed, to have a coherent and compact unification of European countries in a complex state organization of "*federal-type*", first of all, will be essential to evade juridical differences between law systems of European states, so that those legal systems could be similar and analogues, applying comparative-legal method. Although nowadays in Europe's states there is a tendency to approximate their laws without willing to make a common single one. Concluding, it is recommended to "*all teachers of law*" should master the comparative method so as to obtain the necessary information for themselves. Roscoe Pound, early in 1934, had suggested "*that the future teachers of law should support his work in comparative law, with the intention to be able to understand and better withstand his own questions."* (Zweigert & Koetz, 1998, p. 24)

Secondly, dogmatic-legal method consists in analysis, detection, description, and accurate recognition of the legal content of legal norms and institutions, through implementation of traditional methods of legal interpretation, particularly linguistic, logical, historical, systematic and teleological interpretation. (Llukiq, 1979, pp. 109-113)

Thirdly, in terms of research comparative law applies historical-legal methods, to discover the origins of the early development of legal traditions and to study the evolution of legal systems from ancient times to the present day (Shegani, 2002, p. 15). In other words, the historical-legal method, withstands comparative law, because through it gathers knowledge about legal systems that was born and developed in a historical context and in a specific socio-economic order.

4. The Principle of Functionality as a Basic Principle of Comparative Law

In comparative law any comparison contains a reference guide to "*the principle of functionality*", as a basic methodological principle of comparative law (Zweigert & Koetz, 1998, p. 34). The principle of functionality indicates that the comparison can only be made between comparable legal institutions, thus, between legal institutions that are functionally equivalent/equal, that fulfill the same tasks and have the same functions (Shehu, 2004, p. 16). According to Ernst Rabel the principle of functionality consists in two crucial elements: "*function*" and "*context*".

Firstly, the function – legal institutions of different national legal systems can be compared only if they perform the same task, if they serve the same function. So, it appears bizarre, paradoxical and extremely absurd, moreover is "out of any sense of legal logic" to compare two heterogeneous (different) legal institutes that legally speaking, fulfill different functions, such as marriage and adoption. This is best illustrated by the maxim "*incomparables cannot be compared*", or "*only comparable can be compared*" for scientific research study reasons, or perhaps even practical-empirical reasons. It is perfectly natural and normal by the "terms of legal logic" to compare identical legal institutes, such as marriage[1] between two or more concrete legal systems of certain states (for example: between Albania and the Netherlands), noticing the common crucial features, as well as special distinguishing aspects between them.

Secondly, the context – a comparative lawyer during the comparing process of certain legal institutions should consider the terms and the general socio-economic, cultural, ethno-psychological, traditional, religious, racial, historical and geographical conditions that have influenced the content of a specific legal institution.

5. Micro-comparison and Macro-comparison

Lawyers that apply comparative law are known as comparative lawyers. In other words, comparative lawyers are scientists that study and explore various legal phenomena in a comparative plan. Comparative lawyers are, and should be, *juristes d'abord*, conscious of their background and concerned to make a distinctively juridical contribution to the comparative study of legal phenomena (Adams, Bomhoff, 2012, pp. 4). Comparative lawyers are predestined and inclined to

[1] Marriage is usually defined as continuous community life of a woman and man, regulated by law. - Cited by Oruçi, 1994, p. 7. Meanwhile, *Family Law of the Republic of Macedonia*, Article 15 ("Official Gazette of Republic of Macedonia", no. 80/1992) states: "*Marriage can connect two opposite sex with the voluntary statement before a state organ, in the manner prescribed by the law* ".

analyze and compare legal phenomena, particularly legal norms, legal institutions and legal systems of other states, for legal scientific or practical-empirical research purposes as well. Whereas comparative lawyers compare legal institutions of various national legal systems in a restricted volume (smaller volume), then we are dealing with micro-comparison (Zweigert & Koetz, 1998, p. 5). Thus, regarding micro-comparison it is presented a concrete example: if a parallel comparison is made to a specific legal institute such as marriage between continental European legal system and religious legal system (Islamic) is notable the difference that exists between them. This is because the legal institute has equal legal definition that is identical to the European civil law and Islamic law systems, but however they differ in essence, meaning it has legal heterogeneous (different) content in legal systems of mutual states. In connection with this, considering that continental European law system applies to marriage the legal principle of monogamy, which means the marriage of one man with one woman, however Islamic law system applies legal principle of polygamy, which means the marriage of a man with several wives at a time. Besides, if comparative lawyers in wider (greater) volume mainly compare the spirit and characteristics of different legal systems nationally, then we are dealing with macro-comparison (Zweigert & Koetz, 1998, p. 4). Thus, according to macro-comparison method can be presented a concrete example: if Civil law legal system and Common law legal system are viewed in comparative-legal plan, there is an obvious difference between them. Civil law legal system is based mainly on the statutory (written) law and codification (codified/statute law), which has originated from Roman law. Thus, Civil law legal system is mainly summarized in European and Latin America law systems. These law systems, are extremely influenced firstly by the academic lessons of Roman Law in the Middle Ages, than from the natural theory, later, by codification, characterized by the use of abstract legal concepts and the formulation of general legal norms, the advantage of law sources and the split of material and formal (procedural) written norms (Marryman, 2007, pp. 1-67) (Glenn, 2007). The main ways of reasoning or legal reasoning of continental Europe's jurists is syllogism (deduction/bottom-up logic), a process which consists in extracting the specific from a legal norm (concrete, individual) by a general abstract legal norm that existed previously (deductive legal reasoning). In connection with this, it is important to note the Latin legal maxim: "*Jus dicere, non jus dare*" (Svolos, 1956), that would mean that the judge does not create law, but only interprets and applies the law in particular cases in practice. On the contrary, Anglo-Saxon/Anglo American[1] legal system appear as a result of expansion, consolidation and centralization of power of the powerful monarchy, and simultaneously to the operation of the monarchical courts

[1] While the term "Anglo-Saxon legal system "is predominant in "English law literature", the term "Anglo-American" legal system is prevalent in American legal literature. In this case, it is important to underline the fact that extracted from jargon or Anglo-American legal terminology it is very difficult to be translated into a foreign language.

which have been totally subordinated to the monarchic power and for who have worked on the basis of the Common Law system, which has been applied in all English territory (Van Caenegem, 1998, pp. 1-28) (Plucknett, 2010) (Hogue, 1986). It is a very original legal system that is gradually developed in a spontaneous and autonomous way, without any influence from Roman law and continental Europe law, first in England and later spread to other countries which use English as a communication language (Bajalxhiev, 1999, pp. 430-437). Hence, English jurists proudly accentuate the individuality of historical national identity and the heritage of their national law as authentic and indigenous. Today, almost one third of the world population lives according to legal principles based on common law. Common law includes main legal systems of United Kingdom, Ireland, USA, Canada, and New Zealand and Australia. Originally customary law, namely common law contributed in judgments of judicial issues, thus the judicial issues based on the common law, were converted therefore in case law, that, in essence, represent the case law, that later obligate the courts by analogy to similar cases of judicial process. So, Common Law represents the foundation of embryonic legal source, applied through the elaborated Case Law in specific cases (Bogdan, 2003, p. 91-120). According to this, there is no doubt that Common Law is a jurisprudential (judicial) law, and thus revised and created by courts, respectively judges with their decisions during the past centuries, characterized by the application of legal concepts which are less abstracts, the pre-eminence of specific rules and the combination of material legal norms and formal/procedural legal norms (Mandro, 2007, pp. 62-63). Previous judicial decision whose arguments are used to establish new case is called judicial precedent, thus law created under judicial precedent is called case law or jurisprudential law/court (judge-made case law) (Collin, 2004, p. 41, p. 55) (Glenn, 2007). For this reason, the inductive-legal approach to law is reflected in the Anglo-American legal doctrine, where the concept of law is defined as a sum of particular legal norms created by national courts decisions (Hart, 2013). In addition, there is a statutory law as a sum of legal norms that the Parliament as a legislative body approve to regulate rapports with different social, economic and political thematic, respectively to regulate the public life within the legal system. The main way of reasoning or legal reasoning of Anglo-American jurists consists in pragmatically-rational reasoning, more precisely analogy, a process which consists in the application of a legal existing rule in a concrete similar case where it is already implemented (inductive legal reasoning). In connection with this, it is important to note the Anglo-American legal maxim: "*Judges follow previously decided cases where the facts are of sufficient similarity*",[1] that would mean that the judge follows/applies preliminary cases when the facts are considerably similar (Adams, Bomhoff, 2012, pp. 43-73).

[1] Case law has a fundamental legal principle which is denominated *stare decisis* - that translated *ad litteram* would mean *to be careful of the judgment*. It is originated from Latin legal maxim: "*Stare decisis et non quieta movere*", "*To stand by decisions and not disturb the undisturbed* "- that would

6. Comparative Law Functions

Like any scientific discipline of law, comparative law has its functions (objectives), which can be summarized and settled in some major ones. In this case, you will be given a restraint explanation separately for each of these main functions (Zweigert & Koetz, 1998, pp. 15-31):

Firstly, knowledge - the fundamental intention of the study of the comparative law at law faculties of universities around the world, first and foremost, is reduced to the fact that law students acquire a universal legal culture and earn the necessary minimum of the theoretical-legal knowledge in the domain of legal systems belonging to different legal families.

Secondly, to assist the legislator- legislators around the world "*have noticed that in many cases good laws cannot be materialized without the comparative law assistance*", so they "*borrow*" legal settlement from the legislation of other states and make "*transplants*" in their national legislation (Watson, 1974). However, it is important to be aware that great care should be taken when "corrections to a foreign legal solution" are made, because, according to two German authors Zweigert & Koetz, whenever it is proposed to be adopted a foreign legal solution allegedly "superior", two questions must be answered: *first*, "*if it is proven that there was satisfactory in its place of origin*", and, *second*, "*if it fits to the place*

mean: "*Adhere to the decisions already taken and do not deform the already judged.*" So, the judge is obliged to be attentive whilst a similar case which is represented before the court is already decided by a precedent court decision (case law) and whether it should be considered mandatory for the judges of the same or lower rank. This ensures and makes possible sustainability, consequence and predictability in the implementation of law in practice. In this context, the judges in the Anglo-Saxon law system, are not only "*an application machine*" or "*a mouth that pronounces legal norms*", but rather, they are their creators, as they develop through the judicial decision-making, giving a legal epilogue to particular cases in practice that litigants are exposing to them. Thus, the judges of the United Kingdom, follow practice in concrete cases decisions, thus, whilst making a court decision on a specific case, simply consider them, even the previous cases already judged, then take into account previous court decisions in all cases already decided, which led to the creation of identical judicial practice in solving similar cases by the judicial authorities in the United Kingdom. Judicial practice involves the way in which a legal norm is applied to more cases or analogous situations. In connection with judicial practice, in Roman law existed the legal maxim: "*Cursus curiae est lex curiae*" - case law is law for the court. Court decision which is decided to be applied in a particular case, is considered obligatory for all future cases which are identical, means that a judicial decision as a specific and unique legal act, or a specific individual becomes a general legal norm as a result of frequent repetition of analogous cases in judicial practice. Judicial precedent law and the legal system itself, is called a precedent law system. This means that a judicial decision is a unique legal act, or a specific individual becomes the general legal norm as a result of frequent repetition of analogous cases in judicial practice. Judicial precedent and the legal system itself, it is called precedent law system. In more general terms, judicial precedent means that a special case is settled before by the court, which could then be followed by other courts in analogous further situations as a point - reference to other analogous cases to justify other analogous cases in certain circumstances. See: (Brand, 1992); (Glenn, 2007).

where is accepted." Alternatively, you can come up frequently, "*that a successful legal solution*" in another country cannot be applied in any way without being modified and adapted to the specific conditions and circumstances of the particular social environment.

Thirdly, legal education - the valuable function of comparative law in legal education is considered "very significant", having in mind that "in legal education and legal science in general, is too restrictive to study only one national law." In other words, in today's globalized world, jurists cannot limit themselves to studying the laws of their own country. Comparative law provides to law students "*a whole new dimension*", means that they can learn and acquire skills to observe the special legal cultures of other peoples, then "*better understand their own*" to develop critical standards that can lead to improvement, development and perfection of legal culture of their country and, of course, "*to learn how legal norms are conditioned by social factors and what different forms they can have."* In a word, just by him "*who learns to respect legal cultures of other peoples" can be expected "to better understand his own*."

Fourthly, unification - there is no doubt that comparative law always aims to influence the unifying sense beyond national legislation, respectively beyond the legal systems of different countries. Otherwise, comparative law systematically contributes to the law unification (fusion) process, primarily, in legal private relations, although in limited "*quantum*" and "proportions". Law unification is accomplished in two different frames: *one*, as a unifying process in national (domestic) law (which is realized by codification by each country separately) and *two*, as an international unification (made by international agreements/treaties among a number of states in international diplomatic conferences).

(1) Law unification in national level represents a collection of legal norms (usually codes, such as the Electoral Code of the Republic of Macedonia in 2006, the Civil Code of the Republic of Albania of 1994, Uniform Commercial Code (UCC), US Uniform Commercial Code of 1952, etc.) by a particular State legislature, according to some legal principles.

(2) Law unification at international level is a systematic review of agreed legal norms. (usually treaty/international convention, such as the *Vienna Convention on the Law of Treaties* of 1969, the *European Convention for the Protection of Human Rights and Fundamental Freedoms* of 1950, etc.) by an international organization of states, according to some legal principles. Law Unification at international levels is realized, as a rule, through international multilateral treaties[1], whose approval

[1] Treaties (agreements) are international legal acts, by which the subjects of international law (states, international organizations) receive reciprocal rights and obligations regulating the relations between them, both public and private legal character. - cited by Andassy, 1984, p. 18. In other words, an international treaty consists in the allocation of the determination of two or more subjects of

has been given in international diplomatic conferences[1]. Thus, unification may be accomplished if multilateral treaties that bind between States adopt unanimously the essence (the meaning) of legal norms or legal institutions established to conduct concrete legal relationships. In this way, the uniform legal norms contained in multilateral treaties with their act of ratification by Parliament of each state separately, become an integral part (component) of the domestic legal order of those contractual states, which achieved the unification of law to their respective areas, and for consequence, are obliged to apply in practice[2]. In this regard, it should be noted that in all international diplomatic conferences that are kept until today, it has not accomplished to fully unify the law internationally, but managed to unify partially, thus fragmentary, in certain specific areas of legal relations. An illustrative example is the unification of legal provisions in the area of private-legal relations with foreign element of the statutory issues, copyright law/ intellectual property law, industrial property law, the law of bill of exchange and cheque etc. (Katiçiç, 1976, p. 25) *(Convention of 12 June 1902 relating to the settlement of the conflict of the laws concerning marriage); Berne Convention for the Protection of Literary and Artistic Works* (1886)*;* (*Paris Convention for the Protection of Industrial Property* (1883) *Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes* (Geneva, 1930, 1931).

Observing from a development perspective, law in a global planetary view is generally accompanied by "*converging trends*" and not with "*divergent tendencies*". Therefore, it is increasingly supported the position that a "*global law*" should be entitled to all the countries in the world and not just the countries of Europe or USA (Varadi, 2001, p. 36). In this regard, a major contribution to the law unification, provide specific international organizations and associations, such as for example, *The Hague Academy of International Law, the UN Commission on International Trade Law (UNICITRAL), International Institute for the Unification of Private Law in Rome (UNIDROIT), the Hague Conference on Private International Law, the World Intellectual Property Organization (WIPO).* [3] Thus, for example, the Hague Conference on Private International Law has as its primary mission, the progressive unification of private international law provisions. The conference activity consists in preparing the texts of multilateral conventions

international law, with the aim to achieve specific legal effect of international law, creating a report between rights and obligations of its pairs. - quoted by Djuro-Degan, 2011, p. 113.

[1] Depending on the number of subjects that have signed bilateral treaties, it may be bilateral and multilateral. The approval of bilateral treaties, or when there are several subjects as well, is made by the formal signing of the official documents authorized by representatives of the respective countries. Meanwhile. The adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule. (article 9, paragraph 2 of Vienna Convention on the Law of Treaties 1969. - cited by Crniç-Grotiç, 2002, p. 311).

[2] *Pravna Enciklopedija* 2, Beograd, 1989, pp. 1772 -1773.

[3] *Pravna Enciklopedija* 2, Beograd, 1989, p. 1764.

intended for signature and ratification by its member states. In this context, it is important to note that 34 conventions are adopted until today: *Convention of collision between the right of citizenship and the right of residence in 1955, Convention of legal subjectivity recognition of foreign enterprises, organizations and institutions in 1956* etc. Or, the UN Commission on International Trade Law (UNICITRAL) is created in 17. 12. 1966 with the aim of advancing, harmonization and progressive unification of international trade law, considering the interests of all peoples and states in general, and peoples of developing countries in particular. The most important achievement so far is the Convention on Contracts for the International Sale of Goods-CISG signed in Vienna in 1980. [1]

7. Concluding Remarks

From theoretical and legal observations about comparative law generally, and methods and functions of comparative law specifically, conform to legal-analytic approach, the following conclusions are made:

One, any notion or concept has a story, although the concepts cannot be understood without the necessary basic knowledge of general legal theory about their background and historical development;

Two, generally, knowledge of methods of comparative law lacks, whether provided as basic knowledge. The comparative law is, in more general terms, critical comparison of the legal systems of the world countries. Although "born" too early (in Paris in 1900), comparative law does not take any proper place in university curricula, therefore, especially to us "comparative lawyers" are missing;

Three, comparative law is not a branch of law, but it represents a scientific juridical discipline, because in itself does not contain legal norms, and as a result, doesn't aim to settle legal regulation of relationships or societal issues;

Four, comparative law is related to foreign law, thus to the legal system of a foreign state (foreign law system). Although, recognition of foreign law is the initial and prerequisite step for any legal-comparative study and represents its substrate (foundation) on which it was established comparative law. However, what should be considered is that "self-study of foreign law cannot be comparative law". We can only talk about comparative law when specific comparative reflections to a specific legal issue are done. Therefore, experience has shown that it is better when the author exposes the essential characteristic of foreign law, for each country separately and then uses this material as a basis for critical comparison, drawing conclusions regarding the appropriate policy of law to be adopted, and that may include a review of its own legal system.

[1] *Pravna Enciklopedija* 2, Beograd, 1989, p. 1764.

Five, comparative law in its contemporary meaning that is known today, emerges from the early twentieth century, and its creators were eminent jurists, Édouard Lambert and Raymond Saleilles, that aimed to achieve "*a unique worldwide legal system*" creation;

Six, comparative law opposes and fights provincialism, positivism, dogmatism and narrow nationalism, makes observations of legal phenomena within state borders and thus encourages the legislature to develop a sense of responsibility to the national law reform and to improve domestic law by integrating into it the best elements of some foreign legal system (s). In fact, on the practical front, comparative law has been a valuable source of inspiration in domestic law reform;

Seven, due to comparative law, legislators "have noticed that in many cases good laws cannot be adopted without the comparative law assistance";

Eight, comparative study of law systems, is not limited in terms of time and spatial alignment, it does not "*limit*" or "*stop*" to the study of historical legal systems, specific legal systems, distinctive legal systems, but it studies and examines all legal systems around the world in a legal comparative plan;

Nine, comparative law does not apply any autonomous and exclusive method by which it could be identified. In this case, it should be noted that comparative-legal method, are conditioned by the study of legal phenomena;

Ten, comparative law as legal scientific discipline, in different legal phenomena study (legal norms, legal institutions, legal systems), primarily and mainly applies: *one*, the comparative-legal method, *two* dogmatic-legal method, and *three*, the historical-legal method;

Eleven, comparative law applies comparative-legal method, because during study or legal phenomena research is exclusively interested to its comparative-legal dimension. In fact, comparative law applies comparative-legal methods whilst studying various legal phenomena (legal norms, legal institutions, legal systems) in legal comparative perspective. In accordance with this, comparative-legal method is nothing but a scientific method, that serves to the study and recognition of the domestic laws of other states. Precisely for this reason, in some cases it is about comparative studies of law systems (for example: French law or German law study), than to comparative law;

Twelve, it is recommended for "*all law professors*" to owe "*the comparative-legal method with the aim to enlarge the horizon of professional and scientific knowledge*." Roscoe Pound, in early 1934, had suggested that "*the future law professor should uphold himself in comparative law, with the intention to be able to understand and better affront issues associated with its subject*";

Thirteen, there are considerable advantages/benefits "of comparative law" for lawyers and they consist in four areas: *first*, in the expansion and enhancement of

"scientific and professional legal knowledge fund", *second*, in the lawmaker assistance by offering the possibility to identify the best solution for a better law at a given time and place, *three*, legal education as a curricula component of law faculties, and *four*, as a contribution to the systematic unification of law;

Fourteen, from a developmental perspective, the law in a global planetary arena s generally accompanied by "*converging trends*" and not with "*divergent tendencies*". Although in today trends, states tend to approach their laws without intending to unify them as a single law. In addition, the aspirant countries for the European Union membership, such as Macedonia or Albania, must *a priori* fulfill relevant criteria, i. e., to approximate and harmonize legal norms of the domestic legislation with the EU Law (*Community acquis*/*Acquis communautaire*).

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