Foreword

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Attila József, a well-respected Hungarian poet from the early twentieth century, wrote the following renowned lines: “in vain you bathe your own face in yourself, it can be cleansed only in that of others”.[1] We live in a world with so many different colours and shapes in terms of tradition, culture, religion, language and philosophy, and ways of interacting, doing business, nurturing art or creating societies, as well as economies and governmental arrangements. Thus, one important eternal lesson of this short passage is that the way to better understand ourselves is to know others in our vicinity. Similarly to many areas of life, this is also true with regards to the law. The way to better understand our own legal system and legal culture or certain institutions is to carefully and systematically compare them with those of other countries.

This type of legal comparison has opened a window to foreign legal cultures and approaches that help us be aware of both the fundamental characteristics of our legal system and legal culture and the existing differences throughout the world. The method of comparative science of law has a long-standing tradition in the fields of law and political sciences. Its modern theoretical history dates back to René David, the French professor of law who classified the legal systems into five legal families – Western, Muslim, Hindu, Chinese, Jewish and Soviet –according to their ideological, theoretical and cultural background. Based on his famous discoveries, tens of thousands of law students around the world learn the difference between the role of judges in the common law and in the Romano-Germanic system, whereby common law judges find the law and their counterparts only apply it. While in one part of the world the objective of the legal procedure is to provide avenues to enforce rights, in other cultures, its reconciliatory function is more dominant. To bear and keep arms is considered a fundamental right and an ultimate guarantee of freedom in one legal culture, but it is seen as illegal and a source of potential threat in others. In one form of governmental arrangement, impeachment serves as a counterbalance against the executive power, while in others, the establishment of a no confidence vote provides a much lower threshold; this list, of course, can go on. However, the practical usage

1 “Hiába fürösztöd önmagadban, Csak másban moshatod meg arcodat”. English translation by Zsuzsanna Ozsváth.

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of legal comparison goes back much further. One notable example is the Philadelphia Convention held in the summer of 1787, during which British and French constitutional experiences had been taken into consideration when various constitutional visions were discussed by Alexander Hamilton, George Mason, and James Madison, among others. The result of this hard-fought summer was what Benjamin Franklin famously called, in response to a bystander's question, "a republic if you can keep it". A couple of decades later, the French political philosopher Alexis de Tocqueville set out on an American journey to explore how the American system was implemented, and subsequently published the book *On Democracy in America*. One of the major objectives of this influential book was to help France shape its governmental arrangement by opening a window of comparison with the American system.

The method of comparative law is necessary to evaluate legal cultures and attitudes, legal systems, or their legal institutions. It does not and should not only include the comparison of the specific legal rules themselves. As Konrad Zweigert famously argued, "the basic methodological principle of all comparative law is that of functionality". Accordingly, legal provisions shall be analysed and compared within the social and economic context in which they prevail, and the process of comparison shall answer the question of how this legal provision works. Legal rules and systems cannot be separated from their underlying cultural and social reality; comparing ours with others' does not only help position and evaluate each other's legal landscape, but it also provides a potential tool to remedy weaknesses or make improvements. Alternatively, the comparison can highlight the differences that eventually define what constitutes separate identities. For various reasons, applying the method of comparative science of law has increasingly become a standard practice in theoretical legal research as well as in the practice of law. With the astonishing rise of globalisation and the spread of cutting-edge communication technologies, the world has become much smaller, and its various regions and cultures are well within our reach. Studying and comprehending them can thus be accomplished much faster and more easily than in any earlier periods of human history. Comparative legal research is thus committed to satisfying a natural, intellectual curiosity about distant and less distant legal cultures and legal systems. However, this intellectual curiosity is not self-serving. In an age of globalisation, legal systems also compete with each other in most areas of economic and societal life; e.g. they compete to attract the largest or most efficient investments or to provide their citizens with smooth and timely dispute resolutions, their undertakings with efficient commercial regulations, or their consumers with strong customer protection and responsive antitrust regulation. This list ranges from labour law to family law and to constitutional guarantees. Sometimes, the ultimate goal is to adopt the best possible rule, and sometimes, it is to mitigate some of the underlying weaknesses; other times, the goal is to be aware of the unique domestic regulation and conceive it as part of the identity of a particular constitutional system. Regardless of the concrete political objectives, the comparative method is an essential instrument to conduct profound analyses in today's environment.

Comparative law can serve the interests of both the legislation and the process of applying the law by courts or other institutions such as the antitrust authority. The comparative method can facilitate and help the legislator with their aspiration to develop some specific areas or provisions of the law by providing information on the design and functioning of these areas in other countries or cultures. In this case, comparative legal research answers the questions of what the experience of other countries is and how it can be applied. On the other hand, a comparative legal analysis can be also useful for courts or other institutions that apply the law. Even though courts cannot base their judgements on the case law of other countries' courts –since the legality of their decisions must be based on their own law – other countries' relevant landmark decisions or a tendency of case law can serve as an argument to support a certain decision.[2] As they are often called 'negative legislators', constitutional courts or other high courts with equivalent competences have a somewhat larger room to take into consideration the comparative method. As a former Justice of the Hungarian Constitutional Court, I have first-hand experience with the Court being committed to explore the case law of other influential courts when deliberating on major constitutional questions, such as freedom of speech in public debates or the essence of constitutional identity. Furthermore, due to the increasingly fragmented nature of international law, courts established by various international treaties have also increasingly used the comparative method to consider each other's conceptions of specific questions. As shown by the example of the Inter-American and European Courts of Human Rights, this has led to quite a significant number of fruitful interactions, which have resulted in legal development. However, the example of the European Court of Human Rights and the Court of Justice of the European Union is sometimes quite the opposite as they often signal that they are walking on separate paths even when assessing the same legal question.

One of the reasons why this research book is highly valuable and relevant is that the comparative legal method has gained remarkable significance within the European region. The legislation process of the European Union – through the joint exercise of competences – must take into consideration the constitutional systems and cultures of the various member states. Furthermore, the keystone of the European Union's legal order is based on a judicial dialogue among courts of the member states and the Court of Justice of the European Union, while the system of the European human rights protection is also built on the principle of subsidiarity and on an atmosphere of dialogue among the European Court of Human Rights and constitutional or other high courts of the member states. Therefore, the efficient application of the comparative legal method is key to providing mutual understanding during this dialogue, which is of utmost importance for a successful and harmonious European cooperation. The memorable words of Attila József are especially true in Europe,

2 Csink, L. (2017) 'Pragmatikus összehasonlítás: az összehasonlító módszer gyakorlatias megközelítése' in Schanda, B., Csink, L. (eds.) *Összehasonlító módszer az alkotmányjogban*. Budapest: Pázmány Press, pp. 21–22.

where comparative interactions are unavoidable, even though they should not lead to unification or homogenisation.

This research book intends to guide readers through an unchartered European territory, that is, the comparative analyses of the constitutional intuitions and attitudes of the Central European and Western Balkan countries. Even though this region is quite diverse in terms of culture, tradition, religion, and language, its countries have much in common due to their geopolitical location and shared history. As Soviet satellite states, they all underwent the forced and failed attempts of communism and of a centrally planned control and command economy. Around three decades ago, they were all liberated from the Soviet military occupation and subsequently changed their regimes to establish free constitutional democracies, introducing fundamental constitutional institutions and a certain attitude of economic regulation in hopes of being able to soon join the European integration. Nevertheless, they are all committed to preserving their own unique cultures, languages and historical traditions, which are well reflected in their constitutional developmental paths. In light of this background, this research book attempts to present the fundamental elements of their constitutional systems through a comparative lens. In this spirit, the chapters include comparative discussions on a wide variety of questions, such as this region's constitutional identity and values, theory of separation of powers, legislative, executive and judicial powers, governmental arrangements, institution of the head of state, electoral systems, protection of the constitutions, fundamental rights' adjudication, national minorities and unique historical accounts. This research book provides a truly unique, rich, and insightful journey into comparative legal analyses of the Central European and Western Balkan states' public law institutions. I wish you a joyful read and a rich journey in this fascinating region!