The Application of Comparative Law Methods in the Legal Translation Process

A Theoretical Framework for Translational Comparative Legal Analysis

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Abstract: This paper aims to provide an overview of contemporary comparative law methods and demonstrate their potential for use in legal translation. While it focuses on a theoretical framework for such applications (except for one practical example), it has been preceded by other studies in which the framework proposed was tested based on examples from Polish-English legal translation. The present paper is, in particular, intended to share some of the findings of the author's research to date with a wider international audience. It needs to be noted that although numerous authors in the field of legal translation studies present the view that comparative law and legal translation are closely related, they usually do not offer a broader overview of comparative law methods or suggest ways in which these methods are supposed to be used by translators. When such references do occur, they mainly concern the traditional functional method without considering the more pluralistic approaches that have emerged in comparative law in the last three decades. The paper proposes to distinguish the general method and the specific methods of comparative law and points to possible ways of adapting them for legal translation purposes as part of a process named 'translational comparative legal analysis'. It also suggests that translators and translation scholars should more often tap into comparative law methodology in search of solutions useful for legal translation purposes.

Keywords: Comparative law, Comparative legal studies, Legal translation, Comparative law methods, Translational comparative legal analysis.

1 Introduction

Links between comparative law and legal translation have been referred to by multiple authors. There are even claims that legal translation and comparative law are essentially "the very same thing"[1], or that the translation of legal texts constitutes "comparative law in practice"[2]. Legal translation is described as an exercise in or of comparative law[3]. Indeed, it is hard not to notice the obvious connections between these areas. Legal translation can be defined as "the translation of texts used in law and legal settings"[4]

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[1] P. SCHROTH, *Legal Translation*, in *The American Journal of Comparative Law*, no. 34, 1986, p. 53.

[2] G-R. DE GROOT, *Problems of Legal Translation from the Point of View of a Comparative Lawyer: Seven Theses for the XIth World Conference of Federation Internationale des Traducteurs*, in *Van taal tot taal*, vol. 31, no. 4, 1987, p. 189.

[3] A. GALLI, *Introduction: Legal Translation as Cross-Cultural Communication*, in K. W. JUNKER (ed.), *US Law for Civil Lawyers*, Baden-Baden, 2021, p. 5; F. PRIETO RAMOS, *Developing Legal Translation Competence: An Integrative Process-Oriented Approach*, in *Comparative Legilinguistics*, no. 5, pp. 13, 16.

[4] D. CAO, *Translating Law*, Clevedon, 2007, p. 12.

or "translation of texts for legal purposes and in legal settings"[5]. This means that it often involves a confrontation not only of different languages but also of the law expressed in these languages originating from different legal systems. Comparative law is, in turn, described as "a shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems"[6]. Both legal translation studies (LTS)[7] and comparative law[8] have grown into research areas of their own.

However, despite the equating of comparative law and legal translation[9], their mutual autonomy needs to be acknowledged. This is evidenced by, among other things, the different goals of comparative law and translation activities[10], the different roles that law comparison plays in comparative law and legal translation, as well as the different scales of comparative enquiry they entail[11]. Looking at models of comparative law research found in comparative law literature[12], it is difficult to imagine a translator conducting analyses on a similar scale for each problematic term in the source text[13].

Perhaps due to the overhasty equating of legal translation and comparative law, LTS literature, with a few notable exceptions[14], usually does not offer a broader overview of comparative law methods or provide guidelines on how translators should use them. The traditional functional method, adapted for the purposes of legal translation by Šarčević through a redefined notion of 'functional equivalent'[15], is the only comparative law method that has been analysed to a relatively broad extent. Although it holds a strong position in comparative law itself[16], the latter has undergone significant development in the last three decades[17]. This has been accompanied by a certain change in its focus, mentality and spirit[18]. Nowadays, a comparatist is said to have a 'pluralist toolbox' of methods at his or her disposal[19] rather than the one and only correct method, as functionalism was once perceived[20]. These newer

[5] J. ENGBERG, *Legal Meaning Assumptions – What Are the Consequences for Legal Interpretation and Legal Translation?*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, vol. 15, no. 4, 2002, p. 375.
[6] J. HUSA, *Interdisciplinary Comparative Law: Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd*, Cheltenham, 2022, p. 1.
[7] F. PRIETO RAMOS, *Legal Translation Studies as Interdiscipline: Scope and Evolution*, in *Meta*, vol. 59, no. 2, 2014, pp. 260–277, https://doi.org/10.7202/1027475ar.
[8] P. LEGRAND, *Comparative Legal Studies and Commitment to Theory*, in *The Modern Law Review*, no. 58, 1995, pp. 264–265.
[9] A. DOCZEKALSKA, *Comparative Law and Legal Translation in the Search for Functional Equivalents – Intertwined or Separate Domains*, in *Comparative Legilinguistics*, vol. 16, 2013, p. 72, https://doi.org/10.14746/cl.2013.16.5.
[10] A. DOCZEKALSKA, *op. cit.*, p. 70; V. DULLION, *Droit Comparé Pour Traducteurs: De La Théorie à La Didactique de La Traduction Juridique*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, vol. 28, no. 1, 2015, p. 99, https://doi.org/10.1007/s11196-014-9360-2; P. KUSIK, *Comparative Law in the Eyes of Translation Scholars. Is Legal Translation Really an Exercise of Comparative Law?*, in *Hermes Journal of Language and Communication in Business*, no. 64, 2024, pp. 118–119, https://doi.org/10.7146/hjlcb.vi64.147304; G. SORIANO-BARABINO, *Comparative Law for Legal Translators*, Oxford, 2016, pp. 19–20.
[11] P. KUSIK, *Comparative Law in the Eyes of Translation Scholars. Is Legal Translation Really an Exercise of Comparative Law?*, cit., p. 119.
[12] P. DE CRUZ, *Comparative Law in a Changing World*, London, 1999, pp. 235–239; E. J. EBERLE, *The Methodology of Comparative Law*, in *Roger Williams University Law Review*, vol. 16, no. 1, 2011, pp. 51–72; U. KISCHEL, *Comparative Law*, Oxford, 2019, pp. 194–200.
[13] P. KUSIK, *English Translation Equivalents of Selected Polish Partnership Types Revisited from the Perspective of Comparative Law*, in *Lingua Legis*, no. 30, 2022, p. 22.
[14] See e.g. J. ENGBERG, *Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation*, in *Revista de Llengua i Dret, Journal of Language and Law*, vol. 68, 2017, pp. 5–18.
[15] S. ŠARČEVIĆ, *New Approach to Legal Translation*, The Hague, 1997, pp. 235–249.
[16] P. G. MONATERI, *Comparative Legal Methods*, Cheltenham, 2021, p. 7.
[17] J. HUSA, *A New Introduction to Comparative Law*, Oxford, 2015, p. 3; G. SAMUEL, *An Introduction to Comparative Law Theory and Method*, Oxford, 2014, pp. 3, 16.
[18] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 3.
[19] M. VAN HOECKE, *Methodology of Comparative Legal Research*, in *Law and Method*, 2015, p. 28, https://doi.org/10.5553/REM/.000010.
[20] K. ZWEIGERT, H. KÖTZ, *An Introduction to Comparative Law*, Oxford, 1998, p. 34.

methodological approaches have remained – again, with several exceptions[21] – largely unnoticed in LTS.

For the above reasons, it may not be clear whether – and if so, to what extent – comparative law methodology[22] at its current stage of development is suitable for use in legal translation. In order to provide more clarity on this issue, the present paper briefly introduces the foundations of comparative law methodology (Section 2), offers a summary of contemporary comparative law methods (Section 3) and shows some ways to adapt their elements for legal translation purposes (Section 4). The application of this framework is demonstrated based on one practical example from Polish-English legal translation (Section 5). Finally, some general conclusions and recommendations are presented (Section 6).

2 Comparative law methodology

At the outset, it should be noted that law, in its scientific dimension, is classified as a social science, and its subject matter is the analysis of legal norms and broadly understood legal-political institutions. It performs tasks characteristic of theoretical and practical sciences[23]. Comparative law, in turn, can be classified among auxiliary legal sciences in their broad sense[24]. It is also referred to as a meta-discipline of law. The task of meta-disciplines is to elucidate legal contexts and place law in time and space, not only in the narrowly understood normative sphere of a given legal system[25]. A sophisticated understanding of comparative law methodology requires the comparatist to go beyond law itself towards the general methodology of the social sciences[26].

The concept of method in comparative law is said to refer to "all practices and operations by means of which pieces of information describing phenomena are collected and the justifiable rules on the basis of which interpretations concerning the study topics are formed and argumentatively expressed"[27]. From the perspective of comparative law practice, a method is the study of a given legal issue by comparing two legal systems, comprehensively assessing the practical responses in each of the legal systems analysed, establishing similarities and differences, and attempting to determine their legal, political, social and other causes[28]. Legrand, on the other hand, is critical of the concept of method in comparative law, pointing out that a comparatist should not be a slave to any method, and each method is a preferred method of a given interpreter, created by him or her to achieve some goal[29].

Samuel draws a methodological map of comparative law using the concept of a scheme of intelligibility, stemming from sociological literature and meaning "the way natural or social facts are perceived and represented – the way they are 'read' by the observer"[30]. Berthelot distinguished between causal, functional, structural, hermeneutical, dialectical and actional schemes[31]. Each scheme of intelligibility focuses on a specific fragment of the reality under study, which also indicates the existence of different dimensions of knowledge[32].

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[21] J. ENGBERG, *Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation,* cit., pp. 5–18; S. POMMER, *Translation as Intercultural Transfer: The Case of Law*, in *SKASE Journal of Translation and Interpretation*, vol. 3, no. 1, 2008, pp. 17–21; S. SKYTIOTI, *Comparative Law and Language with Reference to Case Law*, in *Studies in Logic, Grammar and Rhetoric*, vol. 66, no. 1, 2021, pp. 105–114.

[22] For a critique of this term, see M. EL KADMIRI, *Semantical Discordances of Comparison in Law Negatively Defined: Comparative Law as Methodology vs 'Comparative Law Methodology' as Tautology*, in *Comparative Law and Language*, vol. 3, no. 1, 2024, pp. 80–91.

[23] L. MORAWSKI, *Wstęp do prawoznawstwa*, Toruń, 2014, pp. 12–13.

[24] J. HELIOS, W. JEDLECKA, *Podstawowe pojęcia prawa i prawoznawstwa dla ekonomistów*, Wrocław, 2015, pp. 13–14.

[25] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 56–57.

[26] G. SAMUEL, *op. cit.*, p. 79.

[27] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 98–99.

[28] U. KISCHEL, *op. cit.*, pp. 152–153.

[29] P. LEGRAND, *Negative Comparative Law*, in *Journal of Comparative Law*, vol. 10, no. 2, 2015, pp. 435–436.

[30] G. SAMUEL, *op. cit.*, p. 81.

[31] M. BERTHELOT, *Programmes, paradigmes, disciplines: pluralité et unité des sciences sociales*, in M. BERTHELOT (ed.), *Épistémologie des sciences sociales*, Paris, 2001, p. 484, as cited by G. SAMUEL, *op. cit.*, pp. 83–84.

[32] G. SAMUEL, *op. cit*., pp. 92–95.

In view of the above, it is difficult to claim that there is only one useful comparative law method. The particular approaches are not intrinsically better or worse than others, but they provide access to different types of knowledge specific to them[33]. Indeed, contemporary comparative law is a pluralistic area of knowledge not only in terms of content but also in terms of methodology. It strives for a broad, rich and – most importantly – more contextual study of law than before, which, at the same time, requires a flexible approach to comparative law methodology[34]. Comparative law can serve different purposes, which means that it is possible to use many methods as part of it in an effective way[35] as long as they provide answers to questions that are interesting for the comparative lawyer[36]. It is pointed out that one needs to avoid 'methodological chauvinism', i.e. arbitrary attribution of epistemic effectiveness only to a given researcher's preferred method[37].

The overview of comparative law methods in Section 3 is inspired by Samuel's account of comparative law methodology[38], supplemented by contributions from other authors. At the same time, it needs to be noted that the very term 'method' is polysemous. Hence, different names and taxonomies of comparative law methods can be found. This notwithstanding, it seems the overview reflects roughly the entire methodological landscape of comparative law.

3 An overview of comparative law methods

In the present paper, comparative law methods will be divided into the general method, which consists in comparison itself, and specific methods, which determine the detailed course of the comparison process[39].

3.1. General method

Comparison constitutes "the essence of comparative law"[40]. It is a generally adopted epistemological practice whose basic goal is to obtain new knowledge – to learn[41]. Comparative law can, at the same time, be considered "an advanced application of comparative knowledge formation"[42]. Thus, it may be said that the general method of comparative law consists of a number of overarching issues relating to the comparison process. These issues cut across, and are addressed by, the detailed approaches referred to as specific methods.

One of these cross-cutting issues is the discussion in comparative law literature on the perspective from which law is observed. On the one hand, comparative law is supposed to provide a special comparative legal perspective, enabling the observer to place himself or herself outside his or her own legal system. Such a perspective makes it possible to understand the historical origins of the classifications known to a legal system, the relative nature of its concepts, and the political and social conditioning of the system's institutions[43]. On the other hand, the researcher must reflect on the extent to which his or her own cultural assumptions as an observer shape the questions asked and influence the acceptance of the answers obtained as convincing[44]. According to others, objective comparison is not

[33] G. SAMUEL, *op. cit.*, p. 95.
[34] J. HUSA, *Interdisciplinary Comparative Law: Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd*, cit., pp. 16–17, 196.
[35] M. SIEMS, *Comparative Law*, Cambridge, 2019, p. 9.
[36] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 99.
[37] R. TOKARCZYK, *Komparatystyka prawnicza*, Kraków, 1999, pp. 177–178.
[38] G. SAMUEL, *op. cit*.
[39] A different division into general and specific methods has been proposed by R. TOKARCZYK, *op. cit.*, pp. 178–185.
[40] M. BOGDAN, *Concise Introduction to Comparative Law*, Groningen, 2013, p. 45.
[41] R. TOKARCZYK, *op. cit.*, p. 30.
[42] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 63.
[43] R. DAVID, J. E. C. BRIERLEY, *Major Legal Systems in the World Today*, London, 1985, pp. 5–6.
[44] D. NELKEN, *Legal Culture*, in J. M. SMITS (ed.), *Elgar Encyclopaedia of Comparative Law*, Cheltenham, 2006, pp. 377.

possible at all, as it is impossible to eliminate a comparatist's cultural bias. Observing an object, for example, a certain legal tradition, means shaping it. The comparatist is therefore always a participant observer[45]. There is also an intermediate approach to this issue, called 'cultural immersion', adopted by Grosswald Curran[46].

Furthermore, it is worth noting the controversies regarding the researcher's orientation towards finding similarities or differences. There is some competition in this respect between the supporters of the presumption of similarity (*praesumptio similitudinis*) of the practical results achieved by particular legal systems[47] and the supporters of the presumption of difference[48] (*principium individuationis*[49]), criticising the former for trying to demonstrate the sameness of laws belonging to different legal systems and depreciating differences[50]. Others point out that it is generally reasonable to look for both similarities and differences between the legal systems under consideration, albeit the goal of the study may also be relevant in this respect[51].

One of the most important methodological tasks of a comparatist is the selection of a *tertium comparationis*. This term can be understood in different ways: as a certain conceptual framework[52], as a common characteristic that makes legal phenomena comparable (a function, goal, problem, factual situation or the solutions offered)[53] or as a comparative metalanguage[54]. Since claims about similarity or difference are in most cases subjective – and in social or cultural studies, there are normally no metric scales – the intersubjective meaning of comparison is vital to avoid arbitrariness. It is based on a shared understanding of what is significant and on the basic scales of difference. For this reason, it is important to reflect on one's epistemological interests and inform other researchers about the motives or reasons for choosing a given *tertium comparationis*[55].

As far as the object of comparison is concerned, i.e. the question of what law is, different answers can be provided, in particular, by legal theorists and by comparatists[56]. Due to definitional problems, legal practice has adopted the concept of law in the legal sense, which primarily sees law as a collection of rules[57]. Such a model of law is the most enduring[58]. The focus on law as rules in comparisons (the so-called black-letter comparison) is one of the criticisms of traditional comparative law[59]. Nevertheless, it should be noted that Zweigert and Kötz, its leading exponents, clearly state that when identifying the rules of the legal systems being studied, comparatists should take into account not only the rules contained in legislation and case law (law in books) but also the conditions of business, customs, practices, and in fact everything that contributes to shaping human behaviour in the situation under

[45] P. LEGRAND, *Comparative Legal Studies and Commitment to Theory*, cit., p. 266.
[46] V. GROSSWALD CURRAN, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, in *The American Journal of Comparative Law*, vol. 46, no. 1, 1998, pp. 43–92.
[47] K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 34, 39–40.
[48] G. SAMUEL, *op. cit.*, pp. 54–55.
[49] P. LEGRAND, *The Same and the Different*, in P. LEGRAND, R. MUNDAY (eds.), *Comparative Legal Studies: Traditions and Transitions*, Cambridge, 2003, p. 272.
[50] P. LEGRAND, *The Same and the Different*, cit., p. 245; G. FRANKENBERG, *Critical Comparisons: Re-thinking Comparative Law*, in *Harvard International Law Journal*, vol. 26, no. 2, 1985, pp. 436–437; G. SAMUEL, *op. cit.*, pp. 54–55.
[51] G. DANNEMANN, *Comparative Law: Study of Similarities or Differences?*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, pp. 413–422, https://doi.org/10.1093/oxfordhb/9780198810230.013.12.
[52] J. HUSA, *A New Introduction to Comparative Law*, cit., pp. 149–151.
[53] E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, in *European Journal of Law Reform*, vol 8, no. 1, 2006, p. 36.
[54] M. VAN HOECKE, *op. cit.*, p. 28.
[55] N. JANSEN, *Comparative Law and Comparative Knowledge*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, pp. 295–300, https://doi.org/10.1093/oxfordhb/9780198810230.013.10.
[56] G. SAMUEL, *op. cit.*, p. 121.
[57] T. CHAUVIN, T. STAWECKI, P. WINCZOREK, *Wstęp do prawoznawstwa*, Warszawa, 2017, pp. 17–18.
[58] G. SAMUEL, *op. cit.*, pp. 121–122.
[59] M. SIEMS, *New Directions in Comparative Law*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, p. 856, https://doi.org/10.1093/oxfordhb/9780198810230.013.48.

study[60].

An alternative to the concept of law as rules is the realist approach. According to it, knowledge about law should be sought in the socially and psychologically conditioned minds of interpreters[61]. Beneath the level of external law (law in books), which is the easiest to recognise, a range of forces are at work. They help understand how law actually operates in society. The mission of comparative law is to provide the tools for examining the whole range of forces that constitute the internal dimension of law (law in action). Law must thus be viewed in a more comprehensive way, encompassing external law, internal law, and the culture on which it is based[62]. Indeed, living law is shaped by different legal formants, the basic categories of which include statutes, legal scholarship and case law. Exploring law requires recognising all the legal formants of a given system and determining the role of each. Notably, there may be greater or lesser disharmony between individual formants[63].

Further objects of comparison can be legal mentalities (*mentalité*)[64]. In this case, comparison aims to "explicate how a community thinks about the law and why it thinks about the law in the way it does"[65]. It is thus vital to recognise not only law in books or law in action but also law in minds[66]. Moreover, comparisons can be made between legal concepts[67] and legal systems[68].

3.2. Functional method

The functional method seeks answers to the following questions: "Which institution in system B performs an equivalent function to the one under survey in system A?"; "How is a specific social or legal problem encountered both in society A and society B, resolved?" Either question leads to the identification of functional equivalents[69]. No doubt, the basic scheme of intelligibility applied in this method is the functional one, albeit the causal scheme can also be noticed. This is because a social problem is perceived as causing the existence of a certain institution[70].

The basic assumptions of the functional method are that the societies being studied share common problems or social needs, that somewhere in these societies, they are solved or satisfied, and that the means used are different but – in terms of their equivalent functions – comparable[71]. The functional method aims to enable the abstraction of rules from their local dimension so that the researcher can focus on their operative content, regardless of the context of the source legal system[72].

As put by Michaels, "the functional method has become both the mantra and the *bête noire* of comparative law. For its proponents it is the most, perhaps the only, fruitful method. For its opponents it represents everything bad about mainstream comparative law"[73]. According to Graziadei, the contemporary criticism of functionalism does not stem from its failure, but – on the contrary – from its

[60] K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 10–11, 35–36.
[61] G. SAMUEL, *op. cit.*, pp. 121–125.
[62] E. J. EBERLE, *op. cit.*, pp. 57, 64–65.
[63] R. SACCO, *Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)*, in *The American Journal of Comparative Law*, vol. 39, no. 1, 1991, pp. 21–34, https://doi.org/10.2307/840669.
[64] G. SAMUEL, *op. cit.*, p. 126.
[65] P. LEGRAND, *European Legal Systems Are Not Converging*, in *The International and Comparative Law Quarterly*, vol. 45, no. 1, 1996, p. 60.
[66] W. B. EWALD, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, in *University of Pennsylvania Law Review*, vol. 143, 1995, pp. 2111, 2130, 2145.
[67] U. KISCHEL, *op. cit.*, pp. 162–164.
[68] G. SAMUEL, *op. cit.*, pp. 131–133.
[69] As already mentioned, this concept has been borrowed by ŠARČEVIĆ, *op. cit.*, pp. 235–236; E. ÖRÜCÜ, *The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century*, Leiden, 2004, p. 29.
[70] R. MICHAELS, *The Functional Method of Comparative Law*, in M. REIMANN, R. ZIMMERMANN (eds.), *The Oxford Handbook of Comparative Law*, Oxford, 2019, p. 363, https://doi.org/10.1093/oxfordhb/9780198810230.013.11.
[71] E. ÖRÜCÜ, *The Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century*, cit., p. 29.
[72] E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, cit., p. 41.
[73] R. MICHAELS, *op. cit.*, pp. 347, 361.

success. The results of sophisticated functional research have expanded comparative law knowledge and have entered mainstream legal thinking[74].

The functional method is, therefore, a useful tool, although it is only one of the methods of comparative law, and its limitations undermine claims that it should be the basic approach[75]. The limitations of functionalism include, in particular, the risk of excluding from the comparison quite similar rules that do not fulfil the same function in the legal systems under study. This may also lead to limiting the scope of comparisons to legal systems that are at the same stage of legal, political and economic development. In addition, some areas of law are considered less suitable for functional comparisons due to the strong influence of geographical, socio-political and cultural factors and other peculiarities. In a given country, a legal problem taken as the basis for comparison may not exist[76]. Moreover, the functional method is particularly suitable for micro-comparative research[77].

Apparently as a response to the postmodern criticism, new approaches to functionalism have emerged in comparative law scholarship. They point to the misinterpretation of this method by its critics and the discrepancy between its fundamentally correct theory and flawed applications. Such new approaches to functionalism include Kischel's contextual comparative law[78] and Michael's interpretative functionalism[79], as well as research in the common core approach[80]. A common feature of all these novel trends is an attempt to raise the importance of the context of law, which traditional functionalism has been accused of neglecting.

3.3. Structural method

A crucial concept for the structural scheme of intelligibility is a system. In this light, law is seen as a legal system that constitutes a certain whole in terms of structure and/or classification[81]. Structuralism in comparative law is based on the belief that understanding individual legal rules in a certain legal system requires understanding the underlying principles and interrelated elements of the system[82]. The elements of a legal system cannot be analysed independently of each other but should be seen in the light of their mutual relationships. "The law is not simply the sum of the specific elements in which every legal framework is expressed [...] but the product of an organic connection of all these elements together"[83].

The structural method is characterised by trying to see units of law at various levels (norms, systems, families) as certain structures distinguished by their specific internal arrangement[84]. Identification of structures is also a means for establishing similarities and differences[85]. The structural method is used to search for similar structural elements and sometimes to try to determine the reasons for the absence of such elements. Once similar structural elements have been identified, they are studied to explain their socio-economic function or how they came to exist and took on their current form. Thus, the structural method can be described as "examining legal architecture"[86]. It also underlies various classifications of legal systems, e.g. into legal families[87].

A weakness of the structural method may be its very focus on structures, which pushes into the

[74] M. GRAZIADEI, *The functionalist heritage*, in P. LEGRAND, R. MUNDAY, *Comparative Legal Studies: Traditions and Transitions*, Cambridge, 2003, pp. 113, 125–127.
[75] G. SAMUEL, *op. cit.*, p. 81.
[76] M. SIEMS, *Comparative Law*, cit., pp. 33–35.
[77] R. MICHAELS, *op. cit.*, pp. 346–347; G. SAMUEL, *op. cit.*, p. 81.
[78] U. KISCHEL, *op. cit.*, pp. 167–174.
[79] R. MICHAELS, *op. cit.*, p. 377.
[80] M. GRAZIADEI, *The functionalist heritage*, cit., pp. 117–118.
[81] G. SAMUEL, *op. cit.*, p. 96.
[82] M. SIEMS, *Comparative Law*, cit., p. 126.
[83] P. G. MONATERI, *op. cit.*, pp. 8–9.
[84] R. TOKARCZYK, *op. cit.*, p. 184.
[85] M. SIEMS, *Comparative Law*, cit., p. 126.
[86] J. HUSA, *A New Introduction to Comparative Law*, cit., p. 127.
[87] M. VAN HOECKE, *op. cit.*, pp. 11–13.

background the analysis of the content of the elements of law being compared[88]. This points to the tension between seemingly objective structural classifications and the pursuit of an interpretative explanation of the complexity of legal traditions. It is also indicated that structuralism assumes the existence of certain constant elements that define a system over time, whereas legal traditions evolve, and the same elements assume unexpected configurations and meanings[89]. It may also be difficult to determine the nature and structure of the system itself. Indeed, it is possible to construct different structural schemes, and particular members of a given legal system may perceive its structure differently[90].

3.4. Hermeneutical method

In the social sciences, the hermeneutical scheme of intelligibility responds to the needs of researching phenomena originating in human consciousness. It is a means of understanding human life through historical and psychological processes[91].

The hermeneutical method of comparative law is also put under the heading of 'postmodern comparative law'. Following postmodernist approaches in other fields, it focuses on differences. It does not seek common denominators of legal systems but aims to appreciate their complexity. The hermeneutical method questions the belief in full rationality and objectivity[92]. A comparatist should treat positive rules and categories as signifiers of a deeper mentality functioning in the complex matrix of a foreign legal culture rather than compare them at the textual level[93]. Indeed, the nature of legal texts is accounted for by a combination of historical, political, social, philosophical, linguistic, economic and epistemological factors, which make up culture[94]. In the hermeneutical method, a comparatist seeks not a cause, but a meaning. He or she should strive to explain foreign law to a lawyer of his or her native system from the perspective of the mentality of the foreign legal system, carrying the audience between legal mentalities, as it were[95].

Legrand points out that knowledge of foreign law cannot exist outside the comparatist's mind without being marked by his or her neural and sensory apparatus. Better access to foreign law is thus gained not by eliminating factors influencing its understanding but by increasing them. "The more readings are garnered, the more interpretations are fabricated, the more writings are produced – in sum, the more the singularity of the foreign finds itself being elicited from various angles – the more insightful understanding of foreign law is likely to prove"[96]. Accordingly, a comparatist should get rid of illusions about his or her own objectivity and about the neutrality of research and the tools used. A critical dialogue between legal cultures – familiar and foreign – is desirable[97].

Grosswald Curran's immersive approach can be considered a slightly milder version of the hermeneutical method. According to her, the proper way to study another legal culture is to immerse oneself in the political, economic, historical and linguistic contexts that shape a given legal system and in which it functions[98].

Postmodern comparatists have been criticised – in return, as it were – by supporters of the traditionally oriented comparative law. The postmodern movement is said to aim at "deconstructive

[88] R. TOKARCZYK, *op. cit.*, p. 184.
[89] P. G. MONATERI, *op. cit.*, pp. 8–9.
[90] G. SAMUEL, *op. cit.*, p. 107.
[91] G. SAMUEL, *op. cit.*, pp. 114–115.
[92] M. SIEMS, *Comparative Law*, cit., pp. 115–116.
[93] P. LEGRAND (ed.), *Comparer les droits, résolument*, Paris, 2009, pp. 228–229, as cited by G. SAMUEL, *op. cit.*, pp. 110.
[94] P. LEGRAND, *Negative Comparative Law*, cit., p. 429.
[95] P. LEGRAND (ed.), *Comparer les droits, résolument*, Paris, 2009, pp. 228–238, as cited by G. SAMUEL, *op. cit.*, pp. 110–111.
[96] P. LEGRAND, *Negative Comparative Law*, cit., pp. 432–433.
[97] G. FRANKENBERG, *Comparative Law as Critique*, Cheltenham, 2016, pp. 230–231.
[98] V. GROSSWALD CURRAN, *op. cit.*, pp. 43–92.

disruption", which is not accompanied by constructive alternatives[99]. Postmodernists are accused of not translating their views into practice, of using incomprehensible language and of not drawing on specific examples. It is even said that the postmodern approach has no method, nor does it strive to develop one, and that comparative law studies describing themselves as postmodern are scarce and basically do not differ from traditional comparative law[100]. According to critics, there is no room for comparative law to fall "into the hands of philosophers, anthropologists, and incomprehensible post-modernists"[101].

3.5. Other methods

Other comparative law methods include socio-legal comparative law, which is characterised by, among other things, reflection on how law and society are linked in a causal relationship. This approach reflects the popularity of socio-legal and empirical research using qualitative and quantitative methods to study law[102]. Its methods include, among others, inferential statistics, interviews, surveys, observation of trials, collecting data on litigation and qualitative historical research[103].

There is also the so-called numerical comparative law, which raises the question of how to obtain quantitative information about law. Its methods include counting facts about law, coding law and conducting surveys about law[104]. The category of numerical comparative law can also be extended to the use of quantitative methods within the approach known as 'comparative law and economics', which stems from the economic analysis of law[105].

As mentioned earlier, the above overview does not enumerate all possible comparative law methods in their different classifications encountered in comparative law literature[106]. However, it seems to cover roughly the entire methodological horizon of contemporary comparative law.

4 Proposed adaptation of comparative law methods for legal translation purposes

Although LTS is situated at the interface between translation studies and law[107], this does not mean that the methods of comparative law and legal translation are the same. One should consider the distinction between comparative law and translation referred to in Section 1. If LTS and practical legal translation activity are to benefit in some way from comparative law, particularly its methods, this might be achieved by adapting certain elements of these methods, bearing in mind the distinctive nature of legal translation.

4.1. Preliminary remarks

As aptly pointed out by Engberg, a translator may draw on the accomplishments of other research areas in an eclectic way if this helps him or her make relevant translation decisions[108]. The above analysis has shown that a pluralistic methodological approach is also advocated currently in comparative law. At the same time, it should be remembered that the goal of legal translation is not to study law as such but

[99] M. BOGDAN, *op. cit.*, pp. 49–50.
[100] U. KISCHEL, *op. cit.*, 97–98, 151–152.
[101] B. S. MARKESINIS, J. FEDTKE, *Engaging with Foreign Law*, Oxford, 2009, p. 69.
[102] M. SIEMS, *Comparative Law*, cit., p. 147.
[103] M. SIEMS, *Comparative Law*, cit., pp. 156–157.
[104] M. SIEMS, *Comparative Law*, cit., pp. 181–182.
[105] F. PARISI, B. LUPPI, *Quantitative Methods in Comparative Law*, in P. G. MONATERI (ed.), *Methods of Comparative Law*, Cheltenham, 2012, pp. 306–316.
[106] See e.g. R. TOKARCZYK, *op. cit.*, pp. 178–185; S. POMMER, *Rechtsübersetzung und Rechtsvergleichung. Translatologische Fragen zur Interdisziplinarität*, Frankfurt a. M., 2006, pp. 100–101; M. VAN HOECKE, *op. cit.*, pp. 16–18.
[107] F. PRIETO RAMOS, *Legal Translation Studies as Interdiscipline: Scope and Evolution*, cit., p. 266.
[108] J. ENGBERG, *Comparative Law for Legal Translation: Through Multiple Perspectives to Multidimensional Knowledge*, in *International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique*, vol. 33, no. 2, 2020, p. 276, https://doi.org/10.1007/s11196-020-09706-9.

to convey the legal meaning of the source text (term) through the target text (term)[109]. Therefore, comparative law methods – described in comparative law literature primarily in the context of scientific activity – will not be used in legal translation as research (scientific) methods, even though the work of a translator resembles that of a researcher[110]. The adaptation of comparative law methods to legal translation can be considered primarily from a praxeological point of view, which is suitable for describing the translation process[111].

Since information about law obtained using various intelligibility schemes can potentially contribute to the right translation decisions, the usefulness of different comparative law methods for legal translation should be analysed. The most suitable candidates are the general, functional, structural and hermeneutical methods. For practical reasons, it is difficult to imagine a translator using typically sociological or statistical methods. The use of comparative law methods adapted for legal translation purposes can be referred to as 'translational comparative legal analysis' to distinguish it from actual comparative law research.

4.2. Adaptation of the general method

It seems that a number of aspects of comparison as the general method of comparative law (see Subsection 3.1) can be relevant to legal translation. Notably, at a very general level, comparison can be considered a common element of comparative law and legal translation. An adaptation of the general method would, in turn, mean introducing a comparative law dimension into the linguistically oriented translation process. The translator should thus take into account – to the extent feasible for him or her – the perspective from which law is looked at by the comparatist. This notwithstanding, the translator should define his or her own perspective as an observer of a foreign legal system, that is, define himself or herself as a representative of a certain legal culture and a member of a specific community and professional environment.

In addition to self-reflection on the way of perceiving foreign law – so as not to impose one's own epistemic categories on it – an important aspect of the general method is the selection of a *tertium comparationis*. Like comparative judgments, translation decisions should not be arbitrary. A good example of a metalanguage which – as a *tertium comparationis* – can be used by a translator when comparing concepts and elements of law from different legal systems is the one proposed by Šarčević. It is based on the division of characteristics of concepts into essential and additional ones and on the formulation of certain criteria for the acceptability of potential equivalents[112].

A useful tool for translators could also be the heuristic presumption of difference (as opposed to the ontological one)[113]. By adopting the presumption of difference, the translator would expect that his or her native legal system and the foreign legal system may differ significantly. Hence, the translator would first establish differences between the concepts under examination and then juxtapose them with similarities, trying, as it were, to refute the thesis that the differences prevail. This could help avoid risky and hasty judgments about similarity. Indeed, it is safer to reject an uncertain target term than to use it based on apparent similarities.

The general method can also provide a comparative legal understanding of law, which takes into account its various dimensions. Going beyond the concept of law as rules would facilitate the proper reading of the legal sense of the terms analysed and, at the same time, prevent excessive focus on legal

[109] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, Warszawa, 2025, pp. 111–123, https://doi.org/10.53271/2025.029.
[110] E. ALCARAZ VARÓ, B. HUGHES, *Legal Translation Explained*, Manchester, 2002, p. 153.
[111] G. GWÓŹDŹ, *Translatoryka. Umiejscowienie, rola, kierunki rozwoju, zadania*, in *Zagadnienia Naukoznawstwa*, vol. 2, no. 208, 2016, p. 264.
[112] S. ŠARČEVIĆ, *op. cit.*, pp. 237–249.
[113] C. VALCKE, M. GRELLETTE, *Three Functions of Function in Comparative Legal Studies*, in M. ADAMS, D. HEIRBAUT (eds.), *The Method and Culture of Comparative Law, Essays in Honour of Mark Van Hoecke*, Oxford, 2014, pp. 99–111.

concepts alone. This also implies the use of a variety of sources of law and of legal knowledge, definitely more reliable than dictionaries. As Samuel aptly notes, "focusing on words and dictionaries is not comparative law"[114].

4.3. Adaptation of the functional method

The functional method – as adapted by Šarčević[115] – seems to remain an adequate tool for legal translation purposes. However, it is worth considering critical approaches to this method and its more contemporary versions that attach greater importance to the context of law. Primarily, it is important to recognise that the functional method is not the only one and that it might not provide a full picture of reality.

Apart from indicating potential equivalents in the form of functional equivalents, understood as terms denoting a concept fulfilling a function identical or similar to that of the source concept, the functional method could also be used in a slightly broader way. Namely, it could be a means of exploring the legal regulation in the target legal system concerning the factual situation (social problem) in relation to which the source legal term was used. This could provide a better insight into the relevant fragment of the target legal system.

4.4. Adaptation of the structural method

The structural method can be utilised in legal translation at several levels. Firstly, it is possible to use it to review the structure of the legal systems being analysed from the macro-comparative level to the meso-comparative level to the micro-comparative level[116]. This may help obtain a broader picture of the legal system under examination, thus avoiding concentration on isolated elements of legal reality in a way that does not consider their context.

The structural method can also point out an initial direction for translational comparative legal analysis, leading to the identification of a potential natural equivalent, which can be referred to as a 'structural equivalent' (parallel to the functional equivalent concept). Its identification would be based on the place of the respective concept in the structure of the target legal system corresponding to the place of the source concept in the source system.

Exploring structural relations in the systems being examined may also allow the translator to avoid using translation equivalents that refer to undesirable elements of these systems' structures or imply incorrect structural relations in the source system. Finally, the structure of a legal institution and its embeddedness in a certain structure can serve as criteria for the comparison of the respective source and target legal terms[117].

4.5. Adaptation of the hermeneutical method

The hermeneutical method may provide the translator with a perspective on the source legal text and other texts that he or she is analysing comparatively as cultural products shaped by a number of factors, including epistemological, historical, political, social, philosophical, linguistic, economic and geographical ones. Such a broader perspective on the source text being translated, as well as on the texts of the target system analysed in the course of the translation process, can help the translator gain a more

[114] G. SAMUEL, *op. cit.*, p. 147.
[115] S. ŠARČEVIĆ, *op. cit.*, p. 236.
[116] More on the various levels of comparative law research in: M. VAN HOECKE, *op. cit.*, p. 21; K. ZWEIGERT, H. KÖTZ, *op. cit.*, pp. 4–5; E. ÖRÜCÜ, *Methodological Aspects of Comparative Law*, cit., p. 31. An example of an analysis for the purposes of legal translation arranged in this manner can be found in a separate case study by the author: P. KUSIK, *The Right to the Environment? Article 4(1) of the Polish Environmental Protection Law Act from a Combined Comparative Law and Polish-English Legal Translation Perspective*, in *Comparative Legilinguistics*, vol. 56, 2023, pp. 195–221, https://doi.org/10.14746/cl.56.2023.3.
[117] S. ŠARČEVIĆ, *op. cit.*, pp. 242–244.

in-depth understanding of law, which consists of not only rules but also the actions of people equipped with a specific legal mentality.

The hermeneutical method also encourages a self-critical approach to one's own perspective and questions the belief in an objective vision of foreign law. Above all, it highlights the differences between the elements of legal reality of cultural and ideological nature. Exploring the context and legal culture of the legal systems associated with the source and target languages may allow the translator to avoid hasty conclusions about the similarity of the legal systems being explored, including the similarity of terms in the source and target languages (e.g. false friends).

5 An example of the practical application of translational comparative legal analysis

For the sake of a brief practical demonstration, the present section will discuss the translation of one of the terms examined in the author's PhD project, namely *ostatni spokojny stan posiadania*. The term is used in Article 153 of the Polish Civil Code. A fragment of this provision, along with its three existing translations retrieved from the LEX[118] and Legalis[119] databases, has been presented in Table 1 below. These examples may be helpful for international readers to understand the legal issue involved and will be treated as a source of potential translation equivalents.

Source text	Translation 1 (LEX)	Translation 2 (Legalis)	Translation 3 (Legalis)
Art. 153. Jeżeli granice gruntów stały się sporne, a stanu prawnego nie można stwierdzić, ustala się granice według ostatniego spokojnego stanu posiadania. […]	Article 153. If the boundaries of land became disputable and their legal status may not be ascertained, the boundaries shall be determined in conformity with the last peaceful enjoyment of possession. […]	Art. 153 If the boundaries of lands have become an object of dispute and their legal status cannot be established, the boundaries shall be delimited accordingly to the last peaceful state of possession. […]	Art. 153. If land boundaries are disputed and the legal status cannot be determined, the boundaries are established as at the last peaceful possession. […]

Table 1: A fragment of Article 153 of the Polish Civil Code accompanied by its existing translations (the problematic term and its translation equivalents proposed by particular translators are underlined).

As can be seen, the term is potentially problematic. It has been rendered in quite different ways by the particular translators. Of course, it is unknown whether these translators employed any comparative law methods in their work.

According to the theoretical framework proposed in the present paper, a legal translator seeking to establish an English translation equivalent (assuming the English legal system as the target one) conveying the legal sense of the source term should first look at this translation task in the broader macro- and mesocomparative contexts. In particular, the translator needs to bear in mind the overall differences between civil law and common law traditions and their distinct paths of development. Furthermore, differences between property law in systems belonging to these traditions ought to be considered. Notably, conceptual differences in this field between common law and civil law systems are particularly pronounced[120]. One of such differences relates to the nature of possession (referred to in the problematic term) and its relationship with the right of ownership, including the protection of possession and ownership[121]. In this way, the translator will realise that special caution is needed to avoid misunderstandings. Unless the translator has sufficient knowledge regarding the above subject matter in the Polish and English legal systems acquired in the course of his or her education or practice, he or she

[118] https://sip.lex.pl.
[119] https://sip.legalis.pl.
[120] See e.g. L. BEREZOWSKI, *Jak czytać, rozumieć i tłumaczyć dokumenty prawnicze i gospodarcze?*, Warszawa, 2018, pp. 179–188.
[121] M. GRAZIADEI, *The Structure of Property Ownership and the Common Law/Civil Law Divide*, in M. GRAZIADEI, L. D. SMITH (eds.), *Comparative Property Law. Global Perspectives*, Cheltenham, 2017, pp. 92–94.

may use relevant resources, for instance, legal textbooks, legal blogs or comparative works like the one cited in footnote 121.

The steps discussed so far have involved the use of the general method, namely introducing a comparative law dimension into the analysis. In particular, the translator has adopted a comparative legal perspective on the legal systems concerned, trying to be critical of one's own point of view, paying attention to differences and using relevant sources. Moreover, the structural method has been used to undertake an overview of the respective legal systems at different levels. The hermeneutical method, in turn, has helped appreciate the deeper cultural differences underlying the respective legal systems and institutions, including the different mentalities behind property law in common law and civil law systems.

Having gained a more general understanding of the source and target legal systems and their relevant fragments, the translator may go on to the microcomparative level and try to establish the meaning of the source legal term. Since it is not defined in the Civil Code, court jurisprudence may be consulted for this purpose. For instance, as noted by the Polish Supreme Court[122], the term in question refers to stable possession, lasting for a long time but not enough for acquisitive prescription. However, the time is enough for it to be incompatible with the principles of social coexistence to deprive the current possessor of possession of a strip of land by fixing the boundary. *Ostatni spokojny stan posiadania* is thus a question of established, undoubted possession that is peaceful in the factual rather than legal sense, without any changes or disturbances in its course.

Next, using the functional method, the translator may try to find out what the criteria for resolving boundary disputes in the target system are (not necessarily whether there is a concept with a similar function in the target system). In this way, the translator learns that although the respective procedures for resolving boundary disputes do not differ dramatically, a condition equivalent to *ostatni spokojny stan posiadania* is not applied in English law. On the contrary, it turns out that English courts primarily try to construe the original act of conveyance[123]. Again, this observation required going beyond dictionaries or glossaries and consulting some English legal sources like cases or reputable online material, e.g. some legal blogs, which are more accessible. In addition, the hermeneutical method helps the translator understand that the generally equivalent procedures may involve quite different approaches. This should alert the translator to a greater risk of incomprehensibility of the target text to the English audience, given that it refers to a category unfamiliar to them. It should also encourage a careful choice of a sufficiently communicative translation equivalent.

In the present case, due to the lack of an equivalent concept in the target system, the translator cannot use a natural (functional or structural) equivalent. An alternative could be a descriptive paraphrase, whose elements should be tested in native English resources for comprehensibility and any misleading connotations. Such a check shows, for instance, that 'the last peaceful enjoyment of possession', a term used in one of the existing translations presented in Table 1, may lead to incorrect associations with the European Convention on Human Rights[124]. Moreover, a simple Google search demonstrates that the expression 'state of possession', used by another translator, is rather uncommon on UK websites[125], which puts into question its intelligibility. Finally, the third translator's choice, 'the last peaceful possession', fails to communicate what possession actually means here, i.e. that the source term refers to a period of holding land or a state of holding land continuing over time.

Based on the above analysis, one may propose the following translation equivalents: 'last/most recent period of peaceful possession' or 'last/most recent state of peaceful possession', the latter being more source-language-oriented. Notably, despite the conceptual differences between the Polish and English institutions of possession, the word 'possession' is acceptable in such an equivalent. The results of the

[122] Supreme Court, Apr. 27, 2018, IV CSK 210/17, LEX.
[123] See Mummery LJ in Pennock v. Hodgson [2010] EWCA (Civ) 873; Alan Wibberley Building Ltd v. Insley [1999] UKHL 15; https://www.summitlawllp.co.uk/legal-guide-to-boundary-disputes-and-land-disputes/.
[124] See the term 'peaceful enjoyment of possession' used in its context at https://www.compactlaw.co.uk/pages/human-rights-act-1998-how-it-relates-to-property-and-housing.
[125] https://cli.re/1nREQ2.

analysis, including the verification of the existing translations, are shown in Table 2 below.

Source term	Translation 1 (LEX)	Translation 2 (Legalis)	Translation 3 (Legalis)	Proposed translation equivalents
ostatni spokojny stan posiadania	~~last peaceful enjoyment of possession~~	~~last peaceful state of possession~~	~~last peaceful possession~~	last period of peaceful possession; most recent period of peaceful possession; last state of peaceful possession; most recent state of peaceful possession

Table 2: Results of translational comparative legal analysis for the term 'ostatni spokojny stan posiadania'.

As can be seen, translational comparative legal analysis for the term *ostatni spokojny stan posiadania* has followed a five-step model consisting of macrocomparative analysis, mesocomparative analysis, microcomparative analysis, terminological analysis and a decision on the translation equivalent (see Figure 1). The detailed course of such analysis could, of course, vary, as each translator is free to use particular methods and resources according to what he or she thinks is best given their experience, knowledge, the translation brief and external circumstances.

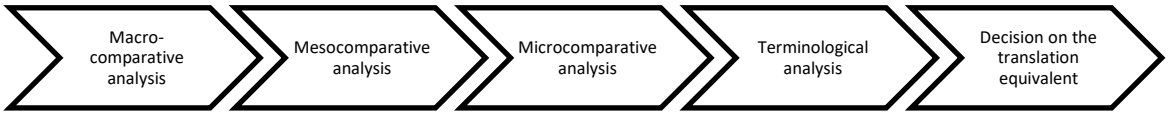

Figure 1: A model of translational comparative legal analysis[126].

Obviously, an analysis like this does not meet the rigorous standards of actual comparative law research, and it is not intended to do so. There is no time for scientific research in practical translation work. Moreover, the analysis is, to a large extent, terminology-focused and oriented towards the goal of legal translation, i.e. conveying the legal sense between the source and target terms. It thus combines elements of comparative law methodology, linguistic methods and translation methods and techniques. In this way, it leads to a rather reliable translation decision based on legal and linguistic arguments. While it is still rather time-consuming (compared to a simple online search, e.g. on a forum or in a dictionary), the translator may decide to use the procedure proposed in the case of more challenging terms or modify it according to the circumstances.

6 Conclusions

The brief analysis presented in this paper shows that comparative law methods are potentially suitable for adaptation for the purposes of legal translation and that there are many elements of these methods that legal translation can exploit. Some ideas for such adaptations were discussed in Section 4. The actual usefulness of comparative law methods has not been addressed in the present paper, except for one practical example in Section 5. However, the framework proposed has, to some extent, been analysed and verified based on the Polish-English pair in the author's earlier research. It included a case study concerning a term in the field of environmental law (published in English)[127], and the author's PhD thesis (published in Polish), covering a much broader collection of terms in the field of property law[128]. It is hoped that this paper and the earlier research will encourage LTS scholars familiar with other language combinations to explore the usefulness of the framework proposed based on different

[126] P. KUSIK, *Legal Transplants and Legal Translation: A Case Study of the Borrowing of the U.S. Limited Liability Partnership into the Polish Legal System*, in *Perspectives*, 2024, p. 6; P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit., p. 461.

[127] P. KUSIK, *The Right to the Environment? Article 4(1) of the Polish Environmental Protection Law Act from a Combined Comparative Law and Polish-English Legal Translation* Perspective, cit., pp. 195–221.

[128] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit.

examples, including a variety of assignments legal translators face. It is also submitted that simplistic references to links between legal translation and comparative law should be replaced with an in-depth study of particular elements of comparative law theory and methodology juxtaposed with the tenets of legal translation.

Uwe Kischel – to wit, a comparatist – aptly notes that although comparative law is helpful in the translation process, solving translation problems "remains the translator's task"[129]. Dullion is also right in stating that comparative law can only serve as a basis for making translation decisions according to pragmatic criteria, but it does not provide ready-made terminological choices[130]. It should thus be emphasised that the comparative law methods presented in this paper are not a substitute for legal translation's own methodology, although they may be complementary to it. As a result of their adaptation, they lose the nature of scientific research methods and become methods in the praxeological sense that support practical translation activity. Indeed, legal translation, as a branch of specialised translation, is of a utilitarian nature[131].

In the legal translation process, the purpose of these methods also changes. They become focused on finding potential natural equivalents[132] and determining their acceptability[133] or on formulating other types of equivalents, more or less oriented towards the source language[134]. In particular, the criteria for assessing differences and similarities between elements of legal reality may differ between translators and comparatists. A difference between certain legal institutions important for a comparatist will not necessarily be decisive when it comes to the translator's decision to use or reject a particular translation equivalent. The translator takes into account the goal of legal translation, i.e. conveying the legal sense, as well as the entire multidimensional communicative situation of legal translation, usefully presented by Kierzkowska in the model of 'Skopos on the discourse disc'[135]. In order to clearly distinguish the use of adapted comparative law methods for legal translation purposes from actual comparative law research, this paper proposes to designate the former as 'translational comparative legal analysis'.

It should also be acknowledged that translational comparative legal analysis, while providing solid grounds for translation decisions, may be time-consuming[136]. Hence, faced with practical constraints, the translator is likely to use it for the investigation of more challenging terms, e.g. those he or she does not already know from his or her education or practice, those for which established equivalents do not exist, those that are not available in reliable reference books or other resources for translators (including tools prepared based on comparative law research[137]), etc. The text type may also matter since the analysis is likely to be more efficient if a particular text consists of terminology related to the same area of law, making it possible to investigate several terms together[138]. The exact course of such analysis is likely to differ depending on the proximity of legal systems, recognised as a factor that has an impact on the difficulty of legal translation[139]. Finally, translational comparative legal analysis is clearly applicable to intersystemic legal translation. It may potentially prove useful in hybrid contexts, but it will rather be inapplicable in the case of unijural systems using two languages (intrasystemic

[129] U. KISCHEL, *op. cit.*, p. 12.
[130] V. DULLION, *op. cit.*, p. 99.
[131] T. TOMASZKIEWICZ, *Proces przekładu: fazy i elementy składowe*, in A. PISARSKA, T. TOMASZKIEWICZ, *Współczesne tendencje przekładoznawcze*, Poznań, 1996, pp. 182–183.
[132] D. KIERZKOWSKA, *Tłumaczenie prawnicze*, Warszawa, 2002, pp. 118–119.
[133] S. ŠARČEVIĆ, *op. cit.*, pp. 241–249.
[134] S. ŠARČEVIĆ, *op. cit.*, pp. 250–263.
[135] D. KIERZKOWSKA, *op. cit.*, Warszawa, 2002, pp. 72–76.
[136] See e.g. S. ŠARČEVIĆ, *op. cit.*, p. 237.
[137] See 'the translation-oriented terminological entry' discussed in C. BESTUÉ, *A Matter of Justice: Integrating Comparative Law Methods into the Decision-making Process in Legal Translation*, in Ł. BIEL, J. ENGBERG, M. R. MARTÍN RUANO, V. SOSONI (eds.), *Research Methods in Legal Translation and Interpreting*, London, 2019, pp. 138–144.
[138] P. KUSIK, *Zastosowanie metod prawnoporównawczych w procesie tłumaczenia na przykładzie polsko-angielskiego przekładu terminologii z zakresu prawa rzeczowego*, cit., pp. 437, 439–440
[139] R. DE GROOT, *The Point of View of a Comparative Lawyer*, in *Les Cahiers de droit*, vol. 28, no. 4, 1987, pp. 798–800.

translation)[140]. Overall, the use of translational comparative legal analysis calls for flexibility that takes into account the context of a particular translation assignment.

It is worth emphasising that the schemes of intelligibility on which particular comparative law methods are based do not have to work independently and can be combined in many different ways[141]. Similarly, translational comparative legal analysis can potentially involve the combined application of different elements of comparative law methods in a way that is tailored to legal translation purposes. Coming back to the metaphor of a comparatist's 'pluralist toolbox'[142], it would be advisable for legal translators and LTS scholars to borrow comparative law tools from comparatists to a greater extent than before, seeking further possibilities of their adaptation for legal translation. This may also encourage the introduction of elements of comparative law methodology into legal translators' education to broaden their horizons with a comparative law perspective.

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[140] See Ł. BIEL, *Researching Legal Translation: A Multi-perspective and Mixed-method Framework for Legal Translation*, in *Revista de Llengua i Dret, Journal of Language and Law*, no. 68, 2017, p. 78.
[141] G. SAMUEL, *op. cit.*, p. 84.
[142] M. VAN HOECKE, *op. cit.*, pp. 28–29.

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