

Discussion Group on Comparative Constitutional Law and Theory

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**Lecture: Comparative law in constitutional adjudication:
creating a methodology for judges**

Date: Monday, 27.2.2023, 6:00 p.m.

Venue: Room 101-02, Sigmund Freud University
Freudplatz 3, 1020 Vienna



Comparative law in constitutional adjudication: creating a methodology for judges

Constitutional systems are interrelated, and legal ideas have increasingly been exchanged between different constitutional systems. Courts play a crucial role in this global dialogue: they are almost always inspired by and often cite foreign law in their decisions.

Legal scholarship agrees that, independent of whether a court dealing with constitutional issues cites foreign law often or sporadically, there is a total lack of methodology. This often results in the 'misuse' of comparative law, which in turn endangers the legitimacy of the courts and the whole function of comparativism in constitutional reasoning.

Therefore, this paper, presenting the results of my larger research project, establishes methodological standards for national and international judges on how to use comparative law in constitutional cases. The methodology is based on theoretical and empirical legal scholarship in the field, and the empirical research from my project including in-depth case analysis and interviews with judges and law clerks at

three different types of courts (American-type apex court, European-type constitutional court, international human rights court).

The methodology deals with various aspects, including the selection of the examined legal systems, documents, and cases; the ways and channels of access to information; the creation of research plans; the steps of the comparing procedure; etc.

Finally, the paper uses concrete cases from the case law of the analyzed courts and applies to them the developed methodology to see what the results of the decision would have been when using a consequent methodological approach.

Biography

Eszter Bodnár is an Associate Professor at the Faculty of Law of Eötvös Loránd University (ELTE) in Budapest, Hungary. She is also a faculty member in the Master in Electoral Policy & Administration program at the Scuola Sant'Anna, Pisa, and a Lecturer at the University of Victoria, British Columbia, Canada. She was a recipient of the Premium Excellency Postdoctoral Grant at the Hungarian Academy of Sciences, the Laureate Visiting Fellowship in Comparative Constitutional Law at the University of Melbourne, and the International Judicial Fellowship at the Federal Judicial Center, Washington, DC. She has gained teaching and research experience in Canada, Germany, France, the United States, the Czech Republic, Portugal, Italy, Greece, Austria, Latvia, Croatia, Romania, and Australia. She was an inaugural Co-Chair of the Central and Eastern European chapter of ICON-S (the International Society of Public Law). She is the Co-Editor of the first Hungarian commentary to the European Convention on Human Rights and the constitutional law textbook used by most Hungarian first-year law students. She graduated as a lawyer and afterwards worked at the Hungarian Ministry of Justice, the Hungarian National Election Office, and the Association of European Election Officials (an international NGO). Her main areas of research are comparative constitutional law, international human rights, and EU constitutional law.