

# Chapter 1

## Courts' Inquiry into Arbitral Jurisdiction at the Pre-award Stage: Introduction

### 1.1 Introduction

International arbitration has become the favoured method of resolving disputes between business partners in almost every aspect of international trade, commerce, and investment.<sup>1</sup> The resolution of a dispute by means of international arbitration provides the parties with an opportunity to resolve their disputes in a private, confidential, cost and time efficient manner before a neutral tribunal of their choice. However, if one was to pinpoint the single most important advantage of arbitration over litigation as means of resolving trans-border business disputes, it is the degree of certainty that the parties' agreement to arbitrate will be respected and the end result of the arbitration, the arbitral award, recognised and enforced almost anywhere in the world.<sup>2</sup> This is the great achievement of the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.<sup>3</sup>

From the perspective of the legal orders accommodating international arbitration within their borders, international arbitration constitutes, *inter alia*, a potentially not insignificant wealth generating resource. Accordingly, the majority of legal orders

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<sup>1</sup> It has been suggested that nearly 90 % of transnational contracts embrace an arbitration clause. See Meijer (1996), 86. The number of disputes referred to arbitration grows constantly. E.g. in 2004 561 new cases were filed with the ICC, 123 with the SCC (out of which 50 international), less than 100 with the LCIA (accounting for both international and domestic arbitration). In 2009 it was 817 (ICC), 215 (SCC) (out of which 96 international), 272 (LCIA). See 2008 Statistical Report in (2009) 20(1) ICC International Court of Arbitration Bulletin, 5; 2009 Statistical Report in (2010) 21(1) ICC International Court of Arbitration Bulletin, 5; Arbitration Institute of the Stockholm Chamber of Commerce SCC Statistical Report 2009; LCIA Director General's Report 2009.

<sup>2</sup> The enforceability of awards has been ranked as the single most important advantage by the highest number of respondents in the 2006 International Arbitration Study "International Arbitration: Corporate attitudes and practices". The study was conducted by Queen Mary, University of London in cooperation with PriceWaterhouseCoopers. It is available at [http://www.arbitrationonline.org/docs/IAstudy\\_2006.pdf](http://www.arbitrationonline.org/docs/IAstudy_2006.pdf).

<sup>3</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York, 10 June 1958, United Nations, *Treaty Series*, Vol. 330, 3.

strive to maintain the efficacy of international arbitration<sup>4</sup> in order to ensure and promote the attractiveness of arbitration as an alternative method of dispute resolution.

The 2006 International Arbitration Study<sup>5</sup> identified three major concerns for the participants in international arbitrations: expense of international arbitration, length of proceedings and national court intervention (which, among other things, also typically results in increased expenditure of time and costs). Responding properly to these concerns may positively impact on the status of international arbitration and further enhance its attractiveness as means of dispute resolution.

Challenges to arbitral jurisdiction have become a rather common practice in the international arbitration field.<sup>6</sup> At the same time, disputes pertaining to arbitral jurisdiction, i.e. in this context an ancillary dispute over the forum for resolving the primary substantive dispute, rank among the most complex ones. The resolution of such disputes may significantly delay the resolution of the parties' primary substantive dispute, increase overall dispute resolution costs and even whittle down the benefits of the parties' bargain to arbitrate.

Frequently a party resisting arbitration would chose to commence litigation over the claims allegedly subject to arbitration. In such a case the defendant in those proceedings would be given the opportunity to invoke the arbitration agreement as a defence to the court's jurisdiction and request the court to give effect to the parties' agreement to arbitrate. The claimant in the proceedings is likely to oppose to such a request and urge the court to affirm its jurisdiction to entertain the claims brought before it. The, often obstructive, jurisdictional skirmish at the outset of the proceedings concerning the substantive dispute between the parties has been on occasions described as the "*single greatest threat to the effectiveness of commercial, business-to-business arbitration today*".<sup>7</sup>

In principle, it is up to every legal order to decide how to address this threat and to determine the parameters of the court inquiry into jurisdictional objections. The New York Convention (Chap. 5) and other instruments of international law provide

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<sup>4</sup> See, e.g. Entwurf eines Gesetzes zur Neuregelung des Schiedsverfahrensrechts, Drucksache 13/5274, 12 April 1996, 1; Botschaft zum Bundesgesetz über das internationale Privatrecht (IPRG-Gesetz) vom 10. November 1982, Schweizerisches Bundesgericht, BBI 1983 I 263–519, 287; *West Tankers Inc v RAS Riunione Adriatica di Sicurtà SpA and others* [2007] UKHL 4 per Lord Hoffmann at [21]; Report on the Competitiveness of Paris as a Venue for International Arbitration to the Ministry of Justice and the Ministry of the Economy, Finance and Industry (Rapport sur Certains facteurs de renforcement de la compétitivité juridique de la place de Paris) by Michel Prada, the Honorary Inspector General of Finances, March 2011; Press release, O'Donoghue Publishes Bill Designed to Attract International Inward Investment to Ireland, 2 October 1997.

<sup>5</sup> 2006 International Arbitration Study: International Arbitration: Corporate attitudes and practices, 6–7.

<sup>6</sup> Gotanda (2001), 13; Redfern et al (2009), 344 para. 5.91; Hoellering (1998), 53.

<sup>7</sup> Graves (2012), 1.

only a limited guidance in this respect.<sup>8</sup> Moreover, the recent development in the EU suggests that the matter will remain within the sphere of each Member State.<sup>9</sup>

One of the concerns of virtually every jurisdiction in this respect is the finding of an optimal balance between the interests of efficacy and the interests of ensuring the legitimacy of the arbitration procedure and of the ensuing arbitral award. It follows from the consensual nature of arbitration (Chap. 3) that the court's jurisdiction to hear a particular dispute is displaced only if the arbitral jurisdiction can be established. Hence, the courts must, as a starting point, be competent to rule on their own jurisdiction, including any circumstances that might exclude it (i.e. the existence, validity and applicability of an agreement to arbitrate). Yet, the vast majority of legal orders nowadays also recognise arbitrators' power to rule on *their* own jurisdiction (Chap. 4).<sup>10</sup> This gives rise to an *inherent tension* between the jurisdiction of the courts to determine whether an agreement to arbitrate exists, is valid and applicable, and the ability of arbitrators to determine their own jurisdiction.

The parameters of the court inquiry into jurisdictional objections in proceedings as to the substance in which one of the parties invokes an agreement to arbitrate generally reflect the choice being made with respect to the optimal balance between efficacy and legitimacy outlined above. Thus, with some degree of oversimplification, legal orders which put a greater emphasis on ensuring the legitimacy of arbitration would generally require their courts to perform a thorough inquiry into the issues pertaining to the jurisdictional question and, possibly, to submit a broader range of issues to such an inquiry before giving effect to the parties' agreement to arbitrate. *Vice versa*, the interests of efficacy of arbitration may justify some concessions to the pursuance of the interests of legitimacy in order to ensure that the resolution of the jurisdictional dispute would not turn into a full-blown parallel litigation.

In principle, neither preference is obviously right, while the other is wrong. As has been noted by Briggs in his monograph on agreements on jurisdiction:

If there were a right answer to this conundrum, it would probably have been found long before now. The fact that lawyers can still fight over, and writers still ponder, these questions, trying to choose between purity and practicality, demonstrates that there is no easy and superior solution.<sup>11</sup>

The current research project departs from the proposition that the efficacy of international arbitration may nonetheless be enhanced at a minimised cost to the interests in legitimacy by finding a more optimal balance between the involved

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<sup>8</sup> See, in particular, Chaps. 2 and 5 at Sect. 2.1 et seq. and Sect. 5.1 et seq. respectively.

<sup>9</sup> Most recently see European Parliament legislative resolution of 20 November 2012 on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), COM(2010) 0748 – C7-0433/2010 – 2010/0383(COD).

<sup>10</sup> See, e.g. Holtzmann and Neuhaus (1989), 478, 508; Gaillard and Savage (1999), 395 para. 650; Redfern et al (2009), 345 para. 5.91.

<sup>11</sup> Briggs (2008), 478.

interests in court proceedings as to the substance, in which the courts inquire into the matter of arbitral jurisdiction as an incidental matter. The present study seeks, among other things, to provide a basis for finding such a balance and stimulate the debate as to how shall such a balance be struck (Chap. 9).

Although many works have been published on the topic of the review of the arbitrators' jurisdiction,<sup>12</sup> the majority of the works tend to generalise the issue and often fail to sufficiently distinguish between different situations and reflect the different solutions under different systems of applicable law. A more thorough analysis of case law is often missing. Accordingly, the current study seeks to fill this gap.

As indicated above, the analysis will focus on the review of the arbitrators' jurisdiction by the courts in proceedings as to the substance, where the arbitration agreement is relied upon by one of the parties, but contested by the other(s). This is a crucial stage in the arbitration process as at this stage it will be determined whether the parties are obliged to pursue the resolution of their dispute in front of an arbitral tribunal on the basis of their prior commitment to arbitrate. The assessment of the process of determining arbitral jurisdiction at the pre-award stage is, however, somewhat incomplete without the analysis of the opportunities for, and properties of, a post-award review. Ultimately, the efficacy of international arbitration depends on whether the ensuing arbitral award is capable of obtaining its intended effect. Nonetheless, the majority of controversies do not arise with respect to the power of national courts to finally decide on the arbitral tribunal's jurisdiction, but revolve primarily around the power of arbitrators to be the *first* judges thereof. Additionally, a high degree of uniformity exists in recognising and enforcing foreign arbitral awards due to the widespread recognition<sup>13</sup> and uniform application of the New York Convention. Accordingly, a detailed analysis of the methods for the determination of arbitral jurisdiction in the post-award stage will not be included. Some general considerations, particularly those likely to have a bearing on the determination made at the pre-award stage, will nevertheless be presented.

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<sup>12</sup> See, e.g. Samuel (1989); Schlosser (1992), 189; Dimolitsa (1999), 217; Cobb (2001), 313; Gotanda (2001), 11; Smit (2002), 19; III Barceló (2003), 1115; St. Germain (2005), 523; Bachand (2006), 463; Park (2007), 56; Gaillard and Banifatemi (2008), 257; Kawharu (2008), 238; Zadkovich (2008), 1; Brekoulakis (2009), 237; Jones (2009), 56; Susler (2009), 119; as well as other materials cited *infra*.

<sup>13</sup> See *infra* at Sect. 4.5.2.1, para. 1.

## 1.2 Formulation of Research Question, Introduction to the Choice of Legal Method

The overarching research question is formulated as follows: How do courts of different legal orders inquire into the matter of arbitral jurisdiction in proceedings concerning the substantive dispute in which one of the parties invokes an agreement to arbitrate as a bar to the courts' jurisdiction over the dispute?

The present research project will seek to answer this question by means of deploying a comparative legal method. The approach taken to the comparison is largely utilitarian. The method is deployed to study the existing solutions in order to:

1. Obtain a better understanding of the legal rules concerning the issues under scrutiny and their application,
2. Ascertain existing similarities and differences between the solutions,
3. Critically evaluate the solutions in terms of efficacy and legitimacy,
4. Find a more optimal balance between efficacy and legitimacy.

The choice of the legal method was guided by the following considerations:

*Firstly*, comparison is an instrument of research, which is both flexible and capable of extension to any kind of problem which may be under investigation.<sup>14</sup> The practice of law in international commercial arbitration uses comparative procedure on a daily basis.<sup>15</sup> It is employed, *inter alia*, in contract formation in order to decide which law should be applied to the contract and to the arbitration clause contained therein and in the process of designating a seat of arbitration and in deciding on the procedural rules to apply to arbitration. Hence the choice of method also reflects the methods most commonly deployed in the field.

*Secondly*, international commercial arbitration, as the term indicates, is a transnational discipline and should be studied by employing methods suitable in the view of its transnational character.<sup>16</sup> This becomes even more apparent upon a reference to the question under scrutiny:

An international commercial dispute will usually be subject to the jurisdiction of at least two different courts.<sup>17</sup> Accordingly, it will be, in principle, insufficient for an arbitration agreement to be recognised in one country only. Since one of the purposes of an arbitration agreement is to displace the courts' jurisdiction and to establish arbitral jurisdiction, such exclusion must be absolute and not limited to the courts of one jurisdiction.<sup>18</sup> If it was to be otherwise, the purpose of arbitration could be easily defeated.

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<sup>14</sup> Gutteridge (1946), 26.

<sup>15</sup> Epstein (2001), 917.

<sup>16</sup> Similarly Barceló (2003), 1116.

<sup>17</sup> See, e.g. Graves (2012), 10; in the EU context see also Carducci (2011), 177.

<sup>18</sup> See also Working Group on International Contract Practices (New York, 6–17 February 1984), 'Model law on international arbitration: territorial scope of application and related issues: note by

By its definition, international effectiveness of arbitration agreements is easiest to achieve by means of international harmonisation. A comparative study enables the synthesis of the approaches adopted in different legal orders and thereby enhances the chances any such international harmonisation would be capable of being transposed in the majority of them.

## 1.3 Method of Inquiry

### 1.3.1 Use of Comparative Method

As indicated above, the present research project will seek to answer the overarching research question by means of deploying a comparative legal method. In general, a method is accounted for as “*sets of rules of proceeding that determine what actions must be undertaken in order to achieve given aim*”.<sup>19</sup> Lando defined “*comparative method*” as “*the technique one uses to collect information on foreign law, to present foreign law and to make comparisons between legal systems*”.<sup>20</sup> Bogdan noted that this method does not consist of one particular technique, but rather a number of different techniques.<sup>21</sup> Accordingly, it will be more appropriate to speak of “*comparative methods*” rather than a single method. In the view of this plurality, it is necessary to further define what is understood by the term “*comparative method*” for the purpose of the present study.

The essence of comparative law is comparison.<sup>22</sup> A comparison entails placing comparable elements against each other to determine their similarities and differences. Thus the necessary prerequisite to any comparison is to (1) define comparable objects for comparison, (2) select foreign legal orders compared and (3) identify and organise the sources and materials used to ascertain the similarities and differences.<sup>23</sup>

Upon identifying the objects of comparison, selecting foreign legal orders and identifying and organising sources and materials, the aim of the comparison<sup>24</sup> will be pursued in three stages: firstly, the legal solutions to the problem will be described in each of the compared jurisdictions. Knowledge of foreign law is

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the secretariat’ in *Yearbook of the United Nations Commission on International Trade Law, 1984, Volume XV* (1984), 228 para. 18.

<sup>19</sup> Stelmach and Brožek (2006), 10.

<sup>20</sup> Lando (1966), 24.

<sup>21</sup> *Ibid.* 24.

<sup>22</sup> *Ibid.* 57.

<sup>23</sup> Similarly, Gutteridge identified three main questions calling for consideration when pursuing a comparative analysis: subject-matter of comparison, sources and materials. See Gutteridge (1946), 73–87. Similarly also De Cruz (1999), 235–239.

<sup>24</sup> See *supra* at Sect. 1.2, para. 2.

perceived as an indispensable perquisite to comparison.<sup>25</sup> Secondly, the similarities and differences between the solutions will be identified. Thirdly, the similarities and differences will be critically evaluated and suggestions on the possible ways forward will be made. In comparative research these three stages of comparative research, labelled by Kamba as descriptive, identification and explanatory,<sup>26</sup> are not necessarily distinctly separated.<sup>27</sup> Rather, as in the present case, they are to some extent intermingled into the same discussion.

### 1.3.2 *The Object of Comparison*

The objects of the comparison must share a common characteristic (referred to as *tertium comparationis*—a common point of reference). For the purpose of this thesis the *tertium comparationis* is function.<sup>28</sup> From this methodological principle follows not only the choice of the legal rules to be compared, but also the scope of the comparison.<sup>29</sup> Moreover, function will also serve as a criterion for evaluation.<sup>30</sup> Thus the better of several laws is the one which fulfils its function better than the others.

Here, function is used to refer to the concept of “*equivalence functionalism*”.<sup>31</sup> This concept of function appears basically in all kinds of comparative functionalism.<sup>32</sup> It revolves around the proposition that different elements can respond to the same problem, rather than the idea that solutions must be inherent in the problems. Thus similar institutions can fulfil different functions in different societies in different times and similar needs can be fulfilled by different institutions.<sup>33</sup>

Accordingly, in defining the object of the comparison, it will be explored to which degree there are or are not functional equivalents in the legal systems under comparison (Chap. 2).<sup>34</sup> The choice will be made in favour of the rules which are intended to deal with the same problem.<sup>35</sup> That is, in the present case, the situation (“*the problem*”) in which one of the parties brings substantive proceedings in a court with respect to a matter that is allegedly subject to an arbitration agreement. In other words, what is compared is how the, subsequently selected, legal orders

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<sup>25</sup> Similarly also Reimann (2002), 675.

<sup>26</sup> Kamba (1974), 511–512. See also De Cruz (1999), 233–234.

<sup>27</sup> See also Kamba (1974), 512.

<sup>28</sup> See also Zweigert and Kötz (1987), 31; Bogdan (1994), 59–60; Reimann (2002), 679.

<sup>29</sup> Zweigert and Kötz (1987), 31. Similarly also Zweigert (1972), 466.

<sup>30</sup> Michaels (2008), 383.

<sup>31</sup> *Ibid.*

<sup>32</sup> See, e.g. Salomon (1925), 33; Esser (1956), 354 et seq.; Zweigert (1966), 5.

<sup>33</sup> See more Michaels (2008), 356–359.

<sup>34</sup> Similarly also Reitz (1998).

<sup>35</sup> See also Bogdan (1994), 40.

deal with a comparable factual situation. In doing so, the emphasis will be put on the effect of the legal rules, i.e. the judicial decisions as responses to similar factual situations.<sup>36</sup>

### 1.3.3 *Choice of Legal Orders for Comparison*

A basic precondition of any meaningful comparison is the possibility to obtain accurate and up-to-date information on the legal rules and their application.<sup>37</sup> Hence, although, ideally, the following comparative study would cover the legal orders of all the New York Convention's Contracting States, prudence demands that the number of legal orders placed under comparison is limited.<sup>38</sup> Such limitation shall be, in principle, feasible without defeating the purpose of the comparison. Indeed, the value of comparison shall not depend on the number of systems submitted to investigation.<sup>39</sup>

The choice of the legal orders for comparison has been made in *two stages*. In the first stage, the pile of potential candidates for comparison has been limited with the view of enhancing the chances of obtaining sufficient quantity and quality of materials suitable for comparison and achieving internal coherence of the study. In the second stage, a choice has been made between the potential candidates with reference to a modified theory of legal families.

Firstly, since references will be made throughout this study to the arbitration framework in the EU and EFTA,<sup>40</sup> the pile of the potential candidates for comparison was first limited to the EU and EFTA Member States (31 States in total). Subsequently, the pile was limited to legal systems with a well-developed arbitration practice.

Indicators used for the conclusion that a particular country has a developed arbitration practice include location of leading international arbitration centres, frequent choice of the country as a seat of arbitration, recent adoption of modern arbitration statutes, developed international arbitration scholarship and a significant amount of published case law.

Secondly, the choice among the remaining candidates has been made by reliance on a modified version of the theory of *legal families*.

The theory of legal families seeks to provide an answer to the question of whether it is possible to divide the vast number of legal systems into just a few large groups, referred to as legal families, based on their similarities and

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<sup>36</sup> Similarly also Michaels (2008), 2.

<sup>37</sup> Bogdan (1994), 40.

<sup>38</sup> Similarly see also Gutteridge (1946), 74.

<sup>39</sup> *Ibid.*

<sup>40</sup> European Free Trade Association.



relationship.<sup>41</sup> Such classification is, by its nature, macro-comparative since it deals with comparison of entire legal systems,<sup>42</sup> rather than individual legal rules, institutions and concepts.

The use of legal families is, however, not limited to macro-comparative law. For example, Husa expressed that benefits of legal families can be methodologically connected with the micro-level research of comparative law. In a nutshell, his propositions can be summarised as follows: a legal family is perceived as Max Weber's "*ideal type*"<sup>43</sup>; i.e. as a methodological term which "*refers to the construction of certain elements of reality into a logically precise conception*".<sup>44</sup> Thus an ideal-typical legal family assembles the most descriptive and fundamental characteristics of a particular ideal type. Accordingly, in this light, a legal family is mainly a conceptual and theoretical tool to outline the core content of a foreign legal system.<sup>45</sup> Hence from a methodological perspective, legal families concern the conditions required for the interpretation and understanding of foreign law from an outsiders point of view.<sup>46</sup> Accordingly, in the process of micro-comparison a real legal system may be compared to a legal family as construed in macro-comparative law. That is, in practice a foreign legal order may be approached with the guidance of a preliminary pre-perception. This pre-perception gives grounds for subsequent description of similarities and differences and lessens the challenge presented by interpretation of foreign law.

Moreover, Zweigert and Kötz noted that the practical effect of the theory of legal families on a comparative lawyer's task is that one or two legal systems may, under certain conditions, be chosen to serve as a representative of the whole legal family.<sup>47</sup> In passing that remark, the authors were undoubtedly referring to a classification based on macro-characteristics. Indeed, they subsequently proceeded to classify the legal orders of the world based on the criterion of juristic style of the legal system.<sup>48</sup> However, the underlying idea can be easily transposed to the present context and serve to guide the choice of representatives for comparison.

Comparative lawyers have presented a great variety of different propositions as to how to classify or group the legal systems of the world.<sup>49</sup> However, any such

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<sup>41</sup> Zweigert and Kötz (1987), 67; Armnjon et al. (1950).

<sup>42</sup> Husa (2001). For a definition of macro- and micro-comparison see also Bogdan (1994), 227–228; De Cruz (1999), 57.

<sup>43</sup> Roth and Wittich (1978), 18–22.

<sup>44</sup> Husa (2001), 4, citing Gerth and Mills (1993).

<sup>45</sup> Husa (2001), 7.

<sup>46</sup> *Ibid.* 4.

<sup>47</sup> Zweigert and Kötz (1987), 64. Similarly, Gutteridge expressed that the difficulties associated with diversity of legal orders may be surmounted by the selection of one system of law from a group of kindred systems. Gutteridge (1946), 74.

<sup>48</sup> Zweigert and Kötz (1987), 69.

<sup>49</sup> See also Husa (2004).

classification is dependent on the point of time when it is construed and on the criteria used for the classification.<sup>50</sup> Accordingly, all classifications are necessarily relative.<sup>51</sup> While traditional classifications<sup>52</sup> have been criticised for being outdated, there appears to be no consensus as to how the legal systems of the world ought to be grouped.<sup>53</sup> Yet, even if such consensus existed, any such classification would hardly be suitable for the purpose of the present project since, as was outlined above, the division of legal systems into legal families normally relies on the legal systems' macro-characteristics.

Thus instead, the methodological toolbox of macro-comparative law will be deployed to group the legal orders of the world with a specific—micro-comparative—purpose. The methodological tool here is the use of certain criteria for the selection of “*some features out of an endless diversity*” and discarding other features which are “*considered peripheral from the point of view of typical features*”.<sup>54</sup>

The major distinctive feature between legal families, as described above and the grouping which will follow is that the subsequently carried out grouping will turn on a single micro-characteristic rather than a multiplicity of macro-characteristics. Consequently, the following grouping will be by definition relative as it will turn on a single criterion. In the present constellation, such relativity is tolerable since the grouping does not aim to provide a generally applicable classification of the legal systems of the world, but is carried out with a specific view.<sup>55</sup>

This *single criterion* used for the grouping is whether priority is granted to arbitrators to determine the question of their jurisdiction. That is, whether the courts limit their scrutiny of the matter of arbitral jurisdiction in proceedings as to the

<sup>50</sup> *Ibid.* 14. See also Zweigert and Kötz (1987), 66, 68.

<sup>51</sup> Husa (2004), 15.

<sup>52</sup> E.g. René David's classification of the genuine legal families into Romano-Germanic, common law and socialist law. He further mentioned Hindu Law, Jewish law, law of the Far East and African Law. See David (1969), 22–33. Similarly, Zweigert and Kötz presented the classification of the legal orders of the world into Romanistic, Germanic, Nordic, Common Law, Far East, Islamic and Hindu. See Zweigert and Kötz (1998), 63–73. In the older editions of the book the Socialist legal family was also mentioned. See Zweigert and Kötz (1998), 69. Bogdan divided legal systems into English law, American Law, French Law, German Law, The Socialist Legal Systems, Chinese Law and Moslem Law. See Bogdan (1994), 101 et seq.

<sup>53</sup> For more recent classifications see, e.g. Mattei (1997), who classified legal systems according to their type of norms: the rule of professional law, the rule of political law, the rule of traditional law; the dynamic classification by metamorphosis based on neutral “strengthening/weakening” qualities resulting into three different types of cultural spheres: Western, non-Western and hybrid. See also Husa (2004), 25.

<sup>54</sup> Husa (2001), 5. For example, Bogdan randomly mentions criteria such as substantive contents of the legal rules, formal characteristics such as the hierarchy of sources of law, legal concepts and legal terminology. Bogdan (1994), 83.

<sup>55</sup> See also Bogdan who expressed that the classification is not an end in and of itself but is conducted for a particular purpose. He also admitted that a division which is appropriate for one purpose may not be useful in another connection. *Ibid.* 85.

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