

PART I

INTRODUCTION TO THE PROJECT¹

CHAPTER 1

Burkhard Hess

<https://www.cplj.org/publications/1-1-introduction-to-the-project>

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¹ Text presented at the Final Conference on 11 July 2024, enlarged by footnotes and cross-references.

1 THE PROJECT'S AMBITION

- 1 Where does procedural law stand in the first half of the 21st century? What has happened and what have we experienced during the last 25 years? What is likely to happen in the years to come? To what extent have political, economic, technological, and societal developments of the last decades impacted on dispute resolution? Is it possible today to look scientifically at procedural law and dispute resolution from a global perspective as we are living in an era of globalization? What are the core values underlying dispute resolution? What are its different fields ranging from litigation to arbitration and other forms of dispute settlement? What are the techniques applied? These issues relate to the main questions CPLJ wants to answer.
- 2 CPLJ is a project of comparative law. Its basic ambition is to understand (and to learn) how procedural law and dispute resolution operate today in the different parts of the world. This objective corresponds to the traditional ambition in comparative law to establish a taxonomy of a specific field, cf R Miller CPLJ webinar no 9, available here. An additional assumption is that some basic concepts and methods of dispute resolution are spreading around the globe and are influencing many jurisdictions. However, local habits (often denominated as 'cultural factors') may also modify or even block international trends from being adopted. The tension between the local and the global is a very important characteristic of the present procedural landscape. Yet, globalisation entails that national systems must adapt to the growing competition in dispute resolution. Nevertheless, adaptation is always a matter of degree. Regionalism and economic integration are important frameworks and drivers in modern dispute resolution, too.
- 3 A major ambition of the project is to reveal significant trends in contemporary dispute resolution, I would like to mention some of them: The quest for procedural fundamentals rights guaranteeing a fair and speedy trial; the quest for proportionality in civil litigation; the rise of collective litigation, the differentiation of dispute resolution caused by the advancement of arbitration, alternative dispute resolution and consumer ADR as alternatives to court proceedings; the impacts of digitalization on dispute resolution; private and public funding of litigation; the growing competition within and between national jurisdictions in dispute settlement. Recently, litigation has also become a means of judicial warfare in the hostile world of today.²
- 4 The biggest challenge of contemporary dispute resolution is the digitalization of societies, economies and public administrations.³ At this juncture, the digitalization of dispute resolution is part of a general development transforming legal systems in general. Yet, the degree of the development is very very different around the globe and even in the various regions reviewed. In Africa, digitalization has not yet become a topic

² K Mehtiyeva, 'Civil Procedure and International Sanctions' (2023) 13 IJPL, 270 ff.

³ Cf CPLJ, pt IX: Digital Revolution and Procedure, especially ch 1 (K Benyekhlef).

for most of the region, whereas in Europe, China and Singapore, it has become a general trend. Again, this does not entail any value judgment, as there are already some promising pilot projects in Africa while some Member States of the EU are lagging considerably behind when it comes to digitalization.⁴

- 5 While I was very much forward looking when describing the ambition of our project, I would now like to look back for a moment: Is CPLJ the first project addressing comparative civil procedure? In this regard, one must refer to the International Encyclopedia of Comparative Law⁵, a still unfinished multi-volume project under the auspices of the International Association of Legal Science. There, a specific volume (XVI), edited by the late Mauro Cappelletti⁶, addresses civil procedure. This volume was closed when the last subchapters were published in 2010⁷ and 2012.⁸ The elaboration of Volume XVI lasted from 1973 to 2012 and it has become a very valuable and often quoted reference in comparative procedural law. However, some important developments could not be foreseen, such as the end of the cold war, the rise of ADR and collective redress as well as the digitalization of dispute resolution.⁹ Other parts of volume XVI had become outdated like the chapter on arbitration in socialist countries or on 'civil procedure in developing countries'.¹⁰ In 2012, the still missing chapters disappeared from the table of contents. At present, there is no comparable treatise on comparative civil procedure although the general treatises on comparative law usually also address procedural law. The only available textbook on comparative civil procedure is edited by O Chase and H Hershkoff¹¹ – it is authored by scholars from different parts of the world who participated in Oscar's famous seminars on comparative civil procedure at NYU.¹²
- 6 In addition, there is a strong tradition of comparative civil procedure in learned societies. The most topical in this regard is the International Association of Procedural Law (IAPL). Since its foundation after the 2nd World War, it conducts comparative research in all areas of dispute resolution.¹³ The activities of IAPL have been expanded over the years and its members have created a global network for collaboration and exchange in

⁴ Cf European Scoreboard 2023, 32 ff, https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en accessed 25 July 2024.

⁵ Editors in chief were Konrad Zweigert and Ulrich Drobnig. Today, the published parts of the Encyclopedia are available online via Brill, <https://referenceworks.brill.com/display/db/ieco> accessed 25 July 2024.

⁶ M Cappelletti and B Garth, International Encyclopedia of Comparative Law (IECL), Vol XVI (1982 Brill | Nijhoff) ch 1, Introduction – Policies, Trends and Ideas in Civil Procedure.

⁷ M Taruffo, IECL vol XVI (2010 Brill | Nijhoff), ch 7, Evidence.

⁸ A Zeuner and H Koch, IECL vol XVI (2012 Brill | Nijhoff), ch 9, Effects of Judgments (Res Judicata).

⁹ M Taruffo, IECL vol XVI, ch 7, Evidence, 2010, para 61 ff, addresses 'computer evidence'.

¹⁰ This chapter was never written.

¹¹ O Chase and H Hershkoff (eds), *Civil Litigation in a Comparative Context* (2nd ed, West Academic Publishing 2017).

¹² From a perspective of Latin America cf recently V Pasqualotto, *Proceso civil comparado* (Palestra Editores, Lima 2023).

¹³ Cf E Oteiza, *International Association of Procedural Law. Indicators, Evolution and Projections, Essays in Honour of Loic Cadiet* (Paris 2023) 1163 ff.

comparative procedural science.¹⁴ Here comparison is primarily conducted from the perspective of procedural law and functionalism, although the methodology of comparative law has been a recent topic.¹⁵

2 THE RESEARCH FIELDS OF CPLJ¹⁶

- 7 Since 2020, 16 parts of CPLJ have been elaborated by the different teams. They address core research topics of contemporary procedural law. In addition, four overarching axes establish the foundations of CPLJ and entail macro- and micro-analyses of comparative procedural law. These axes correspond to the core issues of procedural law and adjudication. Notably, they tackle: (1) the unfolding of the proceedings (including enforcement); (2) the organization and authority of the courts; (2) the rule of law in civil procedure; and (4) cultural divergence and convergence in civil litigation. They are addressed by the different parts of the project.

2.1 The Unfolding of the Proceedings

- 8 Civil procedure rules mainly regulate how a case is brought to court, how it is investigated, how it is argued, how it is decided and how the judgment is enforced, unless it is appealed. In doing so, these rules distribute power in different ways amongst the parties, the judges, the lawyers, and the political authorities that house the courts and the enforcement machinery. In turning disputes over to a neutral third party for resolution, the litigating parties give up their control of the dispute in exchange for peace and resolution. At a micro-level, procedural rules attribute power to each of the players by determining who gets to do what in litigation; in some instances, they will equilibrate power disparities while in others, they maintain existing power hierarchies. At a macro-level, the question of who gets to make these rules (parliament, government, agencies, courts themselves or in cooperation with legal professions) and who gets to enforce them involves a delicate allocation of powers among different branches of government.¹⁷ Furthermore, private ordering may provide for ADR schemes operating outside of the court system.¹⁸ Different power distributions will be examined in the diverse legal and political environments. For example, in many systems, the private or public nature of civil procedure and dispute settlement is subject to debate.¹⁹

¹⁴ The IAPL organizes world congresses every four years and yearly symposia in different countries. Most publications of the World Congresses and other colloquia are available open access at the website of IAPL: <https://www.iapl.org/biblioteca/> accessed 25 July 2024.

¹⁵ Especially in the summer schools of the IAPL, cf L Cadiet, B Hess, M Requejo Isidro (eds), *Approaches to Procedural Law – The Pluralism of Methods* (Baden-Baden, Nomos – MPI Luxembourg, 2017).

¹⁶ This subchapter follows closely the original description of CPLJ (2019).

¹⁷ Cf pt II of CPLJ: Organization of Civil Justice and Judicial Independence.

¹⁸ Cf pt XV of CPLJ: Consensual Dispute Resolution and Arbitration.

¹⁹ A Uzelac and C H Van Rhee (eds), *Public and Private Justice – Dispute Resolution in Modern Societies* (Antwerpen – Oxford, Intersentia, 2007); B Hess, *The Private-Public Divide in International Dispute Resolution*, RdC 388 (2018) 49 ff.

2.2 The Organization and Authority of the Courts

- 9 The definition of the overall parameters of a court's authority (meaning its organizational structure, including its jurisdictional rules, as a subset area of civil procedure) contributes to the delimitation of the political power in any given State. A genuine element of a court is the independence and impartiality of the judges only subject to the applicable law.²⁰ Jurisdictional rules define the State's right to exercise coercive power over parties or the subject matter of a dispute.²¹ Thus, a comparative evaluation of the organization of the court not only adds insight as to how each society approaches the protection of individual basic rights and powers, but it also helps to understand the project of State-building. This situation is particularly exacerbated in critical situations of transitional justice when claims for restitution and compensation of historic wrongs are brought in the civil courts.²²
- 10 As enactments of the State, adjudicative bodies are symbolic and (eventually) physical messages of the power of the State. Today, these symbolic messages are changing across the world: the manifestation of the judiciary in society is no longer solely demonstrated by the court building in the city centre, but equally by the courts' presence in social media and the internet.²³ Furthermore, the way in which proceedings are conceived largely depends on the qualification of judges and the organization of courts. As such, it is necessary and important not only to identify and examine the text of procedural norms but also to evaluate the organization of the judiciary itself. A second axis of the project will be the role of civil courts and of procedural rules in the context of State-building.

2.3 The Rule of Law in Civil Procedure

- 11 Rules on how to litigate are driven by technical constraints of efficiency, predictability and consistency.²⁴ Procedural law, and particularly the notion of procedural justice, acquires its legitimacy precisely from perceptions of its neutrality, rationality, and ability to curb individual and political discretion. 'Fairness' and 'rationality' are presumed to rise beyond local particularities of time and place. The third theme of the project relates to the 'rule of law', that is, to what extent procedure rules can be understood as operating beyond a given time and place, so as to be binding even on the political authorities that enact the law. This process has also been described as 'constitutionalisation'.²⁵ An

²⁰ Cf pt II of CPLJ: Organization of Civil Justice and Judicial Independence.

²¹ Cf pt V of CPLJ: Jurisdiction and venue of the court.

²² R Bejarano Guzmán, P Moreno Cruz, M Rodríguez Mejía (eds), *Reconciliación y Derecho Procesal*, Bogotá, Universidad Externado de Colombia (2016); L Cadiet, 'Justice transitionnelle et droit processuel' (2017) 7 *IJPL / RIDP*, 325 ff.

²³ M A Damaska, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (Yale University Press 1986); J Resnik and D Curtis, *Representing Justice* (Yale University Press 2011) 154 ff; B Hess and A Koprivica Harvey (ed), *Open Justice* (Nomos 2019) 9, 16 ff; B Hess, *Judicial Communications in the Digital Age*, Liber Amicorum L Cadiet (2023) 729 ff.

²⁴ Cf pt VII of CPLJ: Structure of Civil Litigation.

²⁵ Cf pt IV of CPLJ: Constitutionalization and Fundamentalization of Civil Procedural Guarantees and Principles.

important aspect in this regard relates to the values of judicial independence and impartiality.²⁶ Closely related are questions of how national systems ensure the ‘rule of law’ linking State constitutions and domestic procedural rules. Further links can be found between domestic procedural rules and international standards of human rights.²⁷

2.4 Divergence and Convergence in Civil Litigation

- 12 The fourth overarching theme addresses the extent to which procedural laws diverge, are ‘converging’ and what kinds of legal transplantation have taken place in recent years. In the present era of globalization, there is a need for harmonizing procedural rules, a process which has multiple aims including that of preventing parties from forum shopping in transnational disputes.²⁸ How will judges cooperate in these distinct legal spheres, presupposing an integrated global legal system? Notably, the EU has coordinated and even harmonized conflicting or inconsistent procedural rules across its Member States.²⁹ The fourth axis of the CPLJ project thus examines the effects of legal transplantation in procedural law,³⁰ the limits and scope of procedural harmonization, as well as other ways in which rules might converge (e.g. through spillover effects of ECJ case law). These questions also encompasses the influence of global movements such as alternative dispute resolution (ADR)³¹, including the spread of commercial arbitration, and collective litigation.³² Any effort to understand today’s new global system must acknowledge the interaction between global legal transplantation and the assertion of local culture and national sovereignty.

3 THE INFRASTRUCTURE OF THE PROJECT

3.1 CPLJ as a Core Project of the MPI Luxembourg

- 13 Originally, CPLJ was conceived as a project of the former Max Planck Institute for Procedural Law in Luxembourg. The Luxemburgish Fonds National de la Recherche (FNR) made the project possible by awarding an Advanced Grant of 740,000 EUR to Burkhard Hess in 2019. The initial idea was to use the resources (especially the library) of the MPI and to involve the staff of the Department for European and Comparative Procedural Law as much as possible for the project. In 2020, when the project started, 15 teams of 5 – 8 scholars from different jurisdictions were constituted that addressed the different

²⁶ Cf pt II of CPLJ: Organization of Civil Justice and Judicial Independence.

²⁷ G de Vergottini, *Oltre il dialogo tra le corti* (Bologna, Il Mulino 2010).

²⁸ It must be noted that ‘forum shopping’ is not unethical *per se* but corresponds to a legitimate tactic in a (globalized) world composed of differently organized justice systems, cf pt XIV of CPLJ: Cross-Border and International Dimensions.

²⁹ F Gascón Inchausti, ‘Prozessrechtsvergleichung in der Europäischen Union’ in B Hess (ed), *Insolvenzrecht-Prozessrechtsvergleichung* (Giesecking 2017) 111 ff, B Hess, *Europäisches Zivilprozessrecht* (2nd ed, de Gruyter 2020) ch 3–11.

³⁰ A Watson, *Legal Transplants* (2nd ed, University of Georgia Press 1993), mainly addressing the influence of Roman law.

³¹ Cf pt XV of CPLJ: Consensual Dispute Resolution and Arbitration.

³² Cf pt X of CPLJ: Collective Litigation.

themes of the project in their respective segments. In each team, a research fellow of the MPI was to act as a liaison person to the Institute. Three conferences at the Institute had been planned with the intention of convening the participants together. Already in May 2019, Enrique Vallines García had joined the MPI and extensively coordinated the different teams. The IT department of the MPI developed a platform to facilitate online cooperation within the teams of the project. The Scientific Advisory Board³³ met in October 2019, before the project started officially in spring 2020. By December 2020, more than 100 researchers from 37 jurisdictions³⁴ had joined the 15 working teams of CPLJ.³⁵

3.2 Comparative Research During Covid-19

- 14 In spring 2020, the outbreak of the global pandemic changed the working environment dramatically. The opening conference, foreseen for spring 2021, could not take place onsite in Luxembourg. Instead, the Institute organised a multitude of webinars where experts in procedural law and related disciplines (like economics, history, anthropology) explained their methodological views of specific themes in comparative procedural law which had been originally foreseen to occur in segments 1 and 2 of the project.³⁶ These webinars started in December 2020; they took place every month, usually on Friday afternoon with two lectures of 30 minutes, each followed by a discussion.³⁷ For the participants of CPLJ, the webinars offered an opportunity to start discussions among the

³³ Members of the Scientific Advisory Board are Oscar G Chase (USA), Vivian Curran (USA), Hazel Genn (England), John Haley (USA), Moon-Hyuck Ho (Corea), Eduardo Oteiza (Argentina), Fausto Pocar (Italy), Paul-Gérard Pougué (Cameroun), Judith Resnik (USA), Rolf Stürner (Germany), Maciej Szpunar (Poland), Janet Walker (Canada). Many members of the Advisory Board gave presentations in the online webinars or participated actively in the teams.

³⁴ See the Overview in Annex A.

³⁵ Initially, CPLJ was comprised of 18 segments. However, the two first segments on methodology and interdisciplinary topics were presented as webinars during Covid-19.

³⁶ Eventually, the webinars replaced the former Segments 1 and 2 of the project. Most of them will still be available via the CPLJ website; CPLJ also makes the written texts of many chapters of the methodological and interdisciplinary parts available.

³⁷ The following topics were addressed: 4 December 2020: V Curran, Methods of comparative law applied to procedural law; R Stürner, Legal families in comparative procedural law - a valid approach? 15 January 2021: H Muir Watt, Beyond Compare or Beyond the Pale? Comparative Law in the Age of the 'Post-'; T Ruskola, Acts of Comparison, Political and Ethical. 16 March 2021: O Chase, Comparative procedural law and culture; F Pocar, Comparative procedural law: a view from practice. 7 May 2021: J Resnik, Puzzling about Trans-procedural Substantive Norms across Time and Domains; M-C Foblets and H Elliesie, Extrajudicial Dispute Resolution in Europe: Anthropological Insights on the Impact of Religion and Tradition. 4 June 2021: R Michaels, Decoloniality and Comparative Civil Procedure; J Haley, Historical and Political factors Influencing Dispute Resolution. 2 July 2021: B Deffains, Comparative procedural law and economics; R v Rhee, The use of foreign models of civil procedure in national law reform: 'Lessons' from History? 21 October 2021: S Ali, Transcending Generalisations in Comparative Law Research - East Asian, Perspectives in a Global Context; E Oteiza, Who knew only his Bible knew not his Bible: Thoughts from Latin America. 28 January 2022: J Dashaco, Harmonization of Simplified Debt Recovery Procedures in the OHADA Sub-Region: Appraisal of 'Injonction de Payer' Procedure under the Uniform Act and the Common Law Undefended List Proceedings; S Bostanji, Droit judiciaire privé comparé: regard général sur les droits des pays arabes 1 April 2022: R Miller, Comparing Comparisons: A survey of approaches to Comparative law

members of the project. The nine webinars on methodological and interdisciplinary themes continued until February 2022.³⁸ They were a very important and successful part of the project.³⁹

- 15 As I already mentioned, the kick-off conference had equally to be transformed into an online conference. It took place in several webinars between 19 February and 5 March 2020. Each team presented an outline and first reflections regarding their part; the respective proposals were discussed by all participants. After the kick-off conference, the teams continued meeting and working online on their segments/parts.⁴⁰ The editors organized individual online meetings with the teams. In March 2023 the teams presented first findings and results at the mid-term conference.⁴¹ This conference was organised as an onsite event at the MPI. For many teams, it was the first opportunity to meet personally as a group. In the meantime, other teams had already met personally, either in Luxembourg or elsewhere. Again, the FNR Luxembourg generously supported these meetings by funding an additional series of conferences at the MPI⁴² where the teams presented and discussed first results with the researchers and guests of the Institute.⁴³ This lecture series was organized as a hybrid event.

3.3 The Transfer of the MPI to the University of Luxembourg

- 16 After the start of CPLJ, the working atmosphere at the MPI deteriorated continuously, primarily because of difficulties in the management of the administration and of tensions with the Max Planck Society (MPG). Soon, the Institute became a topic of press articles as people were complaining about the internal situation. Finally, the Max Planck Society and the government of Luxembourg agreed on a transfer of the Institute to the university by July 2026. This was when the directors of the MPI decided to leave the Institute as

³⁸ Most of the presentations can be accessed via the website of CPLJ, available here. Written versions of some presentations are found in pt 1 of CPLJ, available here.

³⁹ Covid-19 also accelerated the digitalization of civil procedure around the globe, cf CPLJ, pt IX ch 4 (F Gascón Inchausti).

⁴⁰ The original designation was segment. Later, the co-editors decided to rename the segments into parts to make the project better understandable.

⁴¹ This was a critical phase of the project as personal meetings of the teams were not possible. In addition, the participants could not travel to the MPI Luxembourg for research stays. Direct online access to the resources of the library was not possible because of the limitations of copyright licences.

⁴² FNR-RESCOM/2022/LE/17576191.

⁴³ The following lectures were given at the Institute: 10 January 2023: L Passanante, Judicial Precedent in Comparative Perspective; 19 January 2023: S Dodson, The Culture of Forum Shopping: a View from the United States; 27 January 2023: F Pocar, International Civil Procedure and National Procedural Reforms: Considerations in Light of the Italian Experience; 27 March 2023: N Alexander, Comparative Mediation Law in the EU: an Analysis of Developments in Mediation Law Applicable to Cross-Border Commercial Disputes in Light of the UN Convention on International Settlement Agreements Resulting from Mediation; 17 May 2023: S Ali, Advancing Community Dispute Prevention in Multilateral Infrastructure Development; 12 June 2023: A Gonçalves de Castro Mendes, The Introduction and New Patterns of Precedent Systems in the Procedural Law of the Traditional Civil Law Countries: Possibilities and Innovations for the Stare Decisis; 04 July 2023: V Lipp, Family Proceedings: Substance Driving Procedure?; 04 July 2023: M J Azar-Baud, Environmental Disputes in a Comparative Perspective; 05 July 2023: W Vandenbussche, Consumer Protection Proceedings in a Comparative Perspective

the transfer had been agreed without even informing them. Burkhard Hess accepted a call to the University of Vienna (starting in October 2023) and H       Ruiz Fabri returned to Sorbonne university in August 2023. At the end of September 2023, the Max Planck Society was transferring an Institute many researchers were leaving.⁴⁴ In January 2024, the Institute was transformed into a University Centre of European Law.⁴⁵ The good news is that the excellent library will continue to exist and remains open for guest researchers.

- 17 In these circumstances, CPLJ needed a quick solution. As Burkhard Hess was no longer eligible to be a primary investigator for a project that had been awarded by the FNR to him as a researcher based in Luxembourg, S         Men       kindly agreed to take over as the PI for the project and to become a CPLJ co-editor. Eventually, the project was transferred to the University of Luxembourg. With the help of S         Men       and her dedicated team⁴⁶ it was possible to organize the final conference in July 2024. The ambition was to bring the project to a positive end, especially to publish and to disseminate the results via a special website that was designed by Janosch Weber. In the final phase, the new Viennese team, led by Marcel Kahl, edited the manuscripts sent by the teams to the co-editors; this work is expected to be ongoing until the end of 2024.

4 COMPARATIVE METHODOLOGIES APPLIED TO PROCEDURAL LAW

4.1 Adopting a global comparative perspective

- 18 It is the ambition of CPLJ to adopt a genuine comparative approach to procedural law and dispute resolution. Therefore it is a project of macro-comparism. At the different organizational levels, the project was composed of researchers from different continents and backgrounds. Particularly at the team level, the team members came from different jurisdictions and different continents.⁴⁷ In this regard, the international network of proceduralists, created by the IAPL, was extremely helpful. However, it was not possible to recruit all teams equally with researchers from all different continents – only few African researchers were involved in the project and European and American scientists clearly predominate. However, the composition of CPLJ is more diverse than other projects in comparative law. Furthermore, to make the comparison as global as possible,

⁴⁴ Because of the lack of communication of the MPG, the situation within the Institute had become unstable. The ‘special envoy of the MPG-president’, had to come to Luxembourg several times where he tried to convince researchers to stay at the future university institute. In October 2023, more than 70% of the researchers of the Department for European and Comparative Law had left the Institute. Several researchers moved with Burkhard Hess to Vienna. Pierre Henri Conac, Scientific Fellow at the Institute, acted as interim director and supported greatly CPLJ.

⁴⁵ In June 2024, Prof T Trimidas (London) accepted a call to become director of the Centre.

⁴⁶ I would like to expressly mention Ms S         Mazyk-Mariani.

⁴⁷ There was a clearly formulated objective to avoid one sided (therefore biased) perspectives on the research topics.

the teams were encouraged to communicate with the members of other teams to get additional information.⁴⁸

- 19 Another practical approach was the working method applied within the teams. CPLJ is based on a basic document of the editors describing the different segments and possible issues to be addressed.⁴⁹ In the first phase, the teams took up and discussed the basic description.⁵⁰ They explored the field and prepared national reports on the content of their segment. These reports were the basis for the elaboration of first draft chapters of the segment, authored by one or several members of the team and reviewed by their peers. Outlines of these drafts were presented at the initial conference to all participants of CPLJ. After the initial conference, the teams started working on their segments to present more comprehensive and reviewed drafts at the midterm conference. The presentation and review of the drafts within the teams should disconnect the chapters from any national perspective of single author. However, one must admit that the collaboration in the different teams was not always homogenous – there are teams where the chapters are products of an intense collaboration⁵¹ whereas in other teams the individual researchers presented self-standing chapters.⁵²

4.2 Methodology in Comparative Law

- 20 A specific focus of CPLJ was on methodologies of comparative law and their applicability to the comparative study of civil procedure. Yet, this part of the project proved to be difficult. One reason is found in the present state of the epistemic debates in comparative law: there is no consensus about the methodology to be applied.⁵³ The traditional approach of macro comparison that distinguishes different ‘legal families’ has been criticized by many authors⁵⁴, although it is still to some extent valid, especially when it comes to the distinction between Continental and Anglo-American law.⁵⁵

⁴⁸ Some teams included additional scholars from other continents as ‘correspondents’, ie, team VII, and especially team V, cf part V

⁴⁹ This original document was authored by B Hess, L Cadiet and M Woo from a comparative and procedural perspective. It was intensively discussed in the meeting with the Advisory Board in October 2019.

⁵⁰ By reviewing the topics of the respective Segments, the team were able distance and to differ in the sense of G Frankenberg, ‘Critical Comparisons: Re-thinking Comparative Law’ (1985) 26 Harv Int’l L.J., 411.

⁵¹ Especially teams IV, V and VII.

⁵² In other segments, the collaboration proved to be difficult because of changes in their composition.

⁵³ A comprehensive overview of different methods applied (and criticized) in contemporary comparative law was given by R Miller in the CPLJ-webinar no 9, available here.

⁵⁴ G Teubner, *Law as an Autopoietic System* (Oxford/Cambridge, Blackwell Publishers 1996); P Legrand, ‘Negative Comparative Law – A Conspectus of the Argument’ (2017) 10(2) JCL, 405 ff; contra: J Gordley, ‘Comparison, Law and Culture: A Response to Pierre Legrand’ (2017) 65 AJCL, 133 ff.

⁵⁵ This was stressed by R Stürner in the 1st webinar on Legal Families and Comparative Civil Procedure. For a printed version cf Liber amicorum Loic Cadiet (Paris 2023) 1511, 1514 ff (stressing the cultural and philosophical background) and 1518 ff (on different structural approaches). For a different view cf CPLJ, pt VII, Introduction, para 4: from the unfolding of the proceedings, where the common – civil law was not applied.

However, one recognises that some of the traditional ‘legal families’ have ceased to exist⁵⁶, whereas others can now be more clearly distinguished⁵⁷. Additional new phenomena, like the law export from China via the Belt and Road initiative, has not yet impacted on (but was neither included in) the old classification. Finally, the debate on post-colonialism may also influence the debate about legal families deeply rooted in European traditions.⁵⁸ CPLJ did not take any ‘decision’ on the methods applied but operated in an open manner, trying to take social, economic and cultural factors largely into account.

- 21 Furthermore, there are areas where a cross-fertilization via new concepts and ideas among different jurisdictions is predominant. Two often quoted (and proved) examples are ADR⁵⁹ and collective litigation⁶⁰. Here, the general concept of ‘legal transplant’ has been extensively used.⁶¹ As a result, one might generally state an approximation of the different ‘legal families’ in specific areas of procedural law. However, much of the validity of macro comparison depends on the different areas of dispute resolution such as private litigation, collective litigation, ADR, and arbitration. Comparing different institutional solutions is a matter of degree, not of fundamental difference. As a result, it can be stated that any overall and all-inclusive comparison of dispute resolution according to ‘legal families’ no longer corresponds to the differentiation of modern dispute resolution. However, this does not exclude the approach from still being valid in some parts of the project.⁶²
- 22 An alternative to ‘legal families’ in comparative law could be a ‘regional approach’.⁶³ This approach has much to do with the current structure of the globe where regional areas (often parts of continents) are organized in regional political and economic integration units. Here, cross-border judicial cooperation has become a powerful factor.⁶⁴ The most prominent is the European Union, but there are also interesting developments in Latin

⁵⁶ Especially the family of ‘socialist laws’.

⁵⁷ Especially the Arabic legal family, as explained by S Bostanji, CPLJ webinar, 28 January 2022, available [here](#).

⁵⁸ Cf R Michaels, Decoloniality and Comparative Procedural Law, CPLJ webinar, 4 June 2021, available [here](#).

⁵⁹ Cf CPLJ pt XV ch 6 on Mediation, authored by N Alexander.

⁶⁰ Cf CPLJ pt X ch 0, Introductory Remarks of E Silvestri.

⁶¹ One might also talk about how distaste for the American class action has largely influenced the legal developments in Europe. Nevertheless, since 2010 some EU Member States have followed the US model of settlement class actions, especially the Netherlands, cf CPLJ pt X.

⁶² Stürner, (n 55) 1511, 1518 ff. For a different view on court proceedings cf pt VI, Introduction, para 13 ff.

⁶³ For a similar approach (but less connected to political or economic integration) cf U Kischel, *Comparative Law* (Oxford University Press 2017) who added to the traditional legal families ‘African law’ and ‘Religious Laws’.

⁶⁴ In addition, there are jurisdiction, as the US, Canada or Australia, where cooperation within large territories operates similarly to cross-border cooperation, including even internal conflict of laws and jurisdiction regimes.

America, in Eurasia, in some Arabic states and in Africa.⁶⁵ But there are still regions in the world without any structured economic or political integration at the regional level. The most prominent example is south Asia where the Hague Conference on Private International Law tries to substitute regional cooperation by promoting its (sometimes largely outdated) international instruments. However, if one looks at the current situation, regional factors appear to be more powerful than global initiatives. Still, influences in different areas of dispute resolution must be distinguished.⁶⁶

- 23 Considering the doctrinal situation of comparative procedural law, it might be advisable to start from the other side: procedural law. This is exactly the approach which has been adopted by the IAPL for several decades. The IAPL congresses address general trends in procedural law and specific topics. Usually, a general rapporteur (nominated by the Association) develops a questionnaire that she sends to national reporters. Based on the national reports, regional or general reports are compiled where the topic is presented from a comparative perspective.⁶⁷ The method applied is functionalism: the reports are based on a presumption that procedural instruments and institutions serve similar functions and can be compared⁶⁸ although they are operating in different legal landscapes or traditions.⁶⁹
- 24 A new dimension of comparative law relates to empirical research. In this regard, procedural law stands at the forefront of the scientific developments. During the last 25 years, the use of statistics has constantly increased; data about the performance of judicial systems, the available resources, the length of proceedings and the usage of different proceedings have been made available online.⁷⁰ Yet, using empirical data in comparative law is not an easy task when data are differently collected but used in a uniform way. Comparing data at a global level is difficult to achieve as the former Doing Business Reports of the World Bank demonstrated.⁷¹ In CPLJ, the use of empirical data has remained limited.⁷² This is mainly due to the lack of uniform data sets that are usually

⁶⁵ Here one must acknowledge that France's recent loss of influence in its former colonies obviously impacted on cross-border integration in the region, too.

⁶⁶ CPLJ, pt XIV, Cross-Border and International Dimensions, ch 2 (B Hess).

⁶⁷ Usually, the reports are published by the organizers of the congresses, with most of the reports today freely accessible at the IAPL conferences online library, <https://www.iapl.org/biblioteca/> accessed 5 August 2024.

⁶⁸ S Huber, 'Prozessrechtsvergleichung heute' in B Hess (ed), *Europäisches Insolvenzrecht* (Gieseking 2017) 77.

⁶⁹ K Zweigert and H Kötz, *Rechtsvergleichung* (3rd ed, Mohr Siebeck 1996) 62 ff; P Glenn, *Legal Traditions of the World* (5th ed, Oxford University Press 2014).

⁷⁰ In the Council of Europe, the CEPEJ (Commission Européenne pour l'efficacité de la justice) has been working on statistics of justice systems since the 1990s. In the European Union, statistics on the funding and the performance of the judicial systems of the EU Member States are published every year (Judicial Scoreboard), https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en accessed 5 August 2024.

⁷¹ The Doing Business Reports have been discontinued as of 16 September 2021 after suspicions of serious manipulations had become public.

⁷² Statistical data are found in CPLJ, pt XI ch 2 on Default Procedures and Payment Order Procedures, para 113 – 125 (V Richard).

available at the national, sometimes at the regional, level. Yet, there is no doubt that empirical methods are going to change the methodological approaches in comparative law in a close future.

4.3 Lessons (to be) Learned

- 25 What are the main takeaways from 5 years working in CPLJ?
- 26 1. The first relates to the possibility of conducting a project with so many teams and researchers from different parts of the world. Here, the result appears very positive: CPLJ demonstrates that a global collaboration is possible. However, it needs a high degree of organisation and of commitment. Organising online meetings with participants in California, Hongkong and Luxembourg requires a lot from those team members who stay late at night or start extremely early in the morning. Distances were not an impediment to our collaboration; time zones impacted a lot.
- 27 2. A global project of the size of CPLJ also requires a lot of preparation and interim communication. Here, we all owe Enrique Vallines a debt of gratitude. He was able to address the different teams and their coordinators in a way that motivated and assisted all involved in the project. Furthermore, the coordinators played an excellent role in keeping the work within the teams ongoing. I cannot mention all of them here, but a special thanks goes to Rick Marcus whose team was the fastest to hand in the manuscripts. Collaborative projects require time limits and I am happy to see that most teams have respected them very thoroughly.
- 28 3. One of the most encouraging experiences of CPLJ was the online collaboration via Zoom and Teams. These platforms helped us to communicate and to exchange information online, especially during the difficult time of the pandemic. It was even possible to create a community online – this happened during the webinars and the kick-off conference. We met and discussed regularly – cameras switched on. I recall that we met after the webinars in the Weicker Building with Enrique, Ramon, Nicole and other research fellows to discuss and to review the presentations and the discussions. However, CPLJ also demonstrated the need for personal meetings and onsite conferences, to experience a project with personal contacts. Nevertheless, we have learned in CPLJ that a good balance of virtual and real meetings makes a global project a success. CPLJ was by far not the only one that was conducted during Covid-19 – but it certainly belonged to the most ambitious ones. As such, it opens a perspective for future transnational and global research.
- 29 4. The last takeaway relates to the publication of the results. There was a moment when the editors came to the conclusion that a publication as a compendium by a publishing house would not be a suitable solution for the project. The final publication would have been almost unaffordable, and the individual authors would not have gained any useful access to the results of the whole project. Furthermore, a global project of this kind

needs to be accessible to everyone, especially those who cannot afford the expensive fees of western publishing houses. Consequently, we opted for an open access publication that was professionally prepared by Janosch Haber and Marcel Kahl. Marcel, who had already been working with me in Luxembourg, organized the editorial process and the publication with the new Viennese team in a very efficient and professional way. Thanks to him, we can present the results of the project in a way we can all be proud of.

5 THE FUTURE OF CPLJ AND OF COMPARATIVE PROCEDURAL LAW

- 30 If CPLJ was simply a printed compendium, it would come to a preliminary end today, unless some additional editions were published in the future. Online publications follow a different rhythm. Here, the expectation might be that a permanent updating corresponds to the usual publication standards. However, this is certainly not feasible for a purely academic project. There is no doubt that CPLJ formally comes to an end with this conference. However, it might be also an option to continue the project by carefully updating its different parts and by completing those parts that are still missing: especially the part on arbitration.
- 31 Continuing CPLJ is primarily a task for its editors. What I have learned from my fellow colleagues is that there is a willingness and commitment to continue the project – certainly not as intensively as we did during the last months but on a regular basis. We will certainly seek the support of the IAPL. This might permit us to update the project and to keep it alive – as a major step in comparative law and equally in procedural science. The final session of this conference shall address the future of CPLJ again – but I would like to invite you to reflect about this issue during the next two days to come. Further information about the future of the project will be soon published on the CPLJ-website.

ABBREVIATIONS AND ACRONYMS

Art	Article/Articles
CEPEJ	<i>Conseil de l'Europe Commission européenne pour l'efficacité de la justice</i> (Council of Europe European Commission for the efficiency of justice)
cf	<i>confer</i> (compare)
ch	chapter
ed	editor/editors
edn	edition/editions
eg	<i>exempli gratia</i> (for example)
etc	et cetera
EU	European Union
EUR	Euro
ff	following
fn	footnote (external, ie, in other chapters or in citations)
IAPL	International Alliance of Procedural Law
ibid	<i>ibidem</i> (in the same place)
ie	<i>id est</i> (that is)
IECL	International Encyclopedia of Comparative Law
n	footnote (internal, ie, within the same chapter)
no	number/numbers
para	paragraph/paragraphs
pt	part
Sec	Section/Sections
trans/tr	translated, translation/translator
US / USA	United States of America
v	versus
vol	volume/volumes
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