

Communicating the Methodology of Comparative Law Research in Legal Translator Training: A Gap to Be Filled

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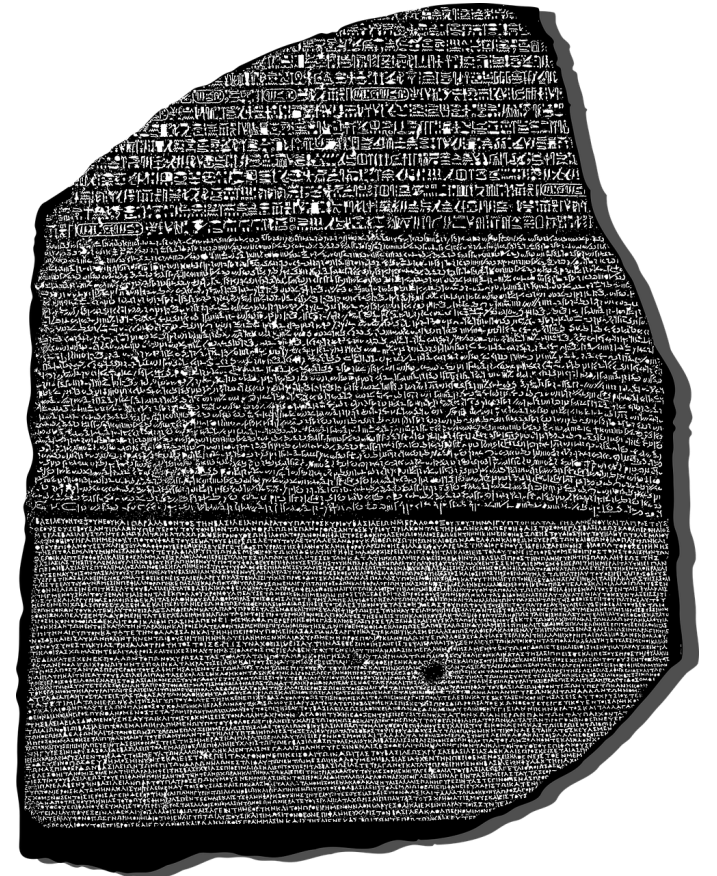
Plan of the presentation

1. Introduction – do legal translators need comparative law at all?
2. Research:
 - a) A literature review on the role of comparative law in legal translator competence and training
 - b) A review of the role of comparative law in existing legal translation curricula
 - c) A survey-based case study of Polish sworn translators
3. Avenues for improvement in communicating comparative law methodology to legal translators
4. Conclusions

Introduction – do legal translators need comparative law at all?

1. **Legal translation** – ‘the translation of texts used in law and legal settings’ (Cao, 2007, p. 12); a process that takes place at the levels of both legal languages and legal systems (Pieńkos, 1999, pp. 121, 150).
2. **Comparative law** – ‘a shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems’ (Husa, 2022, p. 1); ‘the hermeneutic explication and mediation of different forms of legal experience within a descriptive and critical metalanguage’ (Legrand, 1997, pp. 122–123).
3. Comparative law and legal translation: **intertwined and interdependent but separate domains** (Doczekalska, 2013, p. 72).
4. Comparative law and legal translation as **allies in transnational legal communication***.

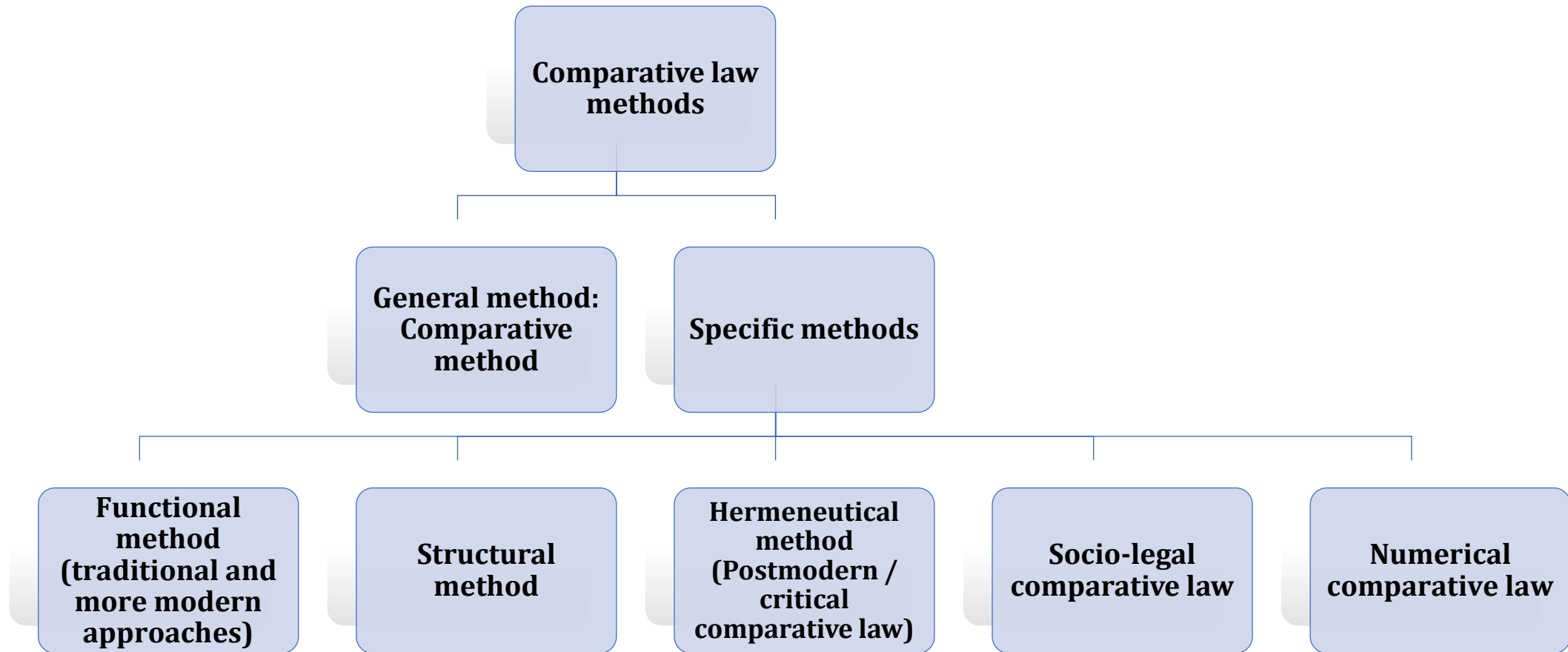
***Legal communication** – ‘the whole process of providing legal information to its recipient and of gaining legal orientation (...)’ (Osiejewicz, 2020, p. 449).



Introduction – do legal translators need comparative law at all?

5. The usefulness of comparative law in legal translator training has been emphasised by many authors (de Groot, 1987; Dullion, 2015; Keşicka, 2017; Kischel, 2019, p. 12; Klabal, 2020; Soriano-Barabino, 2016).
6. However, translation scholars – with few exceptions (e.g., Engberg, 2017) – typically do not provide a broader review of specific comparative law methods.
7. A method analysed relatively well in legal translation studies is the traditional **functional method**, adapted for legal translation by Šarčević (1997, pp. 235–249).
8. Currently, it would be more accurate to speak of a **‘pluralist toolbox’** of comparative law methods (Van Hoecke, 2015, pp. 28–29) than of the one proper method, as functionalism used to be portrayed (Zweigert & Kötz, 1998, p. 34).

Introduction – do legal translators need comparative law at all?



The **methodological landscape of comparative law** (based on Husa, 2015; Kischel, 2019; Monateri, 2021; Örüçü, 2006; Samuel, 2014; Siems, 2019; Tokarczyk, 1999; Van Hoecke, 2015).

Introduction – do legal translators need comparative law at all?

9. Although the clear links between both fields imply that legal translation could benefit from comparative law methods, there seems to be a **gap in the communication of knowledge** about them to legal translators.
10. Therefore, the present research sought to:
 - a) take a closer look at the **role of comparative law** and, in particular, comparative law methodology **in legal translator training**;
 - b) identify **possible shortcomings** in this respect; and
 - c) make some **suggestions for improvement**.

Research: A literature review on the role of comparative law in legal translator competence and training

1. More or less direct references to comparative law can be found in a number of models of **legal translator competence**:
 - a) Šarčević (1997, pp. 113–114): extensive knowledge of the target legal system and preferably also the source system as well as **basic knowledge of comparative law** and **comparative methods**.
 - b) Prieto Ramos (2011, pp. 11–14): the core of thematic and cultural competence is ‘very close to **the practical principles of comparative law**’.
 - c) Piecychna (2013, pp. 152–154): ‘**comparative law plays a crucial role in the effective realization of a translation task**’.
 - d) Other models indirectly point to comparative law skills and knowledge (Cao, 2007, pp. 39–52; International Organization for Standardization, 2020, pp. 8–9; Scarpa & Orlando, 2017, pp. 26–39).
2. However, the models **do not refer to any specific comparative law methods**.

Research: A literature review on the role of comparative law in legal translator competence and training

3. Scholars who have recently advocated the role of comparative law in **legal translator training**:
 - a) According to Dullion (2015), the thematic scope of teaching comparative law should include theoretical knowledge of legal systems and **theoretical reflection on the comparative method** and its practical principles. Moreover, a legal translation course should **show how to use comparative law in translation**.
 - b) Kęsicka (2017) argues for **incorporating microcomparative analysis** in a legal translation course.
 - c) Soriano-Barabino (2016, pp. 141–155) assumes that the acquisition of thematic competence in legal translation and its development should occur **through research in comparative law**.
 - d) The central theme in Klabal's (2020, pp. 54–71, 62–71) study is **'comparative conceptual analysis'**, which he proposes to include in the translator training as a means to carry out **microcomparative analyses**.
4. What is missing in all the above publications is **a broader discussion of comparative law methodology**.

Research: A review of the role of comparative law in legal translation curricula

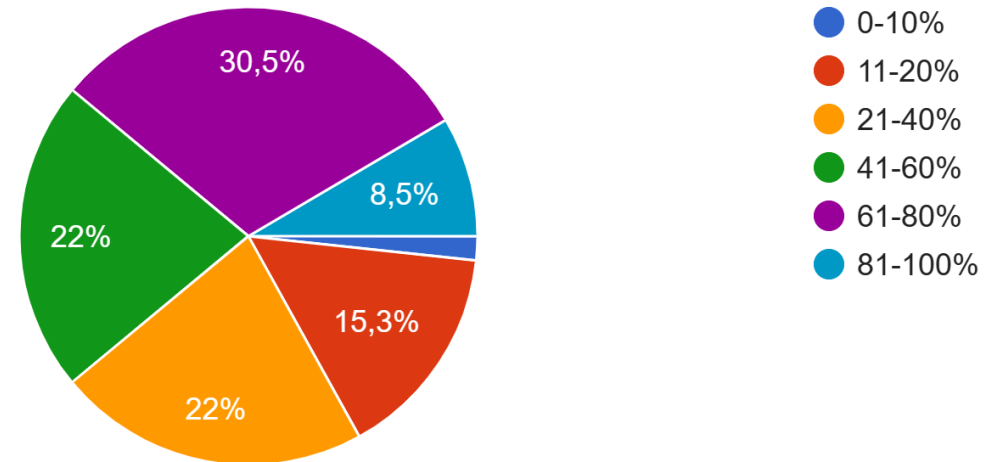
1. An attempt was made to identify **legal translation courses and programmes whose curricula include comparative law** through a series of Google searches performed on 3–4 August 2023 using conjunctions of the search terms ‘comparative law’, ‘legal translation’, ‘course’, ‘programme’, ‘program’ and ‘training’.
2. There were only 4–5 pages of results for each search, which resulted in the identification of **13 programmes and courses**.
3. A caveat needs to be made that the **searches were performed in English**, so some courses or programmes were certainly omitted. Moreover, the searches focused on the term ‘comparative law’ only.
4. Given the significance of English worldwide, the number of courses found still seems **relatively low**.
5. Moreover, **only two** (items 5 and 8) of the courses identified **specifically referred to comparative law methods** in their detailed descriptions.

	institution name	training type (and languages)
1.	Universitat Autònoma de Barcelona	‘Specialisation diploma in legal translation’ postgraduate programme (English-Spanish).
2.	Université de Genève	Master of Arts in Specialised Translation; legal and institutional specialisation (various language combinations including German, English, Spanish, French, Italian, Arabic and Russian).
3.	John Jay College of Criminal Justice	Certificate in Legal Translation and Legal Interpretation; Certificate in Legal Translation (English-Spanish).
4.	Training for Translators	Online legal translation course (English to Spanish).
5.	Leiden University	MA Translation (Dutch-English).
6.	Herzen University	‘Legal Translation and Interpreting’ master’s programme (Russian-English).
7.	CTI/Triple A	‘Master’s in Legal Translation’ (English to Italian).
8.	Istinye University Istanbul	‘Translating Texts on Political Science and International Law’ course within the Translation and Interpretation Bachelor programme (probably Turkish-English).
9.	ISIT Grande Ecole	‘Lawyer-Linguist and Law and Intercultural Studies’ master’s programme (required French and English plus a third working language).
10.	University of Denver	‘Introduction to legal translation’ course (no information on languages).
11.	Comillas Universidad Pontificia	Master’s Degree in Legal-Financial Translation (Spanish-French/English).
12.	University of Zagreb	‘Comparative Legal Linguistics’ course.
13.	NHH Norwegian School of Economics	‘JurDist’ online master’s programme in legal translation (Norwegian-English/French/German/Spanish)

Research: Awareness of comparative law methods among legal translators – the case of Polish sworn translators

1. A survey was conducted among Polish sworn translators to investigate the actual awareness of, and exposure to, comparative law methods in **one particular group of legal translation professionals**.
2. **Polish sworn translators** are authorised (and obliged) to prepare certified translations for statutory proceedings conducted by public authorities.
3. Therefore, they are **likely to deal with highly responsible legal translation assignments**.
4. The questionnaire was administered in Polish using Google Forms with the aid of the **Polish Society of Sworn and Specialized Translators (TEPIS)**, whose office forwarded the invitation to fill in the survey to its members.
5. It was open for answers on 20–28 July 2023. **59 sworn translators** responded to the survey.

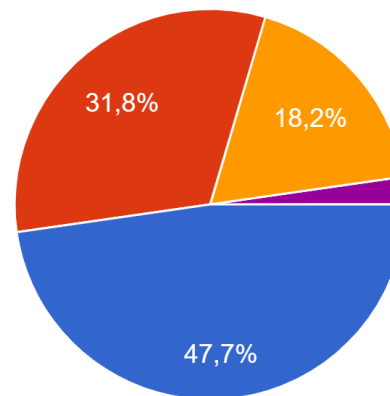
- Please estimate how much of your total working time you spend on legal translation (translation of broadly understood legal texts)?



Research: Awareness of comparative law methods among legal translators – the case of Polish sworn translators

1. Those spending more than 10% of their working time on legal translation were enquired about their encounters with comparative law in organised training and self-study activities.
2. First, the translators were asked whether they had participated in any organised vocational training encompassing legal translation in the last 15 years and whether, during that training, they had met the term 'comparative law' or its equivalents in other languages.
3. 44 respondents declared participation in this kind of activity.

- As part of organised forms of training during this period [last 15 years], have you encountered the terms *prawo porównawcze*, *komparatystyka prawnicza* or their equivalents in another language, e.g. *Rechtsvergleichung*, *droit comparé*, *diritto comparato*, *derecho comparado*, *comparative law*, *Сравнительное правоведение*, *правовая компаративистика*?

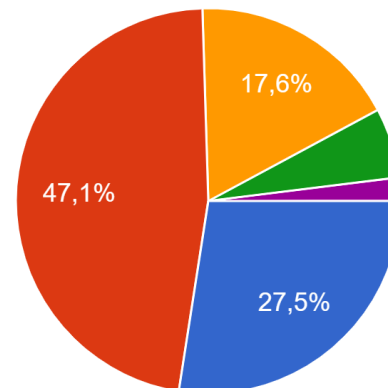


- I haven't come across this concept as part of organised forms of training in that period
- Yes, I have, but those were only mentions
- Yes, I have, comparative law issues were discussed in the classes
- Yes, I have, I had a separate subject/course called 'comparative law'
- Other

Research: Awareness of comparative law methods among legal translators – the case of Polish sworn translators

1. Similar questions were asked about **forms of self-study involving legal translation** (like reading legal or translation literature etc.).
2. **51 translators** reported having engaged in such self-study in the last 15 years.
3. The above results demonstrate that while the translators were **a little more likely to encounter elements of comparative law during self-study** than in organised training, the share of comparative law content was surprisingly low in either activity.
4. **No such content or mere mentions** of it were reported by **almost 75%** of the respondents in the case of self-study materials and **nearly 80%** in the case of organised training.
5. Based on the types of content that the translators reported when answering follow-up questions, the role of comparative law methods in those forms of training appears to have been **negligible**.

- As part of self-study activities during this period [last 15 years], have you encountered the terms *prawo porównawcze*, *komparatystyka prawnicza* or their equivalents in another language, e.g. *Rechtsvergleichung*, *droit comparé*, *diritto comparato*, *derecho comparado*, *comparative law*, *Сравнительное правовѣдение*, *правовая компаративистика*?



- I haven't come across this concept as part of self-study activities in that period
- Yes, I have, but those were only mentions
- Yes, I have, comparative law issues were discussed there
- Yes, I have, this was material about comparative law
- Other

Research: Awareness of comparative law methods among legal translators – the case of Polish sworn translators

1. All the sworn translators were asked the last question in the survey: whether they could **name one or more comparative law methods** they had ever heard of. They could also leave the answer field empty.
2. There were **only nine answers (15.3%)**, with some respondents mentioning more than one method.
3. Three methods (or rather what the respondents considered as methods) were mentioned by more than one respondent:
 - a) comparative (law) method – 3;
 - b) functional method – 3;
 - c) macro- and microcomparison – 2.

- Please indicate the name of one or more methods of comparative law that you have ever heard of or read about. If there have been none, please leave the field blank.

Respondent 1: comparative method

Respondent 2: Legal norms can be compared using specific compatibility criteria: linguistic criteria (e.g. similar wording in different languages), classificatory criteria, axiological criteria. When the objects of comparison show similarities and differences between one another, they may be the subject of comparative law analysis.

Respondent 3: Comparative studies on a macro and micro scale. Generally speaking.

Respondent 4: mainly the functional method (micro and macro comparisons) and the historical method, also qualitative and problem methods

Respondent 5: comparative law

Respondent 6: functional, systemic method

Respondent 7: comparative method, looking for equivalents, looking for counterparts of relevant institutions

Respondent 8: comparing terminology in a given field (e.g. regarding companies or traffic regulations) in different languages; distinguishing differences in approach to specific issues between legal systems that use the same language (e.g. UK, US, Aus)

Respondent 9: Functional, comparative law method

Avenues for improvement in communicating comparative law methodology to legal translators

1. A preliminary conclusion can be drawn that **although significant weight is given to comparative law in LTS**, the role of comparative law in actual legal translator training courses and programmes seems to be **quite limited**, not to mention the teaching of its methodology.
2. The above findings are clearly **not contradicted by the case study of Polish sworn translators**. Similar surveys conducted among legal translators elsewhere could shed more light on practitioners' awareness of comparative law issues.
3. Possible **obstacles to teaching comparative law in translation courses to consider** (inspired by a discussion of the role of comparative law in law curricula by Demleitner (2019)):
 - a) Legal translators are not always – and probably not in their majority (Alcaraz Varó & Hughes, 2002, p. 155) – qualified lawyers.
 - b) Organisational factors: finding staff to teach a comparative law course to translation students might be problematic.
 - c) Space/time constraints: especially in shorter courses, there might be insufficient time to include a whole comparative law module or otherwise integrate comparative law teaching in a meaningful way.

Avenues for improvement in communicating comparative law methodology to legal translators

6. Biel (2011, p. 170): ‘as it is not always possible to provide students with adjusted lectures on comparative law (...), it may be necessary to **integrate knowledge of special fields into translation classes**’.
7. It seems, however, that the above idea may lead to the **actual comparative law content being diluted or completely lost** among ‘more important’ activities. Therefore, **a contrary approach** is worth a thought.

a self-contained comparative law theory/methodology component

- Giving students some grounding in comparative law theory, including, in particular, methodology, distinct from other themes that also involve comparative law.
- **More extended programmes:** a separate comparative law theory/methodology course, ideally run by a professional comparatist.
- **Shorter courses:** a separate session or a series of sessions with a comparatist.

content adjusted to audience

- A syllabus of such a course or session would have to consider that the students might not be lawyers.
- Accordingly, such a comparative law component should **follow other courses or classes that introduce students to law**.

theory followed by practice

- The knowledge acquired in the comparative law theory/methodology component could be **activated in practical translation courses or classes**.
- In more extended programmes, there could be a separate module that would focus on the **practical adaptation and use of comparative law methods** for translation purposes.

Conclusions

1. Almost four decades ago, de Groot (1987) made a strong case for the role of comparative law in legal translator competence and its inclusion in their training: **‘It is astonishing that during the training of legal translators, the study of comparative law is often neglected.’**
2. While many other authors have since pointed to the benefits that translators may gain from studying comparative law, the present research **has not demonstrated fundamental changes** in this respect.
3. Given the competencies expected of legal translators, it seems that comparative law should be more commonly and, in particular, **more explicitly recognised in legal translator training** – preferably as **a distinct theory/methodology component**.
4. In recent decades, comparative law has become a vibrant field, and the most recent literature (e.g. Frankenberg, 2016; Husa, 2015, 2022; Kischel, 2019; Legrand, 2022; Monateri, 2021; Samuel, 2014; Siems, 2019) can be **a pool of ideas for syllabus design** for comparative law modules in legal translator training. It is hoped that this paper will inspire other researchers to make proposals for such syllabi.

Conclusions

5. At the same time, it should be emphasised that **translation is a self-standing profession** (Kischel, 2019, pp. 10–12; Pieńkos, 1999, pp. 136–140), so comparative law methodology cannot be considered a substitute for a legal translator’s own toolkit.
6. Nevertheless, **looking deeper into the comparatist’s ‘pluralist toolbox’** (cf. Van Hoecke, 2015, pp. 28–29) – in particular thanks to improved communication of comparative law content as part of legal translator training – would likely enhance legal translators’ competence and performance.
7. **The better legal translators’ competencies – including the comparative law sub-competence – the better the quality of legal communication across borders, for which legal translation is an indispensable medium.**

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Thank you for
your attention.

