Comparative law making: a case study in Slovak company law[1]

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Hence, just copying foreign law could hardly be considered to be a 'method'. It is rather the typical example of lack of method in comparative law.
Mark Van Hoecke, Methodology of Comparative Legal Research. In *Law and Method*, December 2015, p. 30.

CSACH, K.: Comparative law making: a case study in Slovak company law. Právny obzor, *100*, 2017, special issue, pp. 78-92.

Comparative law making: a case study in Slovak company law. The comparative method or comparative reasoning is commonly used in a legal doctrine, less frequently in the practice by the bodies applying the law at the application of national law. It is natural for the legislator to look beyond the borders of national law and to draw inspiration from foreign law in its law-making. But the fact that national law finds inspiration in foreign law, may bring deviations in the range of interpretation and argumentation instruments against purely national law. The article on the basis of examples from the recent amendments to company law tries to answer the question whether foreign law (source of inspiration) should be used at interpretation and application of national law differently when used as a source and declared by the legislator in the explanatory report, as compared to the case when it is used only as a standard comparative argument. The author assumes that when the legislator declares the source of inspiration, he probably wishes adopted legislation not only to sound as a model, but also to work as its model. It allows to use as supportive argument not only the text, but also the foreign doctrine or case-law that was known at the date of adoption of the national text. These arguments should be part of standard (national) methods of interpretation of law.
***Key words**: company law, comparative arguments, law-making methodology*

The courts apply foreign law mandatorily or may draw inspiration from foreign law in their decision-making. The comparative method or comparative reasoning is an approach commonly used in legal research, but also in the practice by the bodies applying the law at the application of national law.[2] Comparative law-making means the use of the comparative method for creation of new legal regulations. It is natural for the legislator to look beyond the borders of national law, to draw inspiration and not to again invent the wheel. But the fact that national law draws inspiration from foreign law may bring deviations in the range of interpretation and argumentation instruments against purely national law. The question arises whether foreign law (source of inspiration) should be used at interpretation and application of national law differently when used as a source and declared by the legislator, as compared to the case when it is used only as a common

[1] The article is based on a lecture for the postgraduate course at the Faculty of Law of Masaryk University in Brno, 9 November 2017. The basic concept of the lecture is maintained.

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[2] In case of Slovakia it is usually a comparison of conclusions of the national and Czech case-law. The inclination to the German case-law is frequent (especially in the area of consumer protection).

comparative argument. In this case the question arises whether foreign argumentation patterns, conclusions of the doctrine or case-law can be used in the national application environment directly, as own (*acceptance* of foreign doctrine instead of *comparison*), or at least as "strong" or more convincing arguments.

This article does not strive for analysis of the comparative method[3] or its use in legal research.[4] No complex theoretical framework for the judicial use of comparative arguments is offered here.[5] This article is based on discussions on the comparative method as approach to the study of law and tries to describe the author's experiences with recent legislative changes in Slovak company law and from his involvement in legislative work.

Comparative law-making is a slogan rather than an exact definition of work of the legislator. For the purposes of this article it is not important whether the comparative method was used for the preparation of the text of a legal regulation (preparatory works in the framework of the specialized legislation apparatus). More important is whether the legislator alone, through the official channels (explanatory reports), makes references to the comparative method or to foreign solutions, how the legislator works with them and what is the importance of these procedures of the legislator for the application practice.

Methodology of a comparative law-making?

The methodology of comparative research in law and the use of the comparative methodology by the applying bodies have been lengthy discussed.[6] The use of the comparative method by the legislator is very specific.

Comparison with foreign laws may help in the search for the "best law", i.e. the best result of a problem to be solved by the legislator on the basis of a political decision. But the political decision itself may sometimes define the wished result and comparison will help to find the best way/means of attaining this result. Policy-based decisions also influence the approach of legislation to the comparative method. A reference to a foreign solution serves as a supportive argument for the solution chosen by legislation. It may signalise the absence of methodology of comparative law-making as such. However, the use of the comparative method for legislation should also have its own methodology, a set of verified procedures. It should contain a range of instruments for explanation of

[3] See e.g. ZWEIGERT, K., KÖTZ, H. *Introduction to Comparative Law. Third edition. Translated by Tony Weir*. Oxford University Press: New York, 1998; Van HOECKE, M., (ed.). *Epistemology and Methodology of Comparative Law*. Oxford: Hart, 2004.

[4] Sometimes 'comparing' is considered to be a 'method' in its own right and called 'the comparative method' without further explanation or concrete guidelines on the methodology itself. Specific sub-methods of comparative research may be found in the literature: the functional method, the structural method, the analytical method, the law-in-context method, the historical method and the common-core method. For an introduction into comparative research methodology see Van HOECKE, M. Methodology of Comparative Legal Research. In Law and Method, 1-35. December 2015, p. 8 and the literature quoted, https://doi.org/10.5553/rem/.000010, p. 8.

[5] See BOBEK, M. *Comparative Reasoning in European Supreme Courts*. Oxford University Press, 2013.

[6] REIMANN, M., ZIMMERMANN, R. (eds). *The Oxford Handbook of Comparative Law*. Oxford University Press, 2006.

the chosen objective solution. It must include identification of the ways of functioning and the contexts of the application of foreign law that is suitable as a legal transplant,[7] but also the possibility of their substitution by own contexts and legal constructions. From the question how to find and evaluate better law or the wished result from a set of laws we move to the question how to technically achieve the functional use of a foreign solution in national law.

Only then the question arises whether the use of certain methods for expression of work of legislation with foreign law determines the potential importance of a comparative argument for later interpretation and application of law. In this article we will therefore focus on the technique of the legislative transfer.

What is the importance of intentional inspiration of the legislator by foreign law for the application of national law?

Also at the traditional application of national law we can refer to foreign law or results achieved by it. It may support teleological interpretation of law or a particular argumentation. Foreign law will always be used as a supportive argument only.[8]

If the legislator has decided to draw inspiration from foreign law then the applying body has a stronger mandate to look up to this law. Also in this case it can be assumed that the legislator wanted to achieve a solution that was known to foreign law at the time of adoption of national legislation. The legislator makes reference to a state of knowledge and foreign doctrine fixed in time. The future foreign doctrine (if any) should be transposed when it can be assumed that the legislator wanted the application of the legal regulation in its own state to develop in the same manner as the application of the model regulation.[9] However, even this does not change the nature of the foreign case-law or doctrine as an argument at interpretation of a national norm and not as an authoritative interpretation.

[7] See WATSON, A. *Legal transplants. An Approach to Comparative Law*. Second Edition. Athens and London: The University of Georgia Press, 1993, p.121. Watson used the concept of legal transplant for designation of the transfer of law (or legal norm or legal institute) from the legal environment of one country to another country. The concept was theoretically elaborated later. See WATSON, A. Aspects of Reception of Law. In *The American Journal of Comparative Law*, 1996, Vol.44, p. 335. However, this concept cannot be used for designation of the transfer of legal models or continuous stream of legal paradigms and legal ideas across the borders of the national states. WISE, M. E. The Transplant of Legal Patterns. In *The American Journal of Comparative Law*, 1990, Vol. 38, p. 1. Among Slovak doctrine, the concept of legal transplants has been reflected and its various theoretical approaches were elaborated by BENKO, R. Legal-theoretical aspects of potential resistance of national law to the multinational law of the European Union. In DOLOBÁČ, M., GREGOVÁ, ŠIRICOVÁ, Ľ. (eds.): *Resistance of national law and legal transplants*. Košice : UPJŠ, 2009, pp. 20-40.

[8] Let´s disregard cases where the national body is obliged to apply foreign law, e.g. due to the choice of foreign law.

[9] The belief that identical texts will be interpreted in the same manner is illusory and therefore it cannot be expected from the legislator *ipso iure*. The experiences show that initially the same rules were interpreted differently (Belgium and France in relation to private law and generally Slovakia and Czech Republic), but surprisingly also that different rules were interpreted in the same manner (Germany and Austria in relation to private law, Slovakia and Czech Republic in relation to matrimonial property regime).

The use of foreign law as an argument in the practice has flows that indicate methodological shortcomings. The Slovak practice shows an interesting judicial argumentation by the foreign case-law. We can distinguish whether the foreign case-law will be used merely as argument (element of the legal reasoning), or as a binding opinion of the body applying law. At the first sight it is a clear dilemma, which requires to be solved in favour of the first option. The foreign case-law could not be a binding opinion even if foreign law were used mandatorily. But it means that the courts should cope with foreign case-law as with any other legal argument, part of legal considerations. However, it occurs seldom, because the courts often – in case of negative reflection of the foreign case-law – help themselves with the "argument" that the respective decision concerns foreign law and therefore its conclusions *per se* are not applicable to the Slovak environment. Like this they even do not need to cope with them. The other way round, in case of concordant conclusion of the court and the source rule, foreign conclusions are used as a supporting argument, part of legal consideration, usually by a formulation, according to which the supreme court of a foreign state arrived at the same conclusion. The result here obviously (retroactively) affects the selection of the method of coping with a foreign decision.

Declaration of and a reference to the comparative source in the explanatory report?

The scientific dignity requires one to declare the source. But is it really necessary to declare a legislative model in the explanatory report? Does declaration of the source have importance for its interpretation and application?

Declaration of the source brings advantage first of all to the addressees of the rule. It allows to better cope with a new rule and facilitates the use of a foreign based solution (or result) in the domestic legal environment, as a legislative, doctrinal or judicial argument.

If the legislator does not declare the source of inspiration he makes difficult the search for the legislative source and potential argumentation basis to the addresses of law; however it does not hinder subsequent argumentation on comparability or similarity of the legislative institute with the foreign one. It decreases the cogency of teleological or subjective historical interpretation arguments (direct instead of comparative reference to conclusions of foreign law). Consequently, it will not be simple to prove that the legislator wanted to achieve the same result or solution as is achieved abroad. An example from the area of general Slovak private law is the introduction of special criminal offence of "usury" (Article 39a of SCC mirroring Article 138 subs. 2 of BGB). The legislator did not explicitly declare the legislative-technical inspiration of the rule; instead he indicated rather inconsistent fragments of Austrian, German and Swiss law and judicial practice.[10] A closer look at the text and earlier legislative proposals gives a certainty that it used as a model the German law (Article 138 subs. 2 of BGB).

[10] Explanatory report to the amendment of the Act no. 106/2014 Coll., special part, Article I., point C).

A discrepancy between expressed intention to transpose a foreign institute and its insufficient actual transposition may occur (See below the issue of crisis of companies). Unlike an unexpressed will to transpose a foreign legislative model, here it will not be simple to use a correcting interpretation in order to overcome local weaknesses in favour of a foreign model.

In any case we recommend also the legislators to declare the sources of inspiration.

What will be used in legislation (from legislative-technical aspect)?

From a legislative-technical viewpoint the comparative method and foreign solutions can be used at the preparation of national law in three different manners.

Firstly, the whole legislative solution of foreign law can be used. By a legislative solution we mean an abstractly formulated normative rule, regardless of whether the text of legal regulation or its generalisation by the case-law. From a legislative-technical viewpoint it will be the simplest solution, which is often unfeasible. The text of a foreign rule seldom corresponds to the national legislative customs or well-established legal terms. Moreover, comparing legislation only might be risky. When foreign models are used, it is not sufficient to follow the text of the rule only; one should realize also the context and doctrine of foreign law. In addition to the risks about which warns the functional method of comparative legal research,[11] first of all it is necessary to assess whether the national method of interpretation or argumentation of a foreign norm will lead to the same results as envisaged by foreign interpretation.

Secondly, the objective solution of foreign law, i.e. result envisaged by foreign legislation (penalisation of a product, award of a claim in a specific situation), can be transposed. However, from a legislative-technical viewpoint own (national) legislation tailor-made to Slovakia is created. The use of the comparative method in this case seems to be similar to scientific work, but there is one fundamental difference: foreign solutions are used for the support of political objectives of the legislator – as a supportive argument for the proposed regulation. Legislation of the countries, where such regulation cannot be found or where the respective solution is refused, will usually not be used or indicated.

Thirdly, legislation can only use argumentation or interpretation that is well established in a foreign doctrine, without transposing or proposing to transpose also a particular foreign solution. Like for the previous possibility, in this case comparison with foreign legislation is rather a politically supporting argument. However, this approach brings the largest number of risks linked to the comparative method, because it does not exclude the existence of the same legislative solutions, which are interpreted differently from the source model.

[11] The functional comparative method looks at the way practical problems of solving conflicts of interest are dealt with in different societies according to different legal systems and thus, how the law *functions* in different systems. See the chapters by Nils Jansen and Michaels Ralf in REIMANN, M., ZIMMERMANN, R. (eds.). *The Oxford Handbook of Comparative Law*. Oxford University Press, 2006.

What source should be use? How to select model countries and what countries were selected?

Unlike an honest methodology of comparative research, the legislator does not have to analyse the selection of compared countries, to compare a number of rationally selected rules or to strive for their representative sample. Although law-making is policy driven by its nature, we should be able to explain why we use for new legislation as a model a solution of a particular state or several states (problem of selection of reference samples for comparative research).[12]

We will try to outline some considerations on what laws prove to be suitable for the preparation of Slovak legislative texts in the area of company law. As it is obvious from the nature of the matter, we will only offer a set of *prima facie* simplifications or even prejudices, not a thorough empiric research on a representative sample.[13]

In view of the envisaged objective (inspiration by a foreign source) only legislation, that is adequately articulated and expressed in the text in normative manner, comes into consideration.

The general rule applies that the older is legislation, the less suitable it is for transposition into national law (1:1). The main reasons are intuitive. Firstly, formulations of older texts are often archaic and do not correspond to those used by the present legislators. Secondly, the case-law adapted the model rules to the changed conditions and without this historical development and context they cannot be fully understood, or even transposed as a text.

For the same reason, a foreign solution that massively relies on a doctrine regardless of whether it is a new or older rule is not suitable for legislative transposition as well. Legislative expression of law is only a fragment of its functional scope and transposition of legislative text itself (*black letter rules*) would not be sufficient for achievement of the envisaged effect.[14]

A number of prejudices can be generalised, also as regards specification of countries, the laws of which inspire the Slovak law-makers.

Of course, a foreign model very often used by the Slovak legislators is the Czech law, but the specific relation between the two jurisdictions excludes the possibility of drawing any generalizable conclusions.

As Slovak law falls in the sphere of influence of the German law, German and Austrian laws most significantly influence the current corporate legislation.[15] Interestingly,

[12] See Van HOECKE, M. Methodology of Comparative Legal Research. In *Law and Method*, 1-35. December 2015, p. 3-5.

[13] The focus is on corporate law. Amendments that objectively affected corporate issues are limited in number, which does not allow to draw a generalizing conclusion. However, it *per se* does not mean that the same conclusions do not apply to other amendments or for ongoing work on recodification of private law in the Slovak Republic. Quite the opposite, experiences of the author from other legislative work confirm the theses raised here.

[14] But it does not mean that the Slovak legislator consciously or unconsciously does not do so. See the section devoted to corporate arbitration.

[15] A number of conceptual decisions of the Slovak legislator (adoption of the Commercial Code, its fundamental Europeization amendments) have led to preference of the German model of corporate law.

German law does not seem to be a good model for transposition of legal provisions, because the application of German law is connected with very solid and argumentation-strong doctrine or case-law. Legislative (technical) transposition of mere texts of the rules would not simplify the procedure for the addressees. In case of Austria a functional difference between "older" and "newer" private law seems to exist. The functioning of older legislation was substantially reshaped by the case-law, regularly under the influence of German law.[16] The practice thus gradually moved away from the form. However, more recent legislation is different – it seems to be formulated more technically, casuistically and specifically, trying to draw up a doctrine (compare the rules of unfair competition, consumer protection, as well as company law). That is probably why the Slovak legislator reaches for it (typical example is legal regulation of crisis in Article 67a et seq. of the Commercial Code).

So-called new kids on the block, i.e. small Central and East European countries that reformed their private law after the transition phase, are regularly overlooked. Legislative "tailor-made" solutions, influenced by work of the comparatists (or are the direct result of their work), even directly from a foreign country (e.g. known legislative export of German academy), often appear. Although these new laws are not so interesting for comparative research (being called "offshoot" of extensive foreign legislation),[17] they are a very good source of inspiration for the legislator, because their authors had to bring the objectively tested rules into a new environment, where they cannot rely on the existence of a well-functioning and known system. For this reason they are often formulated as *self-sufficient*, with smaller space for unexpressed intra-system connections. It facilitates their transposition by other states. The works on Slovak recodification are also influenced by these new laws (e.g. Estonia).

At the first sight, the concepts of *common law* seem to be hard to transfer, in particular because they rely on the case-law. However, their advantage is their rather closed application. The rules that can be abstracted from the case-law, often do not need further rules for their application and do not constitute only a fragment of the legal rule. They represent closely-formulated implications and therefore can be – apparently surprisingly – transferred into the domestic continental environment. On the other hand, more recent legislation (e.g. *Companies Act 2006*), because of its casuistry and different formulations used, proves to be a less suitable candidate for transposition "1:1". Naturally, objective solutions, also of the rules of common law, are equally worthy of consideration as continental laws.

But legislation, which is actually a law functioning in certain state, is not the only suitable model. Academic proposals (DCFR, PETL) or rules of *soft law* can also be a good source for comparative law-making. They are suitable, because they are written

[16] Take into consideration e.g. prevailing interpretation of delinquent law from the text of ABGB, which came close to the rules or the case-law to BGB.

[17] See for example selection and justification of the compared laws in BACHMANN, G., EIDENMÜLLER, H., ENGERT, A., FLEISCHER, H., SCHÖN, W. *Regulating the Closed Corporation*. In European Company and Financial Law Review. Special Volume 4, 2013.

"on a greenfield,"i.e. *a*contextual by nature. They do not suppose an existing doctrine or context, but they formulate rules, from which this doctrine can be deduced. However, they must be transposed as a relatively large and closed unit. Transposition of particular institutes may present problems.[18]

A difference in use of foreign sources of inspiration between recodification and partial amendment?

In case of transposition of foreign sources of inspiration and formulation of own rule there is, of course, a difference between (partial) amendment of valid law and fundamental recodification or adoption of new legislation. In case of amendment the formulation has to maintain the context of the legal norm, as well as its formulation style. However, at work "from the foundation" the formulation properties of the source material can be better preserved.

After several amendments the pursuing of different foreign models proved to be a special problem of Slovak corporate law. As illustrated below, the legislator transposed the Austrian (initially German) concept of crisis of company, although it had already solved this problem in the bankruptcy law through the institute of voidability and later subordination of the receivables at issue on the pattern of the new German law or US law. The question arises whether it is not more appropriate to transpose or use as the source of inspiration one law than to fragment the institutes.

Alternative approaches to the use of foreign models by the Slovak legislator: Case study in Slovak company law

The recent amendments completed the Slovak company law by new institutes, which are known to the foreign legal practice and usually are the result of judicatory development (regime of loans granted to the company by its members, liability of *de facto* bodies of a company). The national case-law did not elaborate these institutes, so the legislator had to proceed with their legal regulation. He used foreign models for the creation of the legislative text. We illustrate on the following examples three different approaches and their potential consequences.

a) Crisis of companies and shareholder loans

The law wants to motivate the members to finance their company in the crisis period by capital bearing the fate of the company, i.e. by contributions (equity) instead of the debt (loan to be refunded by the company). For this purpose the Slovak legislator almost literally transposed into the provisions of Article 67a to Article 67i of the Commercial Code (hereinafter "CoC") the Austrian law on crisis of company.[19] Inspiration is fully

[18] See Slovak discussion and proposal of consequences of violation in JURČOVÁ, M., NOVOTNÁ, M., CSACH, K. Single system of legal consequences of violation of a contract. A suitable solution for new Slovak contract law? In *Právo, obchod, ekonomika V*. Košice : UPJŠ, 2015, p. 167-187.

[19] Bundesgesetz über Eigenkapital ersetzende Gesellschafterleistungen (Eigenkapitalersatz-Gesetz – EKEG). BGBl. I Nr. 92/2003. Special legislation on financing of a company in this critical phase was contained

declared in the explanatory report. But transposition – at the level of text – was not quite perfect. Some gaps in copying of formulations can be regarded as unintended, but others are so fundamental that they probably cannot be bridged by interpretation and the Austrian model can serve only as inspiration *de lege ferenda*.[20]

In this case we can assume that the legislator wished the new legislation to differ from Austrian legislation – by the text as well as by its effects. Therefore it should be possible to use also conclusions of the Austrian case-law as argumentation source for interpretation of Slovak law, in the framework of teleological or historical interpretation.[21]

b) *De facto* bodies of companies and their liability

The recent amendment (Nr. 264/2017 Coll.) introduced into the Commercial Code the provision on liability of *de facto* bodies of companies (Section 66 (7) of the Commercial Code).[22] The legislator declared inspiration by several laws (Czech, German model or law common law) and highlighted that none of the laws or rules had been transposed. The legislator apparently had the ambition to use the common core method. The legislator tried to unify – at the level of liability for damage and obligations of *de facto* bodies – different approaches (Czech, German and common law approach) and formulated a special rule of duty of care and liability of a *de facto* director. As the legislator searched for the nature of the institute, he could not use a concrete formulation of foreign legislation or abstraction of the case-law. Foreign legislation served here as a supporting policy argument for the introduced rule, the formulation of the rule is located. It makes it difficult to use a particular foreign regulation as an interpretation or argumentation pattern otherwise than for a common comparative argument.

c) Arbitration proceedings on corporate issues

The legislator chose an interesting approach in relation to the possibility to decide on corporate disputes in the arbitration proceedings. The amendment introduced the provision of Article 4 paragraph 5 of the Act on Arbitration stipulating the arbitration clauses in the internal regulations of the legal persons.[23] The explanatory report to

in German law, but it later abandoned this concept. To the overview of German, Austrian solution as compared to the solutions of common law from the Slovak perspective see DOLNÝ, J.: Doctrine of requalification of foreign sources to own sources. In *Justičná revue*, 2016, no. 10, pp. 1034-1035.

[20] See the reasonable proposal of Pala a Frindrich for more consistent transposition of the Austrian model of definition of the conditions of crisis. PALA, R, FRINDRICH, J. In OVEČKOVÁ, O. et all *Commercial Code. Extensive comment. Volume I*. Bratislava : Wolters Kluwer, 2017, p. 499 et seq.

[21] To the needs of *pro*Austrian interpretation see also CSACH, K. Company in crisis. In *Súkromné právo*, 4/2017, p. 166.

[22] According to Article 66 paragraph 7 of the Commercial Code: "*Obligations of the mandatary are also imposed on a person who de facto performs the functions of the statutory body or a member of the statutory body without being appointed or designated as such. In particular, this person is obliged to act with due care in line with the interests of the company and all its members. In case of violation of these obligations this person shall have the same liability as the statutory body or a member of the statutory body.*"

[23] "*The written form of the arbitration contract is maintained also in case of written accession to the contract according to a special law,3a) which contains a valid arbitration clause. This provision shall also apply in case of acquisition of membership of an interest group or another legal person, whose internal regulations contain the arbitration clause.*" (Article 4 paragraph 5 of the Slovak Act on Arbitration).

the quoted provision indicates that "*internal regulations of a legal person (e.g. the memorandum of association or the founding contract, the foundation charter or the articles of association) can contain an arbitration clause. On the pattern of German law the specification of conditions of validity of the arbitration clause and the scope of arbitrable cases in accordance with provisions of this Act is left to the case-law and legal science*". From the aforesaid it is clear that the legislator did not regard it as expedient to determine detailed conditions directly in the Act and invited the case-law and the doctrine to mold the law. The legal science accepted the challenge and formulated – in line with the German doctrine – the conditions of arbitrability of corporate disputes.[24] Did the legislator thus pull the German doctrine in the local world? Attentive reading of the explanatory report reveals that the legislator followed the German model as regards the space devoted to the doctrine to molding of the law, not to the determination of its content. The fact that the legislator wanted to leave a room for molding of law like in the German practice or doctrine, does not mean that it should be filled by German doctrine. However, it is a strong argument in favour of the use of foreign interpretation and argumentation patterns.

Conclusion

Even if the legislator highlighted inspiration by foreign law, no fundamental change of possibilities and the method of interpretation of national legal norms occurs and a foreign case-law does not become a binding argument for the applying bodies. A foreign doctrine or case-law remains an argumentation pattern, which should be taken into account. Declaration of legislative models should discourage the applying bodies from refusing arguments of the parties on certain interpretation of foreign law (e.g. in the judgment) with reference to the fact that it is a foreign view, which *per se* is not applicable in the domestic environment.

If the legislator declares the source of inspiration he probably wishes adopted legislation not only to sound as a model, but also to operate as its model. It allows to use as supportive argument not only the text, but also the foreign doctrine or case-law that was known at the date of adoption of the national text. These arguments should be part of standard (national) methods of interpretation of law. Later development of the doctrine should already be assessed in the regime of traditional comparative arguments in the case-law. If the legislator wishes it to further develop like in other countries he should express its wish more clearly.

[24] CSACH, K., GYÁRFÁŠ, J.: Arbitrability of corporate disputes: *Terra nova*, terra incognita. In *Justičná revue*, 2015, No. 3, p. 316-342. The case-law has not been created yet.