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1 Informasjon og filopplasting

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Task 1: The COMPASS-model

1.0 Introduction

In today's society, comparative law plays a significant role in the development of the world's legal cultures. The way of learning through comparison is a valuable tool, and contributes to an internationalized world community. Comparative law can be used to gain new knowledge in general, or when in need of a specific answer to a legal problem. There are also several ways of conducting comparative studies, that is, the different approaches. The Legal Cultural Model (LCM) can illustrate as an example. However, the LCM does not give a guideline on *how* to compare the specific features in different legal cultures.[1] This is what the COMPASS-formula is all about.

In this text, there will be a presentation of the COMPASS-formula, with explanation of its content. In addition, there will be a discussion about the strengths and weaknesses of the formula, and the effects of it. Is it a useful way of conducting comparative law?

1.1 Definitions and clarifications

When in mentioning of "COMPASS" in this text, it will further on be followed by either "-model" or "-formula", or just "formula". They are both used for the reason of variation. It is based on the perception that they both mean the same thing, after interpreting the task and the relevant literature.

There will be some use of the term "hermeneutics", while presenting the COMPASS-model. Hermeneutics is "the study of interpretation"[2], which refers to the doctrine of how to make the best use of the potential behind interpretation. The developer of the COMPASS-model uses a hermeneutical circle, to clarify the connection between the different steps and how they work together.

2.0 General features of the COMPASS-formula

The COMPASS-formula is developed by Sören Koch, a professor at the Faculty of Law at the University of Bergen (UiB). His field of competence consists of several subject areas, but

[1] S. Koch, "From mapping to navigation – a COMPASS formula for Conducting Comparative Analysis", in: S. Koch and J. Øyrehagen Sunde, *Comparing Legal Cultures*, 2nd ed., Fagbokforlaget 2020, p. 71

[2] T. George, "Hermeneutics", *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2021/entries/hermeneutics/>

most relevant here is his knowledge of comparative law. He is one of the authors behind the academic book "Comparing Legal Cultures", together with Jørn Øyrehagen Sunde, and is the primary literary source in this text.

The COMPASS-formula can be defined as a way of conducting comparative analyses, based on the legal cultural knowledge and the understanding one has discovered.[3] The purpose is to provide a specific guideline on how to conduct comparative studies, as a "recipe". The formula is constructed in a seven-step process, that is all organized in a hermeneutical circle. The hermeneutical circle is considered a suitable illustration to demonstrate the correlation between the different steps.[4]

The presentation of the COMPASS-model is closely related to The Legal Cultural Model (LCM). This is due to the origin of the method. The LCM is the comparative approach developed by Sören Koch, together with Jørn Øyrehagen Sunde in their academic book. The COMPASS-model is still not limited to comparative studies that is based on the Legal Cultural approach. It is considered to be a "roadmap for all kinds of comparative studies", regardless of the specific purpose behind the act of comparison.[5] This means that the COMPASS-model also can be applied when using other approaches, such as the functional approach.

Further on, the seven steps of the COMPASS-formula will be presented shortly, to give a simplified impression of what the guideline consists of. The three first steps corresponds to the preparatory stage, while the following steps are constitute the application stage.[6]

2.1 The seven-step process

The first step is about *creating and concretising the research question*. It is considered a requirement that «the researcher ask herself what precisely she wants to achieve – what is the comparatists epistemological interest».[7] This is where you specifically formulate an overall aim of what you want to accomplish with the comparative analysis. It can be argued that

[3] S. Koch, op.cit. (2020), p. 71
[4] S. Koch, op.cit. (2020), p. 74
[5] S. Koch, op.cit. (2020), p. 72
[6] S. Koch, op.cit. (2020), p. 73
[7] S. Koch, op.cit. (2020), p. 75, with further references to; J. Husa "Research Designs of Comparative Law – Methodology or Heuristics?" in M. Adams and D. Heirbaut (eds), *The method and culture of comparative law. Essays in honour of Mark Van Hoecke* (Hart Publishing 2014) p. 55. DOI: https://doi.org/10.5040%2F9781474201636.ch-004

without a formulated hypothesis or question, it becomes more difficult to achieve a desired result or conclusion. One can ask many different questions within a broad topic; the more accurate the research question is, the more specific the answer will be.

After creating a question or a hypothesis, the second step consists of defining the *objects and objectives* of the comparison. This refers to distinguishing between several questions that needs to be answered before proceeding: what to compare, why, and how to compare them in order to achieve the objective[8]. In short terms, the researcher has to decide which jurisdictions, cultures and legal sources to include in the survey. In addition, one has to decide if the objects of comparison are exclusively contemporary law, or if historical sources also should be included.[9] When answering these questions, it contributes to avoid ending up with factors that are incomparable.

The third step is about designing a suitable *method* for conducting a comparison. The methodological approach has to be formed in a way that serves the overall purpose behind the comparison (step 1), while also considering the objects and objectives that has been selected to be compared (step 2)[10]. Therefore, there is not only one typical method of how to conduct comparative law. In other words, this is the step where you decide which comparative approach to use; if it's the LCM, the functional approach, or one of the many others.

We are now reaching the application stage, where the fourth step consists of *pinpointing* both *similarities* and *differences*. It is based on the methodological approach of comparison (step 3). This is considered to be the most time-consuming step of them all. However, as mentioned above; the more precise the research question is, the less is the risk of comparing incomparables. Based on this factor and several others, «the emphasis of the comparison can be identifying similarities or differences, or both».[11] However, it is considered an advantage to let the comparison be a combination of them, to avoid an eventual biased comparison.[12]

[8] S. Koch, op.cit. (2020) p. 78
[9] S. Koch, op.cit. (2020) p. 82, with further references to; M. Siems, *Comparative Law* (2nd edn, Cambridge University Press 2018). DOI: https://doi.org/10.1017%2F9781316856505
[10] S. Koch, op.cit. (2020) p. 83
[11] S. Koch, op.cit. (2020) p. 87
[12] S. Koch, op.cit. (2020) p. 87, with further references to; E. Örücü, "Developing Comparative Law", in E. Örücü and D. Nelken (eds), *Comparative Law. A Handbook* (Hart Publishing 2007) p. 50

The fifth step is about *assessing* and *explaining* the observed similarities and differences. The findings done in the previous step will not be considered of any value, unless the researcher makes an assessment of them. Here, the context between the findings and the political, geographical, historical and several other cultural factors, are of relevance when interpreting the observed findings.[13] With these cultural factors in mind, it gives a wider understanding of why a legal culture chooses to handle a legal theme like they do.

The sixth step consists of *systematizing* and *scrutinizing* the findings. A good strategy here can be to divide the findings into established categories and subcategories. Further on, it is considered an advantage if the researcher can find alternative explanations to a legal problem. This way of contextualisation can create a more accurate result of the comparison, when all relevant factors are taken into account.[14] This is done in order to be able to answer the research question in the end.

The seventh step is about starting all over again by re-evaluating all the previous steps. This refers to the hermeneutical circle, and the correlation between the individual steps. It is the step where you «critically review the initial research questions and underlying assumptions».[15] The researcher now evaluates the findings, which may result in a change or adjustment of the initial questions and prerequisites of the comparison.

3.0 Strengths and weaknesses with the COMPASS-formula

What is considered a strength of the COMPASS-formula, is that it can be used for all kinds of comparative studies. As mentioned above, the formula is developed by Koch, who also happens to be the developer of the LCM. Even so, it is not limited to only being applicable for that specific approach. The thought is that it is supposed to be a «roadmap for all kinds of comparative studies».[16] This allows the formula to be used for most types of comparative studies. In addition, it is considered as effective on all levels of comparison, such as the macro-, meso- and microcomparison, also surface or deep level.[17]

[13] S. Koch, op.cit. (2020) p. 91
[14] S. Koch, op.cit. (2020) p. 95
[15] S. Koch, op.cit. (2020) p. 97
[16] S. Koch, op.cit. (2020) p. 71
[17] S. Koch, op.cit. (2020) p. 72

However, the scope of the formula can be considered a weakness. The study of comparative law itself is an extensive and time-consuming process. The formula can therefore appear as a bit overwhelming, when it sets up such a complex process to find the answer the researcher is looking for. It is difficult to conduct a straight-forward process of comparative law, without any setbacks.[18] The comparison may therefore not be finished when the researcher has conducted all the steps. It can also be difficult to decide how and where to start.

On the other hand, considering the argument about where to start the comparative process, the COMPASS-formula can be just what the comparatist needs to begin this process. It provides a «starting point and background for comparative legal studies»[19], where the formula contributes as a guideline to the whole process. It also enables the reader to «gain a deeper structural understanding of foreign law in context», when the historical and legal dimensions in a culture together can provide several interesting insights.[20] In this way, the formula is considered a strength.

It can also be mentioned that the use of the COMPASS-formula may require experience within the field of law. The complexity of it may therefore be one of the reasons why it's considered to be a difficult tool for unexperienced comparatists. This is considered a weakness of the formula.

4.0 Summary remarks

The purpose behind the COMPASS-model is to provide the comparatist a guideline on how to conduct comparative law. The formula is applicable to all kinds of comparative studies, and at all levels of comparison. Even though it may require experience within the field of law and be complex for the comparatist, is it a useful way of learning how to conduct comparative studies. To answer the introductory question; multiple reasons tell that the formula is a useful "recipe" for a successful comparative process.

5.0 Bibliography – task 1

George, T. "Hermeneutics", *The Stanford Encyclopedia of Philosophy* (Fall 2021 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2021/entries/hermeneutics/>

[18] S. Koch, op.cit. (2020) p. 73
[19] S. Koch, op.cit. (2020) p. 98
[20] S. Koch, op.cit. (2020) p. 98

Koch, S., "From mapping to navigation – a COMPASS formula for Conducting Comparative Analysis", in Sunde, J. Ø. and Koch, S., *Comparing Legal Cultures*, 2nd ed., (Fagbokforlaget 2020)

Task 2: Education and Professionalisation in Norwegian, English and German Legal Culture.

1.0 Introduction

Each individual country has its own unique legal culture. Their history and culture in general are some of the factors that influence their culture's legal development. A lawyer, or legal worker, is a profession that offers fewer job opportunities on an international basis, due to the fact that each legal culture has its own perception of the most correct way to educate lawyers. In other words; it goes without saying that the legal education and professionalisation is conducted each in their own, unique way.

In this text there will be a short presentation on how the Norwegian, English and German legal cultures conduct their legal education and professionalisation. Further on, there will be a discussion regarding the differences and similarities between them, as well as some strengths and weaknesses. The overall interest with this text is to highlight the different strategies regarding legal education.

1.1 Definitions and clarifications

This assignment requires the comparison to be done in light of the Legal Cultural Model (LCM), developed by S. Koch and J. Øyrehagen Sunde in their edited book «Comparing Legal Cultures». The main focus will be on the structural element of *professionalisation*, which is the fifth element in the model. The other five elements can be drawn into consideration in the presentations and discussions, where it is appropriate in the context.

The term *professionalisation* can be defined in two ways. It means that «those who handle law on behalf of the society spend more and more of their time on legal issues».[21] This refers to law as a time-consuming profession. Secondly, it means that «there are special criteria to fulfil before one can be trusted with the position of handling law».[22] This refers to the path of education, where the goal is to achieve the profession of being a lawyer or someone who handles the law. One can say that profesionalisation is about how the legal education is conducted in the different legal cultures.

[21] J. Øyrehagen Sunde, "Managing the Unmanageable – An Essay Concerning Legal Culture as an Analytical Tool", in S. Koch and J. Øyrehagen Sunde, *Comparing Legal Cultures*, 2nd ed., Fagbokforlaget 2020, p. 34
[22] J. Øyrehagen Sunde, op.cit. (2020) p. 34

2.0 Professionalisation and education within the different legal cultures.

2.1 The Norwegian Legal Culture

In Norway, having a master's degree has been a requirement for practicing law since 1736.[23] To receive the degree, you are required to pass a legal exam. Since the year of 2005, the legal education takes five years. Undergraduate law programs are offered at three universities (Oslo, Bergen, Tromsø), which corresponds to a masters' degree. There are also bachelor programs, but then the opportunity of practicing law is not available yet with an achieved degree.

Other than the requirement of a law degree to practice law, there is one exception if you want to practice as a *lawyer*; you are in need of a license provided by The Organ for Supervision of Legal Practitioners. They have the «authority to decide the requirements and to reward the licenses».[24] To become a practicing lawyer, you work as a paid trainee in a period of two years in a law firm, or something similar.

When completing a legal degree, you have the opportunity to work in most areas of law. Specialisation is not a requirement, not even for practicing as a judge. The Norwegian courts are therefore non-specialised, and lay judges are most extensively used.

2.2 The English Legal Culture

In England & Wales, the «undergraduate law programs are taught at more than 100 higher educational establishments»,[25] such as universities and colleges. Most students take a bachelor degree in law. The postgraduate studies are in other words more of interest for those who seek an academic career.

There are two alternative ways of reaching the professionalised level of law in English legal culture. Either the Legal Practice Cource to become a *solicitor*, or the Bar Professional Training Course to become a *barrister*. These are one-year, full-time courses, which are almost exclusively taught by practitioners, completed after the bachelor's degree.[26] The

[23] M. M. Kjølstad, S. Koch, J. Øyrehagen Sunde, "An Introduction to Norwegian Legal Culture", in: S. Koch and J. Øyrehagen Sunde, *Comparing Legal Cultures*, 2nd ed., Fagbokforlaget 2020, p. 136
[24] M. M. Kjølstad, S. Koch, J. Øyrehagen Sunde, op.cit. (2020) p. 137, with further references to: tilsynet.no
[25] C. N. K. Franklin, "A Legal Cultural "Take" on the Legal System of England & Wales", in: S. Koch and J. Øyrehagen Sunde, *Comparing Legal Cultures*, 2nd ed., Fagbokforlaget 2020, p. 383
[26] C. N. K. Franklin, op.cit. (2020) p. 383

difference between a solicitor and a barrister is that the solicitor mainly performs legal work on the outside of the court, as general legal advisers, while the barrister mainly work within the courts, as special advocates.[27] However, there are exceptions.

It is not a requirement that one has a degree in law to practice law. Therefore, it exists several ways of becoming either a solicitor or barrister. Non-law graduates have an opportunity to enter as a solicitor or barrister by taking a «one-year conversation course on law first, known as the Common Professional Examination or Graduate Diploma in Law».[28] There are no separate way of becoming a judge, because they are exclusively recruited from the practicing Bar.

2.3 The German Legal Culture

The legal education in Germany is known for its tradition of being a country with an «extraordinary high level of professionalisation in the field of law».[29] The teaching of law has since the middle ages been taught at universities and other institutions.[30] All those who are lawyers, legal practitioners and legal scientist have some kind of legal education. In total, there are 46 different law faculties at German universities.[31]

The Länders, which corresponds to the separate states in Germany, are in charge of the legal training and education.[32] The education can therefore appear different in one state relative to another. The German legal culture has however developed a very harmonizing legal education for lawyers, with the basic structures in mind, and a fairly identical way of applying of the legal sources and methodology.[33]

To become a full-fledged lawyer, the student has to pass two separate state examinations, over a total of at least seven years of education, but often more. Judges are not required to complete additional training or other requirements, other than having exceptionally good

[27] C. N. K. Franklin, op.cit. (2020) p. 384
[28] C. N. K. Franklin, op.cit. (2020) p. 383
[29] S. Koch, "An Introduction to German Legal Culture", in: S. Koch and J. Øyrehagen Sunde, *Comparing Legal Cultures*, 2nd ed., Fagbokforlaget 2020, p. 257
[30] S. Koch, op.cit. (2020) p. 257
[31] S. Koch, op.cit. (2020) p. 259
[32] S. Koch, op.cit. (2020) p. 258
[33] S. Koch, op.cit. (2020) p. 258

grades.[34] At the same time, the German court system is specialised to a certain degree, which does require that the lawyer is an expert in his field of competence.

3.0 Comparison of the three legal cultures' educations

3.1 Differences and similarities

The Norwegian education is not considered to be strongly characterised by specialisation within the fields of law, hence to the non-specialised courts. There is one court hierarchy, where the conflict resolution takes place. All types of cases, both civil and criminal are dealt with here. The judges must thus have control over all the different areas of law. In German and English legal culture, there is a more specialised court system, which therefore requires the judges to be specialised within the different fields of law.

The German education is considered to be the longest of the three of them. It requires a minimum of seven years, but often more. This is different than the Norwegian education with its five years (seven for a licenced lawyer), and the English with four. In addition, there are large differences within the number of educational institutions. Norway has mainly 3 (but now counting), England & Wales have more than a hundred, and Germany has 46.

To practice law in the English legal culture, it is not required to have a degree in law. You can still become a legal practitioner, even though you don't have a bachelor's degree before becoming either a solicitor or barrister. This is very different from the Norwegian and German legal culture, who both have in common that a legal degree must have been achieved before practicing law.

There are fewer similarities between the education of the three legal cultures. However, one can say that the English barrister can correspond to the Norwegian and German fully educated lawyer. This can be considered as a similarity between the different legal educations. They all eventually can reach the same title, but however on different ways. In addition, it is common that it is not normally required to take additional education to become a judge.

[34] S. Koch, op.cit. (2020) p. 260

3.2 Strengths and weaknesses – two chosen themes

3.2.1 Educational journey

The German legal cultures' education is, as stated, the longest of the three of them, and may also be the most strict, and this in its self can be considered as a weakness. However, this can also be a strength, because legal workers therefore are well equipped to handle the pressure that comes with the profession, when they know what's at stake if the legal exams are not passed. There are also many students that get an opportunity to study law, which also is a strength.

The English legal culture is considered to be the shortest education of the three, with several ways of reaching the title of barrister or solicitor. A strength is that many get to practice law as a profession, because of the many alternatives to achieve a law degree. As a weakness, the level of professionalisation may be weakened.

In the middle, lies the Norwegian legal education. It is very competitive to be admitted to law school in Norway. This is a strength in form of quality, but a weakness because of a strong focus on grades from high school in admission. What a student has in science and mathematics has little to nothing to say, if you are going to study law.

3.2.2 Specialisation

One can question if the opportunity to practice law in England, without a law degree is a weakness or a strength. On the one hand, as Franklin says, it allows a wide range of people who carry knowledge in all manner of fields, such as economics, engineering, geology and so on. It can be considered a strength that they bring «their skills and specialist knowledge to the legal profession».[35] It can bring another dimension to how conflicts are solved and how norms are produced. However, this can be critisised for making the lawyers less equipped to handle the law in general, given the great responsibility that lies within the profession. It can contribute to a wrong focus on how specialisation should be.

In Norway, the education is characterised as being non-specialised. This can be argued as a strength, considering that the judges in the legal system therefore are fit to handle any case that comes their way. Sometimes the cases concerns multiple fields of law. Therefore, the judges can take care of all of legal questions that arise. However, it can also be a weakness

[35] C. N. K. Franklin, op.cit. (2020) p. 383

that the judges aren't as specialised in the fields. In Germany, the scheme is "the opposite" of the Norwegian. This can be a strength considering that the judges most likely are experts within their field of competence, which further can ensure a fair result. In terms of weakness, the judges therefore cannot handle all types of legal questions. The two legal cultures way of conflict resolution can in this way complement each other.

4.0 Summary remarks

It can be difficult to compare English legal culture, that originates from common law, with German and Norwegian legal culture, that originate from civil law. The legal systems are therefore quite different, which also affect the ideal of justice and professionalisation of the culture. Some of the features are quite similar between two of them, but all three of them together have few common strategies about their educational process.

5.0 Bibliography – task 2

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