

TRANSNATIONALIZATION OF DOMESTIC LAW IN INTERNATIONAL COMMERCIAL ARBITRATION THROUGH COMPARATIVE ANALYSIS: CHALLENGES FOR LEGAL PROFESSION

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ABSTRACT

The paper explores crucial role of comparative method in the interpretative practice of international commercial arbitration and examines in what ways, to what extent, in what context and to what effect it is being used in this field. It aims at highlighting how the “reformulated” practice of comparative analysis in arbitration differs from one developed by the domestic courts, and seeks to explain reasons, as well as consequences of this phenomenon. The comparative method is also perceived as a lens, focusing a number of key issues in arbitration, including its specific functional and legal setting, impact on legal profession and the dynamics of regional developments in this field. The discussion of the role of comparative approach in arbitration focuses on substantive law considerations, but it also refers to the issue of reconciling competing procedural standards in cross-cultural cases. The main goal of the paper is thus to unveil particularities of comparative method in arbitration, to explain its unprecedented popularity in this field and to demonstrate how it is being used as an instrument for what has been characterized as the arbitrators’ “inclination to ‘transnationalise’ the rules they apply”.

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