COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

CCJE(2017)1

Strasbourg, 20 février / February 2017

CONSEIL CONSULTATIF DE JUGES EUROPEENS (CCJE)

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Compilation des réponses au questionnaire pour la préparation de l'Avis n° 20 (2017) du CCJE intitulé « Le rôle des tribunaux dans l'application uniforme du droit »

Compilation of replies to the questionnaire for the preparation of the CCJE Opinion No. 20 (2017) entitled "The role of courts with respect to uniform application of the law"

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Albania / Albanie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Yes. The concept of uniform application of law is established in the Constitution and laws. It is clearly defined and there aren't too many spaces for combination.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

Uniform application of the law as a concept is related to the implementation of the same law's and the same practices throughout the territory of a certain state.
Among the factors that affect mainly the uniform application of the law are consistent legislation and uniform case law.

Consistent legislation is one of the main factors which affect the unification of jurisprudence. Consistent legislation with few changes, affect the implementation of the same law throughout the country.
Uniform practices by the executive institutions may affect mainly on providing a fast service but not in terms of uniform application of the law.
The unification of judicial practice plays an important role in the uniform application of the legislation, and we can say a primary role. Through the unification of judicial practice becomes easier for the administration the implementation of the same practices in the same cases, establishing the same standards.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The reason of the uniform application of the law or even the same practices mainly intended to avoid abuses and creating legal certainty, stability of juridical relations, for a quality and effective service.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The concept of Uniformity of law enforcement is governed by the provisions of the Constitution, domestic laws and international law, and in these conditions during the legislative process is taking into account the principles set out in these acts.

2.2 Is there a hierarchy of laws?

Yes.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Compliance is ensured through the adoption of treaties and harmonization of national legislation. There are cases that the treaties are directly applicable but in other cases are applied through adoption of new laws or adaptation of existing laws.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Through interpretative technique. Mainly the legislator has ensured that there are no contradictions in this section, at least in terms of uniform application of the legislation. As in the case of inconsistencies between treaties and national legislation it is anticipated that the provisions of treaties take precedence over domestic legislation.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The need for modification may become apparent during the implementation of the existing law, or as a result of a public debate between interest groups and political institutions. In fact it is the duty of all ministries to follow closely the development of the legal system in their respective areas and provide, where appropriate, amendments as well as the repeal of legal norms that have lost relevance, or that effectively are replaced by subsequent legislation. Each project for drafting a law should be preceded by the evaluation and certification of the reasons why the law required, in particular his political justification and legal. It is the duty of law makers to determine what should be regulated by law, to who is the law, and under what conditions will legislation function. The main role in this process has Codification Department of the Ministry of Justice and Parliament.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes there are some acts that are source of law and also are binding for the courts.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Mainly the experience of recent years has shown that the legislation has been amended many times and such a fact certainly affects the creation of unstable or legal instability.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

No.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Court decisions have no binding effect, except for the parties.
However the court decisions are important for judges for terms and they serve for informal as a practical application of the same practice for the same cases.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Yes. Unifying decisions of the Supreme Court taken by the joint chambers of the Supreme Court have a binding legal effect and the courts of lower instances are obliged to apply them. No there aren't special arrangements between Courts in horizontal or vertical level.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

Yes we have special courts. The adoption of the new Constitution has foreseen the creation of a special court for crimes such as corruption etc.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Yes is determined by the constitution and others laws.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Yes. These decisions are binding for all judges and for the chambers of the Supreme Court.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Depending on the legal system that a state has adopted, High Court's decisions have the authority of a "precedent"

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Within this framework, the ordinary courts interpret the law relying in their exact meaning by referring to the interpretation rules, in order to fulfil the legal gap on the legal order, the resolution of contradictions, unclarities, ambiguities, in the content of the norms. A task that in a certain way implies a creative and active role of the court for the development of positive law.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

The courts need to form and encourage the development of law and to ensure uniformity of law and legal certainty by giving responses in a timely manner to important legal issues, the impact of which, on the domestic legal order, transcends the interests of the individual case.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Supreme Courts play by unification of the case-law and development of law, in those cases where case-law has shown that the lower courts have given different or contradictory solutions regarding the application or interpretation of certain legal norms, ensuring in this way the consistency of jurisprudence through the uniform interpretation of the law, standardization of rendering justice in the judicial system as observance of the principle of legal certainty.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Another mechanism which serves to ensure the unification of the case-law are as well the judgments of the European Court of Human Rights. The referral to the jurisprudence of the ECtHR has established a valid and effective interdependence between the national courts and the case law of the ECtHR, considering that the

national courts have been entrusted with the task of assuring directly the application of the judgments of the ECtHR.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Access is guaranteed through its various means but mainly those mentioned in your question receive access through the official site of official publications center, courts website and other state bodies.

3.13 Is the access to such database free of charge?

Yes.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Courts are among the sources where you can get information but such information is not primarily used for commercial purposes and provided free of charge from courts and other operators.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

We cannot talk about real challenges in terms of practical unification because the unification is always carried out when the legislation is being implemented in different ways by different courts. Normally it would be better if the legislator would provide clear and explanatory concepts in order to better understanding and to be implemented the same by the courts.

3.16 Any other point you wish to raise.

Andorra / Andorre

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

Il existe un concept d'application uniforme du droit dans le sens jurisprudentiel, les tribunaux supérieurs tels que le Tribunal Superior de Justice, ou le Tribunal Constitutionnel marquent les critères de jurisprudence qui par ailleurs ne sont pas obligatoires pour les instances inferieures. Ce sont uniquement des critères qui peuvent être suivit ou pas. On tout cas il n'existe pas une application uniforme du droit établie par la loi ou la constitution.

Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

- **l'adoption, au niveau législatif, d'une législation cohérente;**

  Non il n'existe pas une application uniforme au niveau législatif.

- **les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;**

  Non il n'existe pas une application uniforme au niveau exécutif ni des organismes d'application de la loi.

- **la jurisprudence uniforme élaborée par les tribunaux**.

  Les antérieures questions sont négatives, car l'uniformisation du droit dans notre système se fait par la jurisprudence élaborée par les tribunaux. Il faut remarquer dans ce point que malgré la jurisprudence à cette fonction, les juges d'instance peuvent ne pas suivre l'interprétation prévue par la jurisprudence, même si cela comporté une très haute probabilité d'appel..

Expliquez chaque point et indiquez l'importance relative de chaque point.

1.2 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire?

La raison d'être de la Jurisprudence est connaitre l'application ou interprétation de la loi quand il existe de différents critères. Il est possible qu'à force de jurisprudence il puisse y avoir des modifications législatives qui puissent servir à normaliser des aspects législatifs non prévus, ou bien pour améliorer l'interprétation d'une loi.

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif?

Il n'y a pas d'exigences formelles ni informelles pour l'uniformité du processus législatif.

2.2 Existe-t-il une hiérarchie des lois?

Oui il existe une hiérarchie normative des lois. Les rangs supérieur est la Constitution, les traités et autres instruments internationaux, la loi qualifié, la loi ordinaire et les normes administratives approuvés par l'exécutif.
Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application?

Les traités internationaux sont directement applicables est dans la hiérarchie des lois ils sont prééminents, envers les lois nationales, dès sa publication officielle.

2.3 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international?

En cas de contradiction entre lois nationales du même niveau hiérarchique, c'est la loi spéciale qui sera appliquée, celle qui sera plus spécifique au cas concret, quand on ne peut pas discerner par ce principe, c'est la loi la plus récente qui sera d'application.

Entre une loi nationale et un traité international il y a une prééminence du traité international.

2.4 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exercent en pratique un rôle dominant dans ce processus?

L'initiative législative correspond à l'exécutif, au législatif, aux administrations locales ou au 10% des personnes avec droit de vote. Généralement, même s'il y a des exceptions, ce le Gouvernement qui présente des projets de loi au Parlement. En ce moment le projet est publié dans le journal du parlement est le processus ce déroule a niveau des commissions parlementaires sectorielles, qui amendent le texte ou proposent un texte alternatif. Finalement c'est la discussion en plenaire est la votation pour l'adoption du texte.

L'exécutif peut aussi adopter des règlements, mais dans la plupart des cas ce sont des normes qui développent des lois ou qui versent sur des questions très concrètes.

2.5 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignant pour les tribunaux?

Les actes qui on caractère générale, sont source de droit est contraignant pour les tribunaux tant qu'ils ne sont pas contraires à la loi.

2.6 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?

Non, en générale on ne dirait pas que les lois sont très souvent modifiés.

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation **nationale?**

La jurisprudence est une source de loi, dans la mesure où il n'y a pas de norme juridique sur ce point concret, donc elle est spécialement important en l'ordre civile, ou il n'y a pas de codification, mais la jurisprudence est, en termes de hiérarchie, subordonné a la législation nationale.

La jurisprudence n'a pas de valeur contraignante au-delà de l'affaire qu'elle juge. Il n'y a pas une obligation d'application générale en ce sens. Mais dans la pratique des tribunaux, la jurisprudence devient le principe, le point de repère pour l'interprétation des normes juridiques et des principes généraux du droit.

Dans le cas de la jurisprudence du Tribunal Constitutionnel, il faut faire une mention distincte. La jurisprudence du Tribunal Constitutionnel est contraignante est peut même déterminer la nullité de la législation nationale. Il faut préciser, que le Tribunal Constitutionnel n'est fait pas partie de la juridiction ordinaire est doit limiter ces fonctions à la validation de la concordance avec la Constitution.

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel?

La jurisprudence a une importance dans l'interprétation des textes législatifs, en tant que critère d'unification, spécialement a niveaux de l'ordre civile, ou il y a moins de législation. Il faut comprendre que on une seule Cour d'Appel. Si un juge d'instance décide de ne pas suivre sa jurisprudence il faut prévoir des révocations des décisions.

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité?

Le Tribunal Supérieur de Justice, en tant que Cour d'appel, à un rôle très important dans l'unification de la jurisprudence, puisque il fixe les critères qui seront suivies, dans la plupart des cas, par les juges d'instance, mais il n'existe pas de critères a niveau horizontal dans la juridiction de première instance pour garantir l'uniformité.

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement.

Non il n'existe pas de tribunaux spécialisés.

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?

Par une pratique établie.

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges / les panels de juges de cette juridiction;
- tous les juges du pays;
- y va-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

  Il n'y a aucune conséquence pour les juges qui décident de ne pas suivre la jurisprudence, puis que la loi ne prévoie pas que cette jurisprudence soit contraignante.

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?

Il y à un effet pratique. Les parties vont faire appel si la sentence est contraire a la jurisprudence, et en toute logique ils auront une révocation de la part du Tribunal qui fixe cette jurisprudence. Aucun juge ne veut voir augmenter ces révocations, ce qui peut avoir une empreinte très négative dans son évaluation professionnelle.

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?

Un recours contre le jugement si la contradiction se produit à niveaux de première instance. Comme il y a un seul tribunal supérieur, le problème ne se pose pas en appel.

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence?

Dans n'importe quelle situation que le juge considère que mérite une solution distincte. Ça reste dans la liberté de décision personnelle du magistrat.

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)?

Il n'y a pas de critères de filtrage tant qu'une des parts au procès décide de faire appel dans les délais prévus.

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays?

La jurisprudence de la CEDH est obligatoire pour l'Etat, et en tant que telle elle est d'application est peut être invoqué devant les tribunaux andorrans, en tant que droit international qui émane des traites.

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

Il n'y a pas de régime spécifique à niveaux nationale pour assembler la jurisprudence de la CEDH autre que celle qui provient de la même institution.

3.13 L'accès à cette base de données est-il gratuit?

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale?

Pour la jurisprudence nationale, le web du Conseil Supérieur de la Justice permet accéder à la jurisprudence de la Cour d'appel. Certains cabinets d'avocats offrent aussi cette possibilité, d'une façon moins exhaustive dans leurs pages web, mais en tout cas ce sont des web d'accès gratuit.

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

Etant donné la taille de mon pays est surtout le fait qu'on ait une seule Cours d'appel, l'unification de la jurisprudence ne parait pas un problème majeur pour le bon déroulement de la justice.

3.16 Tout autre point que vous voulez soulever.

Armenia / Arménie

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

--- ***D'après l'article 69 ;12-eme alinéa, de la loi ,,Cour Constitutionnelle,, Lorsque la cour constitutionnelle, révélant le contenu de la disposition d'un loi, il convient de le reconnaître correspondant a la Constitution et dans le même temps constate que cette disposition sur la base de la décision judiciaire définitive est appliquée avec une interprétation contradictoire a celle de son contenu, dans son décision il formule l'interprétation correcte.***

--- ***D'après l'article 171 ; 2-eme alinéa, de la Constitution de la RA La Cour de Cassation dans la cadre de ses compétence, prévu par la loi, en réexaminant les acte juridique assure l'application uniforme des lois et autres actes juridiques normatifs.***

--- ***D'après l'article 15 ;3-eme alinéa Chaque personne pendant l'examen de son affaire, comme un argument juridique à le droit de désigner les motivations d'une autre décision du tribunal, qui est entré en vigueur légale (y compris la loi) et les circonstances des faits de la quelle sont similaires a son affaire.***

--- ***D'après l'article 15 ;4-eme alinéa , de la Code Judiciaire Dans le cas de certaines circonstances de fait les motivations du décision de la Cour de cassation ou de la Cour européenne des droits de l'homme (y compris l'application de la loi) sont obligatoire pour les cours antérieures au cas des circonstances similaires , sauf lorsque celui-ci indique des arguments solides pour justifier qu'ils ne sont pas applicables les circonstances de fait.***

--- ***D'après l'article 72 ;11-eme alinéa , de la Code Judiciaire Conseil Des Présidents Des Tribunaux sur la base de la demande de l'ombudsman ou un juge peut donner des éclaircissements/explication/ consultatifs sur des questions juridiques qui se posent dans la pratique judiciaire.***

1.2 Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

- l'adoption,au niveau législatif, d'une législation cohérente;
- les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;
- la jurisprudence uniforme élaborée par les tribunaux.

--- ***D'après l'article 28 de la Constitution de RA, il est déclaré que,, Tous sont égaux devant la loi.,,. Cette exigence de la haute juridiction peut-être mise en œuvre si l'application de la loi sera basée sur une garantie de interprétation informe de la législation.***

La garantie de interprétation informe de la législation est réglée à l'aide d'une législation cohérente/présentée ci-dessus/.
Sur la base institutionnelle se sont la cour constitutionnelle et la cour de cassation, qui en synthétisant l'expérience des tribunaux, élabore des interprétations uniformes pour l'application des règles de droit.
L'autre institutions important c'est le conseil des présidents des tribunaux, qui d'après la demande de juge /aussi ombudsman/ a le droit de donne des explications, des éclaircissement et commentèrent de l'applications des dispositions juridique.

1.3 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire?

---***Le but de l'application uniforme de la loi est de résoudre les litiges juridiques pour les même tipes des faits avec la même manière, indépendamment de sexe, de race, de religion, d'appartenance social etc. L'application uniforme du droit en revanche assure l'équité entre la population et dans la relation sociale***

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif?

2.2

--- ***Oui, le processus législatif de l'Assemblée Nationale est réglée par une loi organique.***

2.3 Existe-t-il une hiérarchie des lois?

--- D'après l'article 5 de la Constitution.
1.La Constitution a la force juridique suprême.
2.Les lois doivent être conformes aux lois organiques, Sous-législations doivent êtres conformes aux lois et les lois organiques.
3. En cas de conflit entre les normes des lois et des traités internationaux ratifiés par République d'Arménie, sont applicable les traité internationaux.

2.4 Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application?

--- Les traités internationaux qui sont ratifié par RA, ont une application directe.

2.5 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international?

--- D après l'article 21, 2-eme alinéa, Principes et les normes universellement reconnus par le droit international, ainsi que les traités internationaux ratifiée par l'Arménie, font partie intégrante du système juridique de la République d'Arménie. Les lois et d'autres actes juridiques de RA doivent être conformes

aux normes et principes du droit international. En cas de conflit seront applicables les traités internationaux.

2.6 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exerce en pratique un rôle dominant dans ce processus?

--- ***D'après l'article 88, 2-eme alinéa de la constitution de RA l »Assemblé National accomplie le pouvoir législatif.***

Les règles de processus d'élaboration des normes juridiques sont inscris dans une loi qui est nommée< Loi des actes juridique> /il ne faut pas confondre avec des contrat ou d'autre source des obligations civil/ et dans une loi organique nommée <réglementation loi de l'assemble national> Le rôle dominant dans l'élaboration des projets des normes juridiques appartient au gouvernement

2.7 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignant pour les tribunaux?

---Les actes du pouvoir exécutif ont une force juridique sous législatif et en respectant l'hiérarchie de force juridique des normes/voir point 2.3/ il est obligatoire de les appliquée.

2.8 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?

---L'Arménie est un pays indépendant depuis 25 an. Donc il est évident que pour obtenir et pénétrer les valeurs démocratique dans la société il est obligatoire d'accomplir une tache permanent d'élaboration de raffinement les mécanisme juridiques. A cet égard nous somme dans une phase d'optimalisation de nos instituts et législation.

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation nationale?

--- ***En Arménie la jurisprudence n'a pas une valeur d la source de droit, mais elle une effet juridique contraignant/voir point 1.1/***

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel?

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité?

--- voir point 1.1

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement.

--- ***En Arménie le corps judiciaire est sépare en deux ordres juridictionnel, c'est l'ordre judiciaire et l'ordre administratif. Dans le premier degré l'ordre judiciaire n'est pas spécialise par la loi, mais entre chaque tribunal sont distingue les juges aux affaires pénales et les juges aux affaires civils. Dans le deuxième degré pour tout le pays on a une cour d'appel civil, une cour d'appel administratif et une cour d'appel pénal. ET en dernier ressort c'est la cour de cassation qui a une chambre civil-administratif et une chambre pénale.***

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?

---voir point 1.1

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges/ les panels de juges de cette juridiction;
- tous les juges du pays;
- y a-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

---***Non respect la jurisprudence de la cour de cassation amène a une responsabilité disciplinaire.***

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?

--- voir point 1.1

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence?

--- voir point 1.1

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)?

--- Voir point 1.1--pour l'accès en deuxième degré il est obligatoire d'une demande d'appel, le forme et le contenu de quelle sont inscris dans le code de procédure

et pour l'accès en cassation il faut avoir un pourvoi en cassation. Le seul filtrage concerne au respect aux exigences de forme et de contenue pour l'appel et pourvoi.

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays?

--- ***D'après l'article 204.33, 2-eme alinéa du code de procédure civil de RA les décisions des juridictions international, qui sont reconnu par notre état sont des motifs du réexamen des décisions de justice qui sont entrés en vigueur (circonstances nouvelles).***

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

--- ***Chaque année la cour de cassation publie des collections des décisions et des résumées qui sont des exposés sommaire de la jurisprudence de l'année précèdent. Il existe le logiciel <arlis.am>, qui est disponible pour tout le monde où sont incluses toutes les décisions de la cour de cassation. Aussi par le logiciel <datalex.am> on peut suivre les procédures qui se passent dans tout les instants et les affaires pendantes devant des juges. En se qui concerne a la jurisprudence international on a l'accès du programme de HUDOC***

3.13 L'accès à cette base de données est-il gratuit?

--- ***L'accès le logiciel <arlis.am> et <datalex.am> sont gratuit.***

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale?

--- ***les logiciel <arlis.am> et <datalex.am> sont des bases de donnés par un accès gratuit. Il existe aussi des bases commerciales. Tous ses instruments juridiques sont indépendants et d'hors de pouvoir étatique.***

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

--- ***D'après la législation arménienne le norme juridique doit être interprété dans le sens littéral des mots et expressions qui y sont contenues, en tenant compte les exigences de la loi. L'interprétation ne doit pas changer la signification de la norme. Si la norme a été adoptée en application ou en vertu de la force juridique égale ou supérieure d'un acte normatif, il doit être interprété sur la base des***

dispositions et principes de l'acte normatif supérieur.

Bosnia and Herzegovina / Bosnie et Herzégovine

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

At the level of the state of Bosnia and Herzegovina (BiH) there is no concept of a uniform application of law. Bosnian legal domain is fragmented and divided in multiple layers, within which the concept of uniform application of law has been exercised in a particular manner, yet for all lower levels of authorities, including the state level, there is no such concept in the formal sense, either as a governing doctrine, or as the existence of multiple legal and political schools of thought. This issue is also poorly represented in the papers drafted by local lawyers, but there are three indicators that something is nonetheless being done in that regard. There used to be a broad scientific/professional initiative that discussed, within multiple sessions, the need and the possibility of establishing a supreme court, which would have the jurisdiction to unify the application of law. Further, to some extent this function has been performed by the BiH Constitutional Court through its appellate jurisdiction, but it has been limited to violations of constitutional and conventional rights, so the issue has been discussed only within that scope. And as the third indicator, the BiH Case Law Unification Panel has been established under the auspices of the High Judicial and Prosecutorial Council, so even the work of this Panel, through some dozen or so unified positions over the two years of its existence, shows a minimal progress in this largely neglected field.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- **consistent legislation to be adopted at legislative level;**
- **uniform practices by the executive institutions and law enforcement bodies;**
- **uniform case law developed by courts.**

Please explain each point and indicate the relative importance of each point.

In BiH, there is no clearly established doctrine or position of the main schools of thought and relevant institutions on the concept of the uniform application of the law. However, according to the few positions that do exist, in BiH the concept is interpreted as a uniform practice within courts. There have been various efforts to have a consistent case law, but it has been a slow and long-lasting process, whose significant results cannot realistically be expected in the near future, mostly because of the fragmented legal system.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The uniform application of the law is necessary for the reasons of legal certainty, equality before the law, exercising other constitutional and conventional rights, and for

the full acceptance of the rule of law principle, which characterizes developed and democratic societies. The public should be able to feel the absence of discrimination, equal treatment, equitability and social justice, as well as an ambiance in which there is a certain comfort in terms of living and fulfilling various business and personal plans and interests.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

In BiH there exists one state-level, two entity-level and Brčko District (BD BiH), as well as 10 cantonal legislative bodies. Those 14 legislative bodies (BiH Parliamentary Assembly, Parliament of the Federation of Bosnia and Herzegovina (FBiH), National Assembly of Republika Srpska (RS), BD BiH Assembly and 10 cantonal assemblies) have their own rules by which to regulate the legislative process, according to their specificities and responsibilities. There is no general rule on the uniformity in the legislative process that would unify the procedure of adopting laws in all foregoing legislative bodies, but it is worth mentioning that those processes are essentially correspondent.

2.2 Is there a hierarchy of laws?

Yes there is. The State Constitution is superior to all lower legal acts (state laws and by-laws of state institutions, entity constitutions and their laws and by-laws, BD BiH Statute and its laws and by-laws). Also, in BiH the European Convention for the Protection of Human Rights and Fundamental Freedoms enjoys a special status, so that all acts lower than the State Constitution must be in compliance with the Convention. In case an issue has been resolved in violation of the Convention or has not been dealt with at all, until a decision on non-constitutionality is made there is a constitutional ground for the direct application of the Convention.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The conformity of national laws to international acts is ensured through the very legislative process, wherein various parliamentary commissions are tasked with providing for the conformity, but also through the review of constitutionality of laws before the Constitutional Court. International acts apply directly if a matter is not regulated by the national law, and there have been situations where the international treaty itself specifies its direct application, regardless of the existence of national laws.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

International treaties have a obligatory significance for the country, so if a matter has been regulated differently by law it then must be brought into legislative conformity, while there is always a possibility for the review of constitutionality of such a law before the Constitutional Court.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Draft laws are prepared by relevant ministries and, following or without public debate and consultations with interested groups, the government adopts the proposed law and submits it to the parliament, where it is first discussed within relevant committees (various committees provide their opinions and positions on the proposed law), after which the proposed law enters the legislative procedure before the houses of parliament. The sponsor has a dominant role allowing it not to accept public debate conclusions and positions of interested groups. Most common is a situation where public consultations are carried out only formally, after which regardless of the weight of arguments the ministry or the government completely ignores them and submits to the parliamentary procedure the draft law that suits them.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

No, they are not a source of law and are as such not legally binding for the courts, except in case of general by-laws that must apply in the given case. In such a situation the by-law, if it is an act of executive power, is used in judicial proceedings, but the interpretation thereof is fully up to the court, and the court is not bound by the positions of executive powers concerning the interpretation of the specific norm that is to be applied.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Laws are being amended continually, which shows that efforts have actually been made to improve legal solutions, which is to a certain extent acceptable in a country undergoing transition, such as BiH. However, there has been a series of poor amendments made, creating some unsurmountable difficulties in practice, which ultimately has negative implications for the legal certainty. Naturally, it is necessary to pay special attention to the legislative process, especially with the aim of involving broader interest and professional groups in the law drafting process. In BiH there has been a general tendency of political parties to “trade in laws”, thus politicizing technical and legal issues. All this is a product of our early stage of democratic development, poor reception of the rule of law, low legal culture and the absence of political accountability.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

In our national legal system case law does not have a binding legal effect and represents a subsidiary source of law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Case law plays a rather important role in making court decisions, and despite the fact that legal positions taken in decisions issued by higher (appellate) courts are not formally binding, lower courts still tend to comply with those decisions. The effect of decisions issued by higher courts on lower courts is reflected in the sheer power of arguments.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Since the organization of the judicial system in Bosnia and Herzegovina reflects the complexity of the country's constitutional structure, the judiciary has been organized on four levels. Both Entities – FBiH and RS, as well as the BD BiH, practically have separate judicial systems. Besides, BiH also has a state court – the Court of BiH. However, the Court of BiH does not have a cassation jurisdiction, and in that context there is no hierarchy between the Court of BiH and the entity courts. Given such an organization of the judiciary, unification of the jurisprudence has been carried out primarily at the level of each individual judicial system. Both entities have their own supreme courts which through legal positions they take in their decisions or at sessions of court divisions contribute to the uniformity of interpretation and application of law at the entity level. In the Brčko District, the unification of interpretation and application of law is performed by the Appellate Court through its decisions, while at the Court of BiH that role is played by the Appellate Division. Unfortunately, BiH does not have a supreme court that would provide for the uniformity of case law at the level of the entire country.

In accordance with the recommendations given within the Structured Dialogue on the Judiciary, between the EU and BiH, the Case Law Unification Panel was established in 2014 under the auspices of the HJPC BiH. The Panel provides a platform for establishing a continued dialogue between the highest judicial instances, for unifying the case law, and for the discussion about other issues of common interest. Panel members include judges of the Appellate Division of the Court of BiH, the RS Supreme Court, the FBiH Supreme Court and the BD BiH Appellate Court. The Panel has ben set up to cover the fields of criminal civil and administrative law.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

The only specialised courts existing in BiH are commercial courts in the RS. Pursuant to the Law on Courts of the RS, the courts with special jurisdiction are the District Commercial Courts (five Courts in total) and the High Commercial Court. The provision of the above referenced Law regulating the jurisdiction of the RS Supreme Court as a supreme judicial instance within the referenced Entity does not explicitly provide for the Supreme Court's jurisdiction concretely over the decisions of the High Commercial Court. The referenced Law, however, provides that the Supreme Court shall decide on extraordinary legal remedies against the final decisions delivered by the courts in the RS (also including the High Commercial Court), where stipulated by the law.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The obligation of case law unification has been determined by neither the applicable Constitutions in BiH nor the currently effective laws on courts, except implicitly by the Law on Courts of the Republika Srpska within the definition of the jurisdiction of the Supreme Court of the Republika Srpska. Pursuant to the referenced definition, the Supreme Court shall, *inter alia*, have jurisdiction over „taking principled stances for the

reason of adjustment of the case law on issues deemed to be important for unified application of laws in Republika Srpska."
With regard to by-laws, the Book of Rules on Internal Court Performance adopted by the High Judicial and Prosecutorial Council of BiH provides for the obligation of the Presidents of the Entities' Supreme Courts, the Court of BiH and the Appellate Court of the Brcko District BiH to organize meetings of courts' divisions with the aim of case law unification, to be held at least twice a year.
The way of performance of the Case Law Unification Panel, also including the procedure to harmonize legal positions, has been defined by the Rules adopted by the representatives of the Courts participating in the activities of the Panel.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- **judges/panels of that court;**
- **all judges in the country;**
- **are there any consequences for judges if they do not follow case law of higher court?**

Legal positions of the Entities' Supreme Courts, as well as the legal positions generally taken in the decisions of the high (appellate) courts are mostly instructive by their character, that is, they are not binding in formal and legal terms. However, the Panel's Case Law Unification Rules have provided that the Panel's positions shall have instructive character for the lower instance courts, but a binding one for the courts the representatives of which are members of the Panel (see the response under 3.3.).
Non-compliance with the case law of the higher court may result in the revocation of the lower-instance court's decision which is based on a different legal position, which is certainly one of the reasons for which lower-instance courts indeed comply with the higher courts' case law, despite its non-binding (non-obligatory) character.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Please, see the response provided above for the previous question.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Since there is no supreme court at the state-level in BiH, the case law unification at the state level has been presently effectuated through the activities of the Case Law Unification Panel. The Panel adopts its conclusions by taking unified positions on certain legal matters. The conclusions are adopted by a consensus of all members of the Panel, and the members vote on the referenced conclusions following the principle „one court, one vote". The conclusions adopted by the Panel are thereupon being submitted for verification by appropriate divisions of the courts the representatives of which participate in the Panel's activities. Once the verification has been completed, the unified legal position of the division will become the Panel's legal position. As stated in the response to one of the previous questions, legal positions of the Panel are of the obligatory/binding character for the courts the representatives of which sit on the Panel, or of an instructive character for lower-instance courts.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

No derogation from the established case law is prohibited since it has no binding character. However, it may result in the revocation of the court's decision in the appellate proceedings if the high(er) court has noted that the derogation is unjustified, taking into account the circumstances and specific characteristics pertaining to the concrete case.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As already stated in the responses to the previous questions, there is no concept of a unified application of the laws in BiH, within the genuine meaning of the term, nor is there any supreme court at the BiH state-level.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Starting from the status the ECHR enjoys in the BiH legal system (see the response to question 2.2.), the courts in BiH are under obligation, in rendering decisions falling under their jurisdiction, to take account of the protection of human rights and freedoms guaranteed under the Convention. Along this line, in interpreting the Convention, the courts comply with the legal positions taken in the decisions/judgments of the European Court of Human Rights.
In addition, in war crimes cases, the courts in BiH, particularly the Court of BiH, have relied on the legal positions taken by the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda with regard to the application and interpretation of both international criminal and humanitarian law.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- **judges;**
- **other legal professionals;**
- **general public.**

The case law collection, systematization and publishing in BiH are primarily under the competence of the Judicial Documentation Centre of the High Judicial and Prosecutorial Council of BiH. The core function of the Centre is to provide the holders of judicial functions and the wider legal community with a simple access to a wide spectrum of reliable legal information including, *inter alia*, a review of the case law of international judicial institutions, as well as the judicial institutions in the neighbouring region. In addition, the follow-up of the case law of the Entities' Supreme Courts and the Court of BiH has been ensured by way of the case law bulletins periodically published by the referenced Courts and posted on their respective web-sites, and thereby making them accessible to not only the legal community but to the general

public too. Ultimately, decisions and judgments of certain courts are being published on their web sites. Concretely, all decisions of the Constitutional Court of BiH are available on its web site, while the Court of BiH publishes its decisions of particular interest for the public and/or legal professionals.

3.13 Is the access to such database free of charge?

The access to the database of the Judicial Documentation Centre is free of charge for judicial office holders and professional staff employed with the courts and prosecutor's offices, while other individuals may access the database under payable monetary fees.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

See the responses provided for questions no. 3.12. and 3.13.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

As stated above, the key problem when it comes to the case law unification in BiH is the absence of a state-level supreme court.
In addition to the four different judicial jurisdictions in a relatively small territory, different legislative standards also constitute a large problem. For example, pro-European, modern, short and implicit laws which suit their purpose are characteristic for the state level, while the socialistic-statist legal dogma inherited from the past still maintains a dominant role at the entity level. Therefore, the quality of laws in the four different legal sub-systems coexisting under the Constitutional Court of BiH is quite discrepant, which is an additional problem in the unification of positions and taking a unified legal position concerning the application of laws. In this regard, we have a larger problem with the use of narrow terms and rather questionable norms, which is being made more complex to a further extent by almost regular annual amendments, which frequently result in the emergence of antinomies. Legal particularism generated by the complex constitutional and legal organization of the state of Bosnia and Herzegovina has perhaps showed the largest deficiencies exactly in terms of the justice concept, which requires taking same actions in the same situations, while taking different actions in different situations. While the European states have been approximating the unification of the most complex legal positions and diametrically different legal traditions, the situation in BiH is such that we have ongoing debates concerning the commencement and completion of deadlines, which is but a consequence of an ungainly constitutional and legal organization of the state and a fragmented legal system, which in no way suits the needs of the BiH citizens.

3.16 Any other point you wish to raise.

Belgium / Belgique

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

Il n'existe pas de règles imposant l'application uniforme du droit. Ce sont les cours et tribunaux qui interprètent et appliquent la loi sous le contrôle de la Cour de cassation. Les arrêts de celle-ci n'ont pas l'autorité de la chose jugée à l'égard des juridictions inférieures. Rien n'empêche donc les cours et tribunaux de se « rebeller » contre la Cour de cassation en s'écartant de sa jurisprudence. Cela est inhérent à leur indépendence qui existe également à l'égard de la juridiction suprême, mais s'ils se rebellent, ils le font évidemment au risque que leurs décision soit annulée par un arrêt de la Cour de cassation qui garde in fine le dernier mot. C'est ce que l'on appelle le « dialogue des juges », qui permet, d'une part, à la Cour de cassation de prendre en considération la jurisprudence des cours et tribunaux inférieurs, et, d'autre part, à ces derniers de se rallier à la jurisprudence de la Cour de cassation qui peit maintenir ou modifier sa jurisprudence. Cela conduit également à ce que juges du fond et juge de cassation se contrôlent mutuellement dans l'exercice de l'art de juger.

1.2 Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

- l'adoption, au niveau législatif, d'une législation cohérente;

  Il est évidemment souhaitable que la législation soit cohérente, mais ce n'est malheureusement pas toujours le cas. C'est pourquoi le cours et tribunaux sont amenés à interpréter la loi pour en préciser la teneur et les contours.

- les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;

  Cette pratique uniforme n'est pas prescrite par la loi dès lors que chaque juge demeure indépendant dans l'exercice de l'art de juger, que ce soit pour l'application proprement dite de la loi ou pour son interprétation.Toutefois, le mécanisme de dialogue des juges et de contrôle mutuel entre juge de cassation et juges ordinaires, conduit en pratique à l'unité de la jurisprudence.

- la jurisprudence uniforme élaborée par les tribunaux.

  Il n'y a pas nécessairement de jurisprudence « uniforme », mais bien une unité de la jurisprudence assurée par la Cour de cassation.

Expliquez chaque point et indiquez l'importance relative de chaque point.

1.3 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire?

L'intérêt de l'unité de la jurisprudence est bien entendu la sécurité juridique par la prévisibilité de la loi et l'égalité de traitement du justiciable par les cours et tribunaux.

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif?

Il n'existe pas d'exigences formelles ou informelles pour l'uniformité du processus législatif. IL existe, par contre, un contrôle de la constitutionnalité des lois effectué par la Cour constitutionnelle lorsqu'une loi est contraire à une disposition du Titre II de la Constitution qui a trait aux droits fondamentaux.

2.2 Existe-t-il une hiérarchie des lois?

Selon la jurisprudence de la Cour de cassation, la hiérarchie est, dans l'ordre, la suivante : Convention internationale et droit supranational, Constitution, loi (adoptée soit par le parlement national soit par l' assemblée parlementaire d'une entité fédérée), arrêté d'exécution d'une loi, règlement provincial ou communal.

2.3 Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application?

Les conventions internationales sont approuvées par une loi d'assentiment et ont effet direct dans l'ordre juridique interne si telle est leur portée. Leur application est garantie par les cours et tribunaux qui vérifient également si la loi interne est conforme au droit international et supranational.

2.4 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international?

IL est de jurisprudence constante que lorsque la loi nationale est contraire à la convention internationale, l'application de la première est écartée. C'est pourquoi il est fréquent que la Cour de cassation donne à la loi interne une interprétation qui la rend compatible avec la Convention internationale. C'est particulièrement le cas lorsqu'il s'agit de la conformité de la loi interne avec le droit de l'Union européenne et la CEDH.

2.5 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exerce en pratique un rôle dominant dans ce processus?

La norme juridique par excellence est la loi qui est élaborée par le parlement , lequel joue bien entendu un rôle prépondérant et est souverain dans le processus législatif.

Toutefois, cette norme est souvent affinée par un dialogue entre le pouvoir judiciaire, sous la direction de la Cour de cassation, et le parlement. En effet, lorsque la Cour de cassation donne à la loi une interprétation déterminée, le Parlement peut réagir de trois manières différentes : soit il ne désavoue par la Cour de cassation et on considère alors que le législateur s'est rallié à l'interprétation donnée par la Cour de cassation, soit le Parlement adopte une loi qui consacre une règle énoncée par la

Cour de cassation, soit le Parlement désapprouve l'interprétation donnée par la Cour de cassation à une norme législative et adopte une loi qui précise la teneur que le législateur entend donner à la loi.

Par contre, lorsque une norme est jugée inconstitutionnelle par la Cour constitutionnelle, le législateur est tenu de modifier la loi pour la rendre compatible à la Constitution.

2.6 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignant pour les tribunaux?

Le pouvoir exécutif représenté par le Roi peut prendre des arrêtés d'exécution (arrêtés royaux) lorsque la loi l'y autorise et afin de mettre en œuvre la loi. Ces arrêtés sont contraignants.

Le pouvoir exécutif a également un droit d'initiative législative en déposant des projets de loi. La plus grande part de l'activité législative trouve d'ailleurs son origine dans les projets de loi déposés par le gouvernement.

2.7 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?

C'est, en effet, le cas ces dernières années. Cela rend le droit de plus en plus complexe et nuit à la sécurité juridique.

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation nationale?

La jurisprudence est une source de droit dès lors qu'elle inspire les praticiens du droit dans l'application et l'interprétation du droit. Toutefois, elle n'est pas contraignante pour les autres juges. La Belgique ne connaît pas la règle du précédent comme dans le système de la Common Law.

Ce n'est que dans les cas suivants que la règle de droit énoncée par un juge est contraignante pour un autre juge :

- *En cas de deuxième cassation dans une même affaire, fondée sur la même illégalité constatée par le Cour de cassation ; dans ce cas, le second juge de renvoi est tenu par le jugement de la Cour sur le point de droit tranché par celle-ci ;*
- *En cas de réponse donnée par le Cour constitutiionnelle à une question préjudicielle : la réponse donnée par le Cour constitutionnelle lie les juges dans l'affaire qui a donné lieu à la question.*
- *Lorsque la Cour constitutionnelle refuse l'annulation d'une norme légale qui est donc considérée par elle comme conforme à la constitutionnelle : sur ce point de droit, l'arrêt de la Cour constitutionnelle a l'autorité de la chose jugée erga omnes.*

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel?

Elle est importante pour les juges dès lors qu'elle a une autorité morale très importante. Cette autorité est d'autant plus grande selon le degré de juridiction qui a rendu la décision. En plus, chaque juge rend la justice sous le contrôle de légalité de la juridiction qui lui est supérieure. Il faut donc de bons motifs pour s'écarter de la jurisprudence constante, au risque de se faire réformer ou de voir sa décision annulée.

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité?

Le système de dialogue des juges exposé en réponse à la question 1.1 donne à l'ensemble des tribunaux un rôle unique dans l'unification de la jurisprudence.

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement.

Il existe des tribunaux spécialisés selon les matières : tribunaux de commerce pour les litiges entre commerçants, tribunaux du travail pour les litiges en droit social et du travail ; tribunaux correctionneles pour les affaires pénales , tribunaux de la famille pour le contentieux familial.

Les décisions de ces tribunaux pevuent être contestées devant une juridiction supérieur (cour d'appel, cour du travail).

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?

Elle est assurée par la pratique judiciaire et par la mission spécifique de la Cour de cassation qui est précisément d'assurer l'unité de la jurisprudence.

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges / les panels de juges de cette juridiction;
- tous les juges du pays;
- y a-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

Il y a lieu de renvoyer à la réponse donnée à la question 3,1.

Il n'y a pas de sanction lorsqu'un juge ne suit pas la jurisprudence d'une juridiction supérieure. Ce serait contraire au principe de l'indépendance du juge.

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?

Les décisions de la Cour suprême ont une grande autorité morale. Comme il a été relevé dans la réponse à la question 3.2, si un juge s'en écarte, il risque que sa

décision soit attaquée devant la juridiction supérieure et qu'elle soit réformée, voire même annulée.

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?

C'est ici que la Cour de cassation joue un rôle prépondérant. Les juges des cours et tribunaux appliquent et interprètent librement le droit, mais ils le font sous le contrôle de la Cour de cassation. Celle-ci veille à l'unité de la jurisprudence en sanctionnant les décisions des juridictions inférieures qui s'écartent de sa jurisprudence. S'il existe des divergences entre juridictions inférieures, la règle de droit énoncée par la Cour suprême doit restaurer l'unité.

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence?

Si une jurisprudence n'est plus adaptée à la réalité sociale, économique, culturelle, éthique ou autre de l'époque, le juge peut s'en écarter pour la mettre en adéquation à cette réalité. Il donnera à la norme légale une autreinterprétation ou afinera celle-ci, pour autant que le texte de le loi le permette. Mais, il le fera sous le contrôle de la Cour suprême.

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)?

Quant au rôle de la Cour suprême, il convient de renvoyer aux réponses données aux questions précédentes.

Il y a effectievement des mécanismes de filtrages pour l'accès à la Cour suprême. En matière civile le ministère d'un avocat spcialisés est requise. Cet avocat donnera préalablement à l'intentement d'un pourvoi, un avis motivé sur les chances de succès de celui-ci. En matière pénale, l'intervention d'un avocat ayant suivi une formation spécifique relative à la procédure de cassation est galement requise.

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays?

Les cours et tribunaux sont tenus d'appliquer la CEDH, telle qu'interprétée par la Cour européenne des droits de l'homme. Cela se fait également sous le contrôle de la Cour de cassation qui examine si les cours et tribunaux ordinaires ont correctement appliqué le Convention. Ainsi, la Cour de cassation a développé une jursprudence abondante concernant la CEDH.

Lorsque la Belgique est condamnée par la Cour européenne pour violation de la Convention, le Code d'instruction crminelle prévoit une procédure de réouverture de

la procédure, permettant de juger à nouveau la cause et de corriger ainsi la violation. C'est le mode de réparation par excellence des violations de la CEDH en c'est également ainsi que la justice met en œuvre l'application des décisions de la Cour européenne.

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

La jurisprudence est pubiée dans des revues juridiques spécialisées et sur des sites internet (p.e. Juridat).

3.13 L'accès à cette base de données est-il gratuit?

Certaines de ces banques de données sont gratuites. C'est le cas du site des cours et tribunaux Juridat. Par contre, lorsque la banque donnée émane d'une initiative privée, en général d'une maison d'édition spécialisée, l'accès est payant.

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale?

Les cours et tribunaux ne sont pas la seule sourde d'information jurisprudentielles et doctrinales. Il y a des sites développés par des maisons d'édition spécialisées qui fonctionnent sur une base commerciale

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

Le nombre d'affaires et la législation de plus en plus touffue sont les grands défis. Cette législation n'utilise plus, comme auparavant, des notions générales permettant d'appliquer une norme légale à une multitude de situations juridiques, mais a de plus en plus tendance a donner pour chaque situation une définition spécifique, ce qui ne facilite pas le travail du juge. Cette tendance traduit en réalité une méfiance à l'égard du juge, qu'on veut priver de son pouvoir de dire le droit et d'avoir un rôle créateur de droit, ce qui est pourtant l'essence de sa mission.

3.16 Tout autre point que vous voulez soulever.

L'unité de la jurisprudence et l'application uniforme du droit dépendent essentiellement de la confiance que l'on a dans les juges et de celle que ceux-ci se font mutuellement dans l'application du droit. Cette confiance dépend du dialogue des juges qui doit être assuré entre tous les niveaux de juridictions, ce qui implique le respect que les juges se doivent mutuellement. Mais ce dialogue doit également avoir lieu avec le législateur, car de bonnes décisions de justice contribuent à une meilleure définition des contours de la loi et à une meilleure connaissance de celle-ci et est une aide précieuse pour parfaire l'œuvre législative.

Bulgaria / Bulgarie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Yes, there is a concept of uniform application of law in Bulgaria. It is formal, established at the level of Constitution and legislation /Judicial System Act, Codes of Procedure, Normative Acts Law, Rules on Organisation and Procedure of the National Assembly/.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level -yes;
- uniform practices by the executive institutions and law enforcement bodies-yes
- uniform case law developed by courts - yes.

Please explain each point and indicate the relative importance of each point (see answer 2.1., 3.2.)

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

Supreme Court of Cassation as well as Supreme Administrative Court issue Interpretative Decisions by which the contradictory jurisprudence on certain issues is unified. They are obligatory for all courts/the organs of the executive, the self-government organs and all organs, issuing administrative acts - and the issues interpreted therein shall be solved according to that interpretation in all further cases. Besides addressing an issue in an appellate court judgement (in civil and commercial cases) - in contradiction with the obligatory practice of the Supreme Court of Cassation, addressed by the courts in a conflicting manner or relevant to the accurate application of the law, as well as to the progress of law - is a ground for admitting cassation, rehearing the case and delivering a judgement - containing, *inter alia,* an interpretative part – obligatory case law unifying the practice. The Interpretative Decisions and the obligatory case law are accessible to all. This makes the public aware of how certain matters shall be solved in court and, respectively, the court practice predictable and uniform. On the other hand the filtering criteria allow the Supreme Court of Cassation to focus on its main task – ensuring uniform application of law, and contributes to complying with the Article 6 ECHR reasonable time requirement – lessening the overall length of the proceedings.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Yes. There are formal requirements for ensuring the uniformity in the legislative process. The hierarchy of normative acts and the law making process are subject to regulation in Constitution, Normative Acts Law, Rules on Organisation and Procedure of the National Assembly.

According to Article 5 of Bulgarian Constitution normative act shall match the Constitution and other normative acts of higher rank; if a normative act of a lower rank contradicts a normative act of a higher rank, the courts shall apply the higher rank act. State organs are obliged to inform the organ competent to repeal a normative act for any discrepancies with higher rank acts /Art.15 Normative Acts Law/.

On the other hand, the enactment of a draft is preceded by a legal research about its impact assessment and conformity with European Union Law, respectively European Convention on Human Rights and European Court of Human Rights' practice and by a discussion of the draft in the National Assembly's Legal Commission. A normative act draft to which no motives, respectively no impact assessment or analysis on conformity with the abovementioned acts are applied, shall not be discussed by the competent authority.

2.2 Is there a hierarchy of laws?

Yes – Constitution, Laws, By-Laws

The Constitution shall be the supreme law, and no other law may be in conflict therewith (Art.5.1. Constitution); the normative act must comply with the Constitution and the other superior normative acts; should a Decree, Rules, Ordinance or Instruction contradict any superior normative act, the justice administering authorities shall apply the superior normative act (Art.15 Normative Acts Law).

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

There are special provisions in the Constitution and the Normative Acts Law on ensuring the conformity of national laws to treaties and other international instruments and the direct effect of the latter (Art.5.4. Constitution, Art.15 Normative Acts Law).

Any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for Republic of Bulgaria, shall be part of the domestic law. Any such treaty shall take priority over any conflicting standards of domestic legislation (Art.5.4.).

Should a normative act contradict an European Union Regulation, the Regulation shall be applied (Art.15.2.Normative Acts Law).

Each normative act draft shall be submitted for discussion and approval by the competent authority only if it is accompanied by, *inter alia,* an analysis regarding the compatibility with the European Union law. A draft of a law or a code, subject to consideration by the Council of Ministers, shall be accompanied by a check for compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights, carried out by the Ministry of Justice. A normative act draft which lacks the abovementioned analysis shall not be discussed by the competent authority (Art.28 Normative Acts Law).

Besides the Constitutional Court shall pronounce on the consistency of any international treaties concluded by Republic of Bulgaria with the Constitution prior to the ratification of any such treaties, as well as on the consistency of any domestic laws with the universally recognized standards of international law and with the international treaties whereto Bulgaria is a party (Art.149.4. Constitution). Any act which has been declared unconstitutional shall cease to apply as from the effective date of the decision.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

See answer 2.3.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Law making process is carried out by the legislative – through enactment of laws, and by the executive - through by-laws adopted in terms of statutory delegation.

The legislative has a dominant role in this process. The right to initiate legislation shall vest in every National Representative and in the Council of Ministers /the State Budget Bill shall be drafted and presented by the Council of Ministers/. The bill shall be submitted only if it is accompanied by motives, including impact assessment and analysis regarding the compatibility with the European Union law (see answer 2.3.). Following submission it shall be distributed among the Standing Committees and assigned Rapporteur Committee. Standing Committees shall consider the bill and submit a "motivated" report to the President of the National Assembly and the Chairperson of the main Rapporteur Committee. The report of the latter (as well as the bill and the motives thereto) shall be made available to the Members of Parliament not later than 24 hours before the beginning of the sitting at which the bill shall be considered. Members of Parliament may submit written motions for amending the bill that has been adopted at first reading. Bills shall be debated and passed by two votes /readings/ taken at separate sittings; by exception, the National Assembly may resolve that both votes be taken at a single sitting. The adopted act shall be sent to the President of the Republic who may return it for further consideration or sign a decree for promulgation. The act shall come into force three days after promulgation, unless another term is specified in it.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

By-laws adopted by executive power organs in terms of statutory delegation are source of law and legally binding for courts. However by-laws may be contested before administrative court without limits in the time (Art.185-Art.196 Code of Administrative Procedure). The court shall declare the invalidity of the contested by-law or a part of it, shall cancel it entirely or partially or shall reject the contestation. The court decision shall have an effect regarding everybody.

The pending contestation proceedings before administrative court do not prevent a civil court, finding inconsistency of a by-law with a higher rank law while solving a case, to apply the higher rank normative act – thus eliminating the inconsistency within its jurisdiction in the concrete case, regardless of the pending procedure before the administrative court.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Yes.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Interpretative Decisions and judgments, containing interpretative part - forming the so called obligatory practice of the Supreme Courts – have binding effect to courts and state organs (see answer 3.3.). However, it is not a source of law as the national legislation.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

The practice of the Supreme Courts is important for judges both at formal and informal level. The so called obligatory practice is binding; the other case law, although not binding, is a landmark of how the Supreme Courts interpret and apply the law, respectively what might be the result upon appeal.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Yes. The Supreme Court of Cassation and the Supreme Administrative Court have respective functions to unify civil, penal and administrative case law. According to Bulgarian Constitution (Art.124-125) the Supreme Court of Cassation and the Supreme Administrative Court shall exercise supreme judicial supervision as to the accurate and equal application of the laws by all courts/in administrative justice.

The uniform application of law is provided through the following mechanisms: issuing Interpretative Decisions, obligatory case law, admitting to cassation and rehearing cases.

Interpretive Decisions

The Interpretative Decision shall be adopted in presence of contradictory or erroneous jurisprudence or application of the law.

They are adopted /depending on the matter solved/ by the General Assembly of the Criminal, the Civil or the Commercial college of the Supreme Court of Cassation; the Civil and the Commercial colleges of the Supreme Court of Cassation; the Colleges of the Supreme Administrative Court; the colleges of the Supreme Court of Cassation and the Supreme Administrative Court.

The adoption of an Interpretative Decision may be requested by the Chairperson of the Supreme Court of Cassation, the Chairperson of the Supreme Administrative Court, the Prosecutor General, the Minister of Justice, the Ombudsman or the Chairperson of the Supreme Bar Council. A Supreme Court of Cassation panel may also propose rendering an Interpretative Decision - when issues have been addressed in a conflicting manner by Supreme Court of Cassation panels. The interpretative decisions contain interpretation of law which is binding - for all courts, the organs of the executive, the self-government organs, all organs, issuing administrative acts - and shall be followed *ex nunc.*

Obligatory practice, admitting to cassation and rehearing cases

While solving cases, the Supreme Court of Cassation and the Supreme Administrative Court shall also unify the jurisprudence and contribute to progress of law through interpretation of normative acts and updating their practice. These duties directly deriving from their Constitutional competence to carry out supreme court supervision for accurate and uniform appliance of law by all courts are entrusted with the aim of establishing consistent court practice, in conformity with the actual laws and the changing social and economic situation in the country.

Addressing an issue in an appellate court judgement (in civil and commercial cases) in contradiction with the obligatory practice of the Supreme Court of Cassation, addressed by the courts in a conflicting manner or relevant to the accurate application of the law, as well as to the progress of law. is a ground for admitting cassation. In these cases, if cassation is admitted, the Supreme Court of Cassation, following a hearing, delivers a judgment, which always contains two parts. The first part is the interpretative part – an answer to the issue abovementioned – which contains binding practice and shall be followed by the lower courts hereinafter. The second part is on the substance of the case - in which the court solves the dispute according to the circumstances of the case on the basis of the said answer/ respectively on the basis of the accurate application of law, which has been specified in the

interpretive part (the Supreme Court of Cassation shall point out explicitly which case law is considered correct and which incorrect).

In administrative and penal cases cassation is not conditioned by such filtering criteria. Nevertheless rehearing the case and delivering a judgment in these cases has the same task - to establish consistent practice and ensure uniformity of law.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

Yes - there are specialized courts and hierarchy of specialized courts.

There are military courts (3) and a military court of appeal and a specialized penal court and a specialized penal court of appeal. The judgments of the military court of appeal and of the specialized penal court of appeal can be challenged before superior judicial body - Supreme Court of Cassation.

There are also administrative courts (28) and their judgments can be challenged before Supreme Administrative Court.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Yes. The unification of case law is determined by Constitution and laws (Judicial System Act, Codes of Procedure, Normative Acts Law).

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court – The Interpretive Decisions of Supreme Court of Cassation/Supreme Administrative Court are obligatory for all judges – including for judges/panels of the respective Supreme Courts. Obligatory Supreme Court of Cassation case law, pronounced in case cassation is admitted (in civil and commercial cases), is not binding for other Supreme Court of Cassation panels - in case of contradicting Supreme Court of Cassation panels' judgements, the procedure for issuing Interpretative Decision shall be initiated and thus the practice shall be unified;
- all judges in the country - yes;
- are there any consequences for judges if they do not follow case law of higher court? – no, but the judgment shall be quashed upon appeal – and the number of judgments quashed shall be taken into consideration in the process of periodical evaluation of judges' performance

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have? (see answer 3.6.)

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)? – appealing; admitting cassation upon appeal, rehearing cases and delivering obligatory Supreme Court of Cassation case law for unification of practice/rehearing cases by Supreme Administrative Court upon appeal; delivering Interpretative Decisions of Supreme Court of Cassation, Supreme Administrative Court, Supreme Court of Cassation and Supreme Administrative Court (see answer 3.3.)

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

It would be regarded as permissible or even necessary to depart from the case law if it has to be updated with regard to changes in legislation, in social and economic situation in the country, ratification of international treaties, European Union legislation, practice of the European Court of Human Rights and European Court of Justice

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

According to Bulgarian Constitution (Art.124-125) the Supreme Court of Cassation and the Supreme Administrative Court shall exercise supreme judicial supervision as to the accurate and equal application of the laws by all courts/in administrative justice. The mechanisms for ensuring uniformity (Interpretative Decisions, obligatory case law, admitting to cassation and rehearing cases), as well as the filtering criteria regarding civil and commercial cases (details below), are described in answer 3.3.

Cassation appealability before Supreme Court of Cassation – in civil and commercial cases - shall not apply to all appellate court judgements. Some of them are excluded by law because of small material interest or the type of the dispute. The others can be admitted to cassation only if they match the filtering criteria established by law: The grounds for admitting cassation are three: addressing an issue by an appellate court in conflict with the obligatory practice of the Supreme Court of Cassation, addressing an issue which has been solved by the courts in a conflicting manner; addressing an issue which is relevant to the accurate application of the law as well as to the progress of law. Cassation proceedings have two phases. First phase – in which, by way of reasoned decision, cassation is admitted or not (depending on Supreme Court's understanding whether the filtering criteria are met); in case cassation is not admitted, the non-admittance decision is the final act and there is no rehearing of the case. Second phase – in case of admittance decision - there is rehearing of the case and delivering of final judgment – containing, *inter alia,* interpretation part (answer to the question, which had been addressed by the appellate court in conflict with the obligatory practice of the Supreme Court of Cassation, which had been solved by the courts in a conflicting manner, which had been relevant to the accurate application of the law/progress of law) – obligatory for lower courts. All parties seeking cassation pay equal tax for delivering an admitting to cassation decision (15 euro) and thereafter, depending on the result of it, those, who are admitted, pay additional tax for rehearing the case.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The enactment of drafts is preceded by legal research about their conformity with European Union Law, respectively European Convention on Human Rights and European Court of Human Rights' practice. A normative act draft to which no analysis on conformity with the abovementioned acts is applied, shall not be discussed by the competent authority. In case of ECHR/ECJ judgments finding violations of protected rights, the State shall undertake measures to execute the final judgments, including, *inter alia,* amendments of the legislation (ex. following a pilot-judgment procedure compensation mechanism for excessive length of proceedings had been provided - through amendments of Judicial System Act and The State and Municipalities Liability for Damage Act).

On the other hand the courts shall apply directly European Convention on Human Rights in the light it is interpreted in the case law of the ECHR, thus ensuring the Court's

case law appliance at national level - even if legislative changes had not been yet undertaken. The unification of nation case law to that respect /with regard to European Court of Human Rights and other supranational courts or quasi-judicial bodies case law/ is again through the case law of the Supreme Court of Cassation and the Supreme Administrative Court.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

All courts have on their internet sites the judgements delivered and the access to them is free of charge. The Supreme Court of Cassation/Supreme Administrative Court internet sites have searching machines with different criteria/classifications, both of case law and Interpretive Decisions. The judges dispose of information from an internal system and legal systems, providing updated legislation and practice; access to internet. There are also different case law periodicals. The Supreme Court of Cassation and the Supreme Administrative Court have very rich libraries; libraries are available in other courts too.

The Ministry of Justice has special sections on its official internet site where judgements against Bulgaria and other countries are available in Bulgarian free of charge; it also publishes there periodical with recent ECHR judgements. National Institute of Justice proposes such translations as well as Human Rights Internet Portal. It publishes digest of decisions of international tribunals and national courts. European Courts' case law is available free of charge on Supreme Judicial Council's internet site.

3.13 Is the access to such database free of charge?

The access to the database of all courts, Ministry of justice, National Institute of Justice, Supreme Judicial Council is free of charge.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Yes, there are other providers, independent entities; some of them operate on commercial, others – on non-commercial database.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The national legislation is changing frequently, the laws often contain ambiguous or imperfect wording/regulation; the usage of relatively broad definitions and legal concepts – which is sometimes needed and inevitable in order to cover various hypotheses - leaves room for different interpretations; the broad European Union legislation and European Courts' case law is also a challenge.

3.16 Any other point you wish to raise.

Croatia /Croatie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In the Constitution there is provision that Supreme Court is highest court in the State and that its duty is to secure the uniform application of the law. This is also repeated in Article 20.of Law on Courts.
In the Law on Courts, Article 40., it is a provision which says that conclusions of Assembly of judges on certain points of law are obligatory to all panels of the court (courts of appeal and Supreme Court). There is no such provision for first instant courts.
The opinions of higher and supreme court are not obligatory in formal way for lower courts (only by strength of its argument). In practice lower courts will follow the case law of higher courts because if they do it differently in regular circumstances their decisions will be revised.
Deprivation form case law of Supreme Court or different case law of different courts of appeal is ground for extraordinary appeal. (Revision).
Every 3 month Supreme Court organizes join meetings with representatives of courts of appeal of general and specialized jurisdiction where topics of mutual interest are discussed and conclusions are published on SC web site.(Article 27. Law on Courts).
It is expressively sad in Article 27. Law on Courts that such conclusions must not in any way diminish independence and freedom of a judge in deciding cases.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

It is not possible to explain other three points because this concept enshrined in them does not exists in practice. For the third point please see answer under 1.1.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale is legal certainty and legitimate expectations of the natural and legal persons. It is common remark for the work of the courts that at lower levels legal certainty is very dubious and that parties are not sure what will be the outcome of the

dispute in same and very similar factual circumstances. Problem is even more visible in different courts of same level and jurisdiction.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

No. The problem which really exist that different laws are regulating same issues in different way so courts are faced with the problem of finding out what law should be applied and how.

2.2 Is there a hierarchy of laws?

Yes. Constitution, Internatinal Treaties, Laws, By- laws.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Constitution is the highest law in the County. All laws have to be in the conformity with the Constitution. International instruments are applied after the ratification through the Parliament. Exceptions are EU regulations which are applied directly if the nature of the Regulation is of such nature.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Contradictions between national laws are solved by the courts if such question arises in the particular case. Then court is using all principles regarding relations between different laws (lex posteriory rule, lex specialis rule etc.)
If there is contradiction between national law and international treaty international treaty has to be applied.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Laws are changed to often in Croatia especially fundamental laws which have been changed in last 10 years for several times, especially Civil Procedural Law, Criminal Procedural Law, Bankruptcy Law, Enforcement Law, Law on Courts, Property Law, Civil Obligation Law etc.
In preparing and proposing laws predominant role is kept in hands of the Ministries and the Government.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes, the general orders delivered by the Government are binding to the Courts. Also Government can deliver so called "Orders with legal power" which can replace laws or amend existing laws but only for the period of one year.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Please see answer under 2.5. And YES such practice of changing laws to often contributes to legal uncertainty in great extent.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Case law is not source of law. Regarding binding character of case law please see answer under 1.1.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

The binding role of case law or legal opinions expressed in judgments of courts of appeal or Supreme Court has semi-formal character.
As it has been expressed under 1.1. there is no obligation for judges of first instant courts to follow the case law of their courts, and there is no formal obligation to follow case law of courts up to court hierarchy. But in practice judges of first instant courts are following the case law of courts of appeal because in the contrary up to appeal it is very likely that their decisions will be squashed.
For panels and judges of courts of appeal (second instant courts) their case law is binding for them. If panel or judge in its decision will depart form the case law the issue will be raised before the Department Assembly of judges and its decision on the question (delivered by majority vote) raised is obligatory to all judges and panels of the court until same question will be raised again. Second instant judges and panels are not in obligation to follow case law of the Supreme Court but if their decision will depart from SC case law it is reason for the extraordinary appeal.
The same situation is in the Supreme Court.
The case law of the SC has no formal binding character for judges and panels of lower courts but in practice courts are following it to avoid unnecessary squashing of judgments.

In any particular case lower court must follow instructions of higher court regarding procedural matters and evidence to be examined but are not in obligation to accept understanding of the law expressed by higher court.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Please see answer under 3.2.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

YES. There are commercial courts, misdemeanour courts and administration courts. All those specialised first instant courts have one court of appeal on national level.
The relation between this first instant courts and their court of appeal are the same as explained under 3.2.
The system of extraordinary appeals or similar instruments allows Supreme Courts to hear the cases proceeded before two levels of specialised courts.
System diverts in some extend in administrative system of justice because against judgment of High Administrative Court only Prosecutor General can lodge request for extraordinary review of the judgment.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The system of unification of case law as explained under 3.2. is determined by Constitution and Law on Courts and procedural laws.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Judgments are obligatory to judges and panels of the particular court with exception to judges of first instance courts.
Judges are in practice following the case law of higher courts. If they do not follow it, it is very likely that under the appeal procedure their decisions will be squashed or changed.
Performance of judges is followed in different aspects and one of them is percentage of squashed decisions. If this percentage is considerable judges final appraisal result could be law and this could affect his/hers chances for promotion or even disciplinary responsibility even that so far never happened in practice of High judicial Council

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Judges are following case law of higher courts by virtue of strengths of its arguments and they are aware of necessity to raise level of legal certainty in the justice system.
Other practical effects and measures prescribed in laws with aim to promote uniform application of law are explained under 3.2. and 3.7.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

The Croatian legal system tries to face such problem with different approaches.

A:If there is different case law between different courts , especially between courts of appeal that is a ground without any limitations to lodge extraordinary appeal before Supreme Court. If SC finds that case law is relay different in same factual circumstances

SC will deliver judgment and in it solve such discrepancy in particular case and that will be precedent for all other future cases before SC.

B. If there is different case law before same court of appeal the problem can be solved as explained under A. Also in such cases president of court can call all judges of the certain department or all judges of a court if case law and the problem affect all judges to decide what proper case law is and how points of law in dispute should be applied. Opinion adopted with majority vote of all judges of the Department or Court is obligatory to all judges and panels of the court.
C.If there is different case law before Supreme Court in such cases president of court can call all judges of the certain department or all judges of a court if case law and the problem affect all judges to decide what proper case law is and how points of law in dispute should be applied. Opinion adopted is obligatory to all judges and panels of the court. One of tools to avoid different case law at SC is a system where all rulings of Supreme Court before sending them out pass control in so called "CASE LAW DEPARTMENT" to establish is certain court ruling in harmony with so far existing case law. If particular ruling diverts form established case law this is indicated to the judge/panel .If judge/ panel stays with its opinion then mechanism explained above (Decision of Department Assembly or Assembly of Judges) takes place.

There is on system of preliminary ruling even though in new draft of Civil Procedure Act such possibility is proposed in case of large number of same disputes.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

It is allays possible to depart form established case law. Such situation will provoke appeal process and eventually extraordinary appeal procedures before SC where dilemma raised because of different case law will be solved.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

According to Constitution Supreme Court is highest court in the Country and is role is to secure uniform application of the law.
Supreme Court in civil justice acts as highest court and it is possible to access the Court through extraordinary appeal which is always possible if value of the case is over 200.000 Kuna or 500.000 Kuna in commercial cases (1Kuna = 7,50 Euro). Also same kind of legal remedy is allowed if the case in question is labour case.
In other cases of lower value or other kind, parties can lodge extraordinary appeal if the solution in the case depends on solving the question which has general importance for unified application of the law or equity of all in application of law.
One of the reasons for such appeal is different case law of courts of appeal or if where there is no case law of supreme court, or where there is case law of supreme court but case law of court of appeal departs from its (SC) case law, or when from reasons of case law of ECHR it is necessary to establish case law of SC.

The SC firstly decides are there reasons to accept the extraordinary appeal and if panel of five judges finds that there are reasons and that there is need to reaffirm or establish case law SC will deliver competent decision.
If there is no such case SC will discard the extraordinary appeal with short reasoning that there are no grounds to hear the case. (It is in a way filtering criteria).

In criminal justice SC acts mostly as court of appeal but also there are some very limited possibilities to access to the Supreme Court.

The Supreme Court of Croatia serves as appellate court for county court's first instance judgments.
As cassation court, Supreme Court decides upon extraordinary remedies.
The request for extraordinary review of the final judgment is an extraordinary remedy that only defendant may file only against municipal court judgments.
The request for protection of legality is an extraordinary remedy that only prosecutor may file against final judgements.
The conditions for extraordinary remedies are narrow. The request for extraordinary review may not be filed against Supreme Court judgments. The request for protection of legality may be filed against Supreme Court decisions, but this happens very rarely.
<u>Unification of court practice is not possible</u> to the desirable extent because there is no court in Croatia that would decide upon appeals against first instance judgements. County court is an appellate court for municipal courts first instance decisions and Supreme Court is appellate court for county courts first instance decisions.
Extraordinary remedies do not cover all final decisions.
For these reasons, there is a need for one court that will have jurisdiction for all first instance judgments as judges of SC constantly argue but without much of success so far. If High criminal court (HCC) would be established and would have that jurisdiction then the Supreme Court could be cassation court for final decisions that comes from HCC - in that case the request for extraordinary review of the final judgment will be allowed because HCC is not the Supreme Court.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Judgments and opinions in such judgments are obligatory to the court in particular case. Even if ECHR express in its judgment that there was breach of the Convention the case has to be heard again, and case law of ECHR is obligatory for all courts in that case.
Same effect has ruling of Constitutional Court if it finds breach of rights guaranteed by the Constitution.
The rulings have effect by virtue of its arguments.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

In Croatia there is data base "Supra-nova" with search engine where case law is accessible free of charge to all judges but as well to all general public without any charge. There are some restrictions in accessibility for searching data base outside of courts.

3.13 Is the access to such database free of charge?

YES

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are also other providers of case law on commercial basis. The sources of information they provide are courts, Official Gazette and judgments of supranational courts.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

There are three main challenges. First challenge is quality and instability of national legislating. Second challenge was so far before creating data base "Supra-nova" accessibility of courts case law. Third challenge is overburden of cases so judges cannot devote appropriate time to study the case.

3.16 Any other point you wish to raise.

Cyprus / Chypre

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Cyprus is a common-law country. This means that the courts follow the stare decisis principle i.e. the precedent established by case law. Precedent is followed by all courts, the lower courts being bound by the decisions of the higher courts, which themselves follow their own decisions in a systematic manner. The decisions are also binding on the executive and legislative bodies and have to be followed by the administration.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

It is of paramount importance to understand that the notion of consistent application of the law really relates only to the courts which are called upon to apply the law in a coherent and systematic way. Although the idea of consistent legislation and uniform practices by other institutions is welcomed and it is in fact followed by the legislative body and the executive, nevertheless it is up to the courts to apply it and give direction, explaining the intention of the legislator.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The role is explained in the answer to 1.1 above. It is highly desirable that the decisions of the courts pave the way for a clear understanding so that the administration and the executive organs apply the law in a systematic way, while lawyers know how to advice their clients and litigants know their rights

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The House of Representatives (the parliament) is under a constitutional obligation to legislate in a way consistent with court decisions.

2.2 Is there a hierarchy of laws?

Yes, as a member of the European Union, European law comes first, then the Constitution, International or Binary Conventions or Treaties, primary legislation, secondary legislation and other orders of the executive by way of administrative decisions.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

International Treaties are covered by the Constitution and have a binding effect over domestic legislation. They are ratified by the House of Parliament.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

As explained above such treaties have superior force over national law on condition that there is reciprocity.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The House of Parliament is the primary organ responsible for law making. It can act on its own or discuss and pass any Bill put before it by the Executive.

2.6 Are acts of the executive power source of law in your country and in that respect,are they legally binding for the courts?

According to the Constitution, each Minister is responsible for the preparation of orders or regulations concerning his Ministry for submission to the Council of Ministers. Once passed by the Council of Ministers, in most cases these orders are subject to ratification by Parliament. The courts are often called upon to interpret them and are applied as far as they are not repugnant to the law under the authority of which are made i.e. they are not ultra vires or are not inconsistent to the Constitution.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Laws are not frequently amended, mainly due to the fact that the Constitution provides strict and detailed procedures for their amendment.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? Ifyes, to what extent? To the same extent as the national legislation?

The court case law is a source of law and has legal binding effect as it is explained in the answer to 1.1 above. It has a parallel legal effect as national legislation and as explained before the courts are the final judges as to the interpretation of the law and how it is to be applied.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?N/A

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?As explained above

Cyprus is a common-law country and as explained in answer 1.1.the lower courts are bound by the decisions of the higher courts, which themselves follow their own decisions in a systematic manner. In case of need to re-examine existing or conflicting case law the Supreme Court in its full bench jurisdiction i.e. 13 Judges, may decide accordingly not to follow its previous decisions or rulings on a specific matter where it is shown that the previous decision was obviously wrong having been decided on a wrong legal principle or circumstances have since dramatically changed.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are five types of court which are considered as being of 'special jurisdiction'. These courts are the Family Court, the Industrial Disputes Tribunal, the Rent Control Tribunal, the Military court and the Administrative Court.

Family Courts have exclusive jurisdiction when it comes to family law disputes. The Industrial Disputes Tribunal has exclusive jurisdiction to determine matters arising from the termination of employment such as its legality and the payment of compensation. The Rent Control Courts have jurisdiction over tenancies and leases, matters regarding recovery of possession of controlled rented property and the determination of fair rent, as well as any other incidental matter. The Military Court has jurisdiction to try offences committed by military personnel in contravention to the Military Criminal Code or any other law, irrespective of the sentence provided. The Administrative law in Cyprus has its foundations in Article 146 of the Constitution which allows for the judicial review of executive administrative acts. The Administrative Court deals with all decisions taken by the administration regarding their lawfulness on a recourse filed before it by any person that has an existing, present vested interest or right to challenge the decision of the administration. All judgments handed down by the above courts are open to appeal before the Supreme Court both on the evaluation of the facts in the case as well as on their legal merit with the exception of the decisions of the Industrial Disputes Tribunal which are appealable only on a legal point of law.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

As mentioned above, Cyprus is a common-law country and the unification of the case law is effected by means of long standing practice.

3.6 Are judgments of such courts(mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Judgements of the Supreme Court are obligatory and fully binding and ought to be followed by all judges. There are no immediate consequences for judges that for some reason do not follow clear precedent but their decisions could be always appealed by the litigants and if reversed for such a reason and is shown that a particular judge does not comply with stare decisis it would have an adverse effect on his position as a judge.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?N/A

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law betweendifferent courts or different levels within the same court including superior courts(appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

As mentioned in answer 3.6 above, in case of contradiction or deviation in the case law, the affected litigant can always appeal from the judgement. Moreover as explained in paragraph 3.3 above, contradictions or deviations are finally resolved by the Supreme Court in the way explained. There are no preliminary rulings in abstracto.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

As mentioned above, the lower courts are bound by the decisions of the higher courts, which themselves follow their own decisions in a systematic manner. The Supreme Court judges are especially reluctant to overrule themselves because of the importance of certainty of the law and only in case a serious error embodied in a decision the Supreme Court would deviate from the stare decisis principle.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

See answer 1.1 above. There is no filtering criteria for appeals which are exercised freely subject to specific time limits and the need to follow a specific procedure.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

All courts are bound by the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies, since international treaties that establish those Courts have binding effect over domestic legislation. Both the executive and the legislative authorities are also bound by the case law of those courts.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Judgments are published in the Supreme Court's website accessible to all, and in the Law Reports which are accessible to all Judges and professionals. The general public is informed through the internet and the media. Judgments of the European Court of Human Rights are collected and disseminated to all judges through the Attorney-General's Office being the legal counsel of the Government.

3.13 Is the access to such database free of charge? No.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are independent providers as well as lawyers' database. The first is commercial, whilst the second one is free.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The main challenge for the unification of the case law is to have clear and relatively broad definitions and legal concepts. The volume of statutes and regulations, their piecemeal structure, and their level of detailed and frequent amendments in some cases, make legislation hard to understand and difficult both to apply and comply with.

3.16 Any other point you wish to raise.

There must be close cooperation between the judiciary, executive and legislative authorities so as to produce a unified case law.

Czech Republic / Republique Tchèque

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The unification of application of the law is under Czech law (Law about the Courts and Judges) given to the Supreme court.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

From my point of view it means only uniform case law developed by the courts. Consistent legislation can be enforced by the Constitutional Court, uniform practices of other bodies by the courts.

Please explain each point and indicate the relative importance of each point.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The outcome produced by the courts are only court decision (verdicts, judgements). No other recommendations or unformal notes are possible.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

None, as I know.

2.2 Is there a hierarchy of laws?

The Constitution is on a higher level, other laws are equal.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Some of them become to be a part of national law. They are printed in Collection of law, official source of law. Some of them must be adopted by the Parliament.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

This is bussines of the Constitutional court

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Proposal of a new law can be given to the Parliament by the Government, by the President of republic or by a group of members of parliament. Dominant role in a law adopting process has the Parliament.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes, they are, but this “under law” acts must be in accordance with law acts.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

The laws are very often amended and it effects complication of law and not understanding of it.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Yes, but only judgements of the Supreme court and the Constitutional court. This decisions are by the law the source of law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Binding in legal effect is only decision of the court of appeal in the same case. The court of the first stage is binded by the meaning of higher court, expressed in reasoning of judgement.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

If any court produce interesting or for practise important judgement, can it send to the Supreme court and after discussion this decision can be published in Collection of judgements. This is official printed publication of the Supreme court for ensuring uniformity of the court decisions.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts

before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There does not exists any system of specialised courts in the Czech republic. There are only specialised tribunals in the courts without any system of hierarchy.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Its given by the law and by long lasting practice too.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Yes, they are obligatory for all of them, until the other different decision is published by the Supreme court in the Collection of judgements.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

They are obligatory.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Differences in judgements of ordinary courts can be solved by the tribunal of the Supreme court. Differences in decisions of the Supreme court tribunals must be decided by the Great tribunal of the Supreme court which consists of all Supreme court members.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

I cannot imagine such a situation. The judge is binded only by the law and such case law which is published in Supreme courts Collection of judgements. Previous court judgements in similar case can use only unformally. This is not source of law, it can be only unformal instruction for further inspiration how to decide.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

See 3.3.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such

case law affects the unification of national case law in your country?

It depends on type of decision. Generally it can affect unification of cases law.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

There exists official Collection of law published by the Government and Collection of judgements created by the Supreme court.

3.13 Is the access to such database free of charge?

No, it is based on commercial bases.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are more sources of informations on net. All of them are based on commercial bases, but one of them is free for judges. The fee is payed by the Ministry of justice.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

It is hard to say. I am just satisfied with this system.

3.16 Any other point you wish to raise.

None.

Denmark / Danemark

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In Denmark there is a general understanding that it is of crucial importance to achieve uniform application of the law.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- *consistent legislation to be adopted at legislative level;*
- *uniform practices by the executive institutions and law enforcement bodies;*
- *uniform case law developed by courts.*

Please explain each point and indicate the relative importance of each point.

All branches of power work actively to ensure uniform application of the law.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale is found in the law dating back to 1241 that no law should be made or used only to the benefit for some men but according to the needs to all those who live in the country (Jyske Lov). The same rationale prevails at the present time.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The Danish Parliament gives the laws of the country and will ensure uniformity in the legislative process.

2.2 Is there a hierarchy of laws?
The Danish Constitution is hierarchically higher than any other law. By-laws can be issued based on a mandate given by parliament in a law.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Through national implementing legislation, but the Danish membership of the European Union means that EU-regulations become immediately enforceable without a specific implementing act.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

In general the courts – and in the final instance the Supreme Court – have to decide in such matters, regard the answer to question 3.11.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Any member of Parliament as well as any member of Government may introduce bills, but normally the Government takes the initiative to have a bill prepared in a ministry, possibly after the issue has been considered in an expert committee. The bill is then put forward for the Parliament for further considerations. The Parliament, who has the legislative power, enacts a law by simple majority.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes. Such acts are binding for the courts when issued by the government according to mandate in a law provided by the Danish Parliament.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

No.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

A judgment in a case settles the dispute between the parties only, and it is not a binding precedent in later cases between other parties. However, interpretation of a law or application of general principles of law expressed in judgments from the appellate courts, in particular the Supreme Court, has very great weight in cases where the rule of law in question is to be applied to a comparable set of facts.

Case law is considered as being secondary in importance to legislation. National legislation is the primary source of law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Case law is recognised at a formal level as being very important for judges. Most emphasis is placed on Supreme Court case law.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Within a court, the question of uniformity of case law may be discussed between the judges at plenary meetings. At the horizontal level an annual meeting between the judges of the two appeal courts takes place. The judges of each of the two appeal courts meet annually with all judges from the courts of first instance within their district. At these meetings issues regarding uniform application of case law may be discussed.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

In general all cases are heard by the ordinary courts. Danish Courts are composed of the Supreme Court, the two appeal courts, the Maritime and Commercial Court, the Land Registration Court, 24 district courts, and the courts of the Faroe Islands and Greenland. The Maritime and Commercial Court and the Land Registration Court are specialized courts, but their judgments can be challenged to the appellate courts.

Outside the ordinary courts are the Special Court of Indictment and Revision and the Labour Court.

The core subjects for The Special Court of Indictment and Revision are processing complaints against judges and deputy judges and applications for resumption of criminal cases. A judgment in cases concerning complaint regarding improper or unseemly behavior of a judge or deputy judge can be appealed to the Supreme Court. An application for resumption of a criminal case can be filed to The Special Court of Indictment and Revision when there is no possibility of appeal left, but the decision of The Special Court of Indictment and Revision cannot be appealed. The Court is chaired by a Supreme Court judge and composed of two judges from the lower courts, a practicing lawyer and a professor in law.

Denmark has only one labour court, which has a chairmanship of 6 part time judges (normally from the Supreme Court), who have been designated after recommendation from the main actors on the Danish labour market. The Labour Court has exclusive jurisdiction to deal with inter alia all disputes concerning breaches of collective agreements on wages and working conditions, including industrial actions in contravention of collective agreements. It is not possible to challenge the judgments of the court to a superior judicial body.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The unification on case laws as described under question 3.3 depends on a long lasting practice.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- *judges/panels of that court;*

No

- *all judges in the country;*

No

- *are there any consequences for judges if they do not follow case law of higher court?*

No

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

As described under question 3.1 the case law from the appellate courts and particularly from the Supreme Court is a very important source for unification of the law.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

There are no different levels within the same court in Denmark. Contradictions and differences between judges in a court or between vertical courts are generally handled by appeal. Please see also the discussion about special arrangements in the above answer to 3.3.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

It will normally be necessary to depart from case law, if it has been outdated by new legislation. Other situations where depart from case law could happen are if the details of the case at hand differ significantly from those of the case law, or if the case law is very old and its reasoning has been overrun by the progress.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

Being the final court of appeal in Denmark the Supreme Court is highest authority regarding uniformity of application of law. The Court reviews judgments and orders delivered by the

High Court of Eastern Denmark, the High Court of Western Denmark and the Copenhagen Maritime and Commercial Court. The Supreme Court reviews both civil and criminal cases including constitutionally issues and The Court is the final court of appeal (third tier) in probate, bankruptcy, enforcement and land registration cases. In criminal cases, the Supreme Court does not review the question of guilt or innocence. There are no lay judges on the Supreme Court panel.

There are the following two avenues to get access to the Supreme Court:

When a court of first instance holds that a civil case is of principal character etc., it may refer the case to be heard by the appeals court, which thereby, if the court accepts the case, serves as the court of first instance. This creates access to the Supreme Court, because a first instance judgment from an appeal Court may be appealed directly to the Supreme Court.

Another avenue to the Supreme Court goes via the Appeals Permission Board. Thus the Appeals Permission Board considers petitions for leave to appeal to the Supreme Court although the cases in questions have already been tried and reviewed (third tier grant). Such cases are test cases, e.g. cases that may have implications for rulings in other cases, or cases of special interest to the public. In terms of grants and administration, the Appeals Permission Board belongs under the Danish Court Administration, but the Appeals Permission Board is otherwise independent of the judiciary and the government services. So there is no appeal from the Board's decisions to the Minister of Justice or the Parliamentary Commissioner for Civil and Military Administration in Denmark (Ombudsmanden). The Board is chaired by a Supreme Court judge and composed of two judges from the lower courts, a practicing lawyer and a professor in law.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

To prevent unintended inconsistency with international obligations the Danish case law and legal theory has established three main principles or rules. These rules, which are quite common also in other continental European jurisdictions, go under the name of the “Rule of Presumption”, the “Rule of Interpretation” and the “Rule of Instruction”.

The Rule of Presumption states that when Parliament adopts an act and the wording of this act, if applied stringently, turns out to have some effects, which might infringe established international obligations, it is presumed that the Danish Parliament did not want to override its international obligations. Consequently the courts presume, that the Danish legislation is to be applied in conformity with the international obligations, unless there is express authority in the “travaux preparatoires” that the Parliament intended otherwise.

The Rule of Interpretation holds that if a provision in an act of Parliament leaves room for different options of interpretation, the interpretational result which is in better conformity with international obligations should preferred.

The rule of Instruction applies to actions of administrative authorities and means that the Rule of Interpretation and possibly the Rule of Presumption are operative also in the administrative decision-making process.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- *judges;*
- *other legal professionals;*
- *general public.*

All decisions by The Supreme Court are made publicly available at the Internet. A full public access to every decision of any Danish court is planned for implementation within a few years. Decisions of the ECHR are accessible in English or French from the HUDOC Internet portal. Summaries in Danish are to a great extend available from the Internet. Decisions of the Court of Justice of the European Union (CJEU) are accessible at http://curia.europa.eu/.

3.13 Is the access to such database free of charge?

Yes.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Database services of the Karnov Group constitute a major source of access to court decisions and case law. Karnov Group services are available on a commercial basis only.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

No major challenges.

3.16 Any other point you wish to raise.

Regarding the answer to question 3.14, The Association of Danish Law Firms (Danske Advokater) during the summer of 2016 filed a complaint with Danish Competition and Consumer Authority (konkurrence og forbrugerstyrelsen). The association complained about abuse of dominant market position and excessive prices by the Karnov Group. The motion was supported by the Danish association of lawyers and economists (Djøf). The complaint is still pending decision by the Danish Competition and Consumer Authority (konkurrence og forbrugerstyrelsen).

Estonia / Estonie

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

This question has not been regulated at the level of the constitution or legislation. The main influencer for uniform application of the law is the Supreme Court. Although interpretations of Supreme Court are not universally obligatory (they are obligatory only in the same case), they are the main source and influence for the uniform application of the law. The principle is that it is highly likely that the Supreme Court will interpret the law the same as it has before (there are exceptions occasionally).

Another influence is explanatory memorandum of the bill or draft resolution. It is used to understand the purpose of a new or revised legal act or subsection.

Opinions of renowned specialists of law also somewhat influence the uniform application of the law, but these opinions are not usually cited in court rulings (unlike Supreme Court rulings and explanatory memorandums).

The Supreme Court also arranges trainings for judges and publishes **case law analyzes (it means** studying cases and drawing essential conclusions on how courts apply certain norms and how they interpret them and results in an analysis document that generalises case law and highlights its trends and problems**).**

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- **Consistent legislation to be adopted at legislative level;**
- **Uniform practices by the executive institutions and law enforcement bodies;**
- **Uniform case law developed by courts.**

Please explain each point and indicate the relative importance of each point.

It is understood in all of the mentioned forms.

Although adopting consistent legislation is ideal in theory, it does not happen in real life. Life situations are constantly changing so legislation has to change accordingly. Those changes sometimes are not consistent with parts of legislation that are not changed. With legislation there is also another problem – it cannot regulate every possible situation. This is why legislation has to be rather flexible and that brings forth different interpretations.

Uniform practices are good for uniform application of the law ensure that people are treated equally.

Uniform case law developed by courts is important to judges and other practitioners of law (lawyers for instance), but people who do not have knowledge of law don`t usually have knowledge of court cases either.

The concept of the uniform application of the law cannot be reduced to one form; neither can we say that one form is more important than the other. Consistent legislation is the basis of the uniform application of the law, although legislation is never ideal for everyone; uniform practices are needed to ensure that people are treated equally; court cases help judges make fair rulings and lawyers (for instance) predict their cases` chance of success. All forms are therefore important for different reasons and impacts.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?
The rationale of the uniform application of the law is to ensure equal treatment of people, who are in similar legal situation.

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?
No. However, judges are expected to know the Supreme Court's decisions.

2.2 Is there a hierarchy of laws?
Yes.
The foundation of the legislative system is the Constitution. Provisions of the Constitution have a superior legal force compared to other legal provisions.
Next, there are constitutional laws, laws (the difference between constitutional laws and other laws in that the first can be adopted and amended only by majority vote of the composition of the parliament and cannot be amended by the President with his or her decrees) and **decrees (**the President can issue decrees that have the force of a law, in the case when there is urgent national need and the parliament is unable to convene**).**
Then, there are regulations - issued by the Government and ministers on the basis of and for the compliance with the law.
All of the above are rules of conduct of general nature. There is also **legislation of specific application** (decisions, orders) and this kind of legislation is meant for regulating specific cases.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly on through national implementing legislation?
Treaties and other international instruments are mostly implemented or at least cited in national law.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?
In national level, *lex specialis derogat legi generali*. If provisions contradict the Constitution, then the provisions are interpreted in accordance with the Constitution or are not applied (similar corresponding provisions are applied, if possible).
Treaties are higher in hierarchy and in case of contradictions, treaties are applied over national laws.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Acts can be initiated by a member, a faction or a committee of the Parliament and the Government.

The Parliament and the Government work together in law-making process. A large percentage of bills is initiated by the Government, who thus also takes part in their proceeding. The opinion of the Government must be asked on bills initiated by the members, factions or committees of the Parliament.
First, the concept and the structure of the bill are worked out, its scope is determined, the used terms are defined and the initial version of the text is drawn up. In the explanatory

memorandum accompanying each bill, its authors explain the purpose of the new act. It is important to involve the interest groups who are the most directly impacted by the future act into the creation of the act. Increasingly, the Government informs the interests groups about its legislative intention in order to collect their first input.
Passing of an act requires three readings. Only in certain cases, such as the ratification of foreign treaties, two readings are sufficient. Between the readings, the bill is deliberated by the leading committee. General principles of the bill are discussed at the first reading. A decision is made whether to continue the proceeding of the bill in the Parliament or not. At the second reading, the provisions of the bill are discussed and motions to amend are put to the vote. The second reading can be suspended and additional motions to amend the bill can be presented. If the reading is not suspended, the second reading is considered to be complete and the bill is sent to the third reading. The passing of the bill is decided at the third reading.

Before a law enters into force, it must be announced by the President. When the President announces the law, it is published in the official website of legal acts - Riigi Teataja (there are no official paper publication any more in Estonia). The President can refrain from announcing a law that has been approved by the Parliament, sending it back to the Parliament for new discussion and deciding. If the Parliament approves again the law sent back by the President without making any amendments to it, then the President shall announce the law or apply to the Supreme Court for determining the conformance of the law to the Constitution. If the Supreme Court satisfies the application of the President, then the law will not enter into force. If the Supreme Court does not satisfy the application, then the President must announce the law.

The law will enter into force on the tenth day after having been published in the Riigi Teataja, unless a different deadline is stated in the law.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Government issues regulations and orders. A regulation is a legislative act and it is obligatory since publishing. **Regulations are law and legally binding for the courts.** Order is a legislation of specific application that is obligatory to the adressee of the order.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Most changes in legislation affect legal certainty and laws are amended often.
On January 1st 2017 there were 375 laws (not including Government or Ministers regulations) and 88 of them were either mended or came into force on January 1st 2017, so roughly a third of all laws. By February 10th 2017, 34 laws out of 375 have been amended (or came into force). By the end of this year another 21 changes (known at this point) are coming in these laws. And some laws are amended several times a year.

3.1. Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law has no binding legal effect. Opinions of higher courts are not mandatory in general. The positions set out in a judgment of a higher court on the interpretation and application of a provision of law are only mandatory for the court conducting a new hearing of the same matter.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?
Interpretations of provisions of law are commonly used by judges and they are important for uniform application of the law.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?
The positions set out in a judgment of a higher court on the interpretation and application of a provision of law are mandatory for the court conducting a new hearing of the same matter. Otherwise there are no arrengements between courts to ensure uniformity. It`s just probable that higher courts will have same opinions about interpretation and application of law in future cases, so that way it indirectly influences case law.

3.4 Are there specialized courts in your country? Is there hierarchy of specialised courts if such system exists? Is it possible to challenge final judgements of specialised courts before judicial body (Supreme Court or court with a similar role). If yes, please explain in short.
There are no specialised courts.
The judicial system in Estonia has three instances:

- first instance courts are county courts (hear all civil and criminal matters) and administrative courts (deals with complaints about the activities or inactivity of officials of the Estonian government and local governments, as well as other public disputes);
- second instance courts are district courts (hear appeals and review the decisions of county and administrative courts);
- third instance is The Supreme Court.

3.5 Is there unification of case law (mentioned in question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?
No.
3.6 Are judgements of such courts (mentioned in 3.3) obligatory to follow:

- **judges/panels of that court;**
- **all judges in the country;**
- **are there any consequences for judges if they do not follow case law of higher court?**

The positions set out in a judgment of a higher court on the interpretation and application of a provision of law are mandatory for the court conducting a new hearing of the same matter.
For judges, there are no consequences if they don`t follow case law of higher court.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

They indirectly influence case law, because they probably keep their opinions they have formed previously.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

Participants in proceeding can appeal decisions of first instance courts and can justify their appeals with case law that is not in accordance with courts decision. That, however, does not mean that court decision is automatically annulled.

3.9 Either in the case when the case law has binding legal effect, or in the vase when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

It is permissible to depart from the case law (opinions of higher courts). A judge is independent from fellow judges and judges of higher court instances in rendering judgements, except when the opinion of a higher court concerning interpretation of law is obligatory for the court re-examining a case.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Supreme Court is the highest court in Estonia and reviews court judgements in cassation proceedings. The Supreme Court is also the court of constitutional review.

The Supreme Court is competent to:

- review appeals in cassation and protests;
- hear petitions for review filed against court judgments;
- hear petitions for constitutional review;
- resolve certain matters pertaining to court administration.

In civil, criminal and administrative cases an appeal in cassation, an appeal against a court ruling or a petition for the review of a court decision can be filed with the Supreme Court. The Supreme Court does not accept all filed appeals. The Supreme Court shall accept a matter for proceedings if:

- the circuit court has evidently applied a provision of substantive law incorrectly in its judgment or has materially violated a provision of procedural law in making the judgment and this could have resulted in an incorrect judgment;
- the adjudication of the appeal in cassation has fundamental importance with respect to guaranteeing legal certainty and developing a uniform judicial practice.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Judges are continiously informed about the decisions of the European Court of Human Rights by e-mail newsletter.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- **judges;**
- **other legal professionals;**
- **general public.**

Judges can use Courts Information System to access case law. Other legal professionals and general public can use two different websites for that. First, there is a webpage of the Supreme Court, where all Supreme Court decisions can be found. There are also case law analyzes, annotations of second instance court decisions, references to other webpages for different courts or international case law. Secondly there is a webpage of Riigi Teataja where legislation and all of courts (all instances) decisions are published, also annotations of decisions of European Court of Human Rights.

3.13 Is the access to such database free of charge?

Yes, all of the above-mentioned are free of charge.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

No more providers.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

One of the problems are constant amendments in legislation, which makes it harder to keep track of the changes.

The fact that legislation is mostly not very concrete, makes it possible to interpret legislation in different ways, but on the other aspect, it is necessary for legislation to be applicable to different life situations. If laws would be more concrete, there would probably be more laws and also more frequent changes.

3.16 Any other point you wish to raise.

Finland / Finlande

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

There is a concept of the uniform application of the law. It can be derived from many sections of the Constitution of Finland, most notably section 6 according to which ”Everyone is equal before the law”. There is also a well-rooted practice that the courts and administrative authorities try to apply the law in a uniform way.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

The concept of the uniform application of the law consists in fact of all the above-mentioned elements.

Please explain each point and indicate the relative importance of each point.

At legislative level there is an endeavour to avoid situations where a new law is in conlict with the existing ones. This means that as the Parliament enacts new laws the existing ones are amended or repelled in the extent necessary to avoid such conflicts.

The aim is that all the executive institutions and law enforcement bodies apply legislation in a similar way. There are legal safeguards to secure this aim in form of right of appeal against or other kinds of scrutiny of the decisions and measures of these bodies.

The uniformity of case law of the courts is of course a very important factor in securing the uniform application of law. In order to reach this the Supreme Courts (the Supreme Court and the Supreme Administrative Court) publish their decisions and judgments (below in the text ”decisions”) to give guidance to the lower courts in their decision making.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale is to secure that similar cases are decided in a similar manner. This is of the essence to satisfy the requirement of equality before the law as set in the section 6 of the Constitution. The uniform application of the law is expected to enhance the public trust to and the legitimacy of the judiciary and the legal system as a whole.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The legislative process in the Parliament is regulated in a uniform manner in the Constitution (chapters 4 and 6) and the Parliament's Rules of Procedure. In principle all the laws are initiated through formal government proposals (there are some exceptions but in practice these are rather insignificant). There are formally accepted guidelines for preparing the government proposals. The preparatory work for government proposals is done in the ministries mainly in working groups consisting either of ministry officials (civil servants) only or of them and various experts for instance from courts or executive bodies and other ministries (depending on the subject matter). Also for this preparatory work there are formally set guidelines.

2.2 Is there a hierarchy of laws?

The Constitution is hierarchically above the level of ”normal” laws. Below the ”law” -level there are decrees of the government and ministries and further below there may also be legal norms set by the central bodies of administration. All this ”lower level legislation” must be in accordance with the laws (i.e. the legislation on the ”law” -level).

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The conformity of the national laws to treaties and other international instruments is ensured through legislative process which is gone through before the ratification of the treaties.

There are several ways in which the treaties and other international instruments are implemented. Some of the EU legislation is directly in force in Finland. In other cases the EU legal instruments may be implemented by incorporating their contents into national legislation. Sometimes a kind of a hybrid system is used: an instrument may be enforced by enacting an implementation law in which there are also given additional (national) provisions, often of a practical nature. International treaties are probably most commonly implemented through a national implementation law according to which the provisions of the treaty are in force as a law insofar as they belong to the field of legislation. Besides this

there may be lower level legislation (decrees of government or ministries) to give further instructions about application of the treaty, also these often of a practical nature. A treaty may also be implemented by changing the national legislation so that it is in conformity with the treaty.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Normally these kind of contradictions would probably appear in the form of unclear national laws. It can be said that if such contradictions appear the legislative process has been unsuccessfull in identifying all the relevant national laws or the requirements of the treaty.

In a situation where a conflict exists between national laws and a treaty that binds Finland the courts have an obligation to interpret the national laws in accordance with the treaty. If the contradictions cannot be overcome through a ”treaty-loyal interpretation” the national laws must be amended in such a way that the contradictions are abolished.

In cases of contradictions between national laws there are established rules of interpretation, e.g. so called lex specialis -rule (special laws supersede more general ones).

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

See the answer to question 2.1. The ministries in their own fields of responsibility have in practice the dominant role. Depending on the type of legislation in question also various kinds of organizations may have a major influence on the outcome of the process. E.g. in developing the labour legislation the trade unions and the respective organizations of the employers have had an important role in the preparatory legislative process.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Decrees of the government and of the ministries are sources of law in Finland. As explained in the answer to question 2.2. these decrees must be in accordance with the ”law” -level legislation and they must also have been authorized in it. In some fields there may also be binding regulation of lower level than decrees of ministries, e.g. legal norms set by certain administrative authorities. These must also be in accordance with the ”law” -level legislation and be authorized in it.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Certain laws can be said to be amended very often, even too often. However, the major part of legislation is rather long standing. Especially in certain pieces of the EU-based legislation there have been rather frequent amendments. Too

frequent amendments of legislation have naturally an infavourable effect on the ability of the courts and administrative authorities to produce right decisions. As a whole the legal certainty is however on a good level in Finland.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

No.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

The decisions made by the Supreme Court (in civil, commercial and criminal matters) and the Supreme Administrative Court (in administrative matters) are normally followed by the lower courts in similar cases. Also the decisions and established practices of lower courts may have considerable influence on application of the law.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

Especially the Supreme Courts have an important role in unifying the case law. The Supreme Courts guide the case law of the lower courts by publishing their decisions as precedents. Also the Courts of Appeal, the Administrative Courts, the Market Court, the Insurance Court and the Labour Court publish their most important decisions.

The president of the Supreme Court may order that a certain case is referred to a plenary session (all members) or a grand chamber of the court (11 members) e.g. if the Supreme Court wishes to depart from an earlier precedent. Similar arrangements are used also in other courts in matters involving important principles although these are mainly based on the provisions in the courts' own rules of procedure. One of the tasks of the court presidents is to oversee the uniform application of law within their courts.

The lower courts are expected to follow the case law of the higher courts in their decision making.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are three specialised courts in Finland: the Insurance Court, the Market Court and the Labour Court.

The Labour Court is the only instance in matters relating to collective agreements. Its decisions are subject only to extraordinary channels of appeal in the Supreme Court (either a complaint on the basis of procedural fault or an application of reversal of judgment; the latter is possible e.g. if the judgment is manifestly based on missapplication of the law).

Appeals from the decisions of the Market Court and the Insurance Court lie either to the Supreme Court or the Supreme Administrative Court, depending on the case (e.g. in cases relating to public procurements the appeal from the Market Court lies to the Supreme Administrative Court whereas in the cases relating to intellectual property rights it lies to the Supreme Court).

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The requirement for the unification of case law can be derived for example from the Constitution (especially sections 6, 21 and 99), from the Supreme Court Act (especially sections 1 and 7) and the Supreme Administrative Court Act (especially sections 1 and 7) and from the Code of Judicial Procedure (especially chapter 30 section 2).

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

It cannot be said that the judges are obliged to follow the case law of the the Supreme Courts or any of the lower courts. The Supreme Court may not, however, depart from an earlier precedent of the Supreme Court unless the new case is referred to the plenary session or the grand chamber (the Supreme Court Act, section 7, and the Rules of Procedure of the Supreme Court, section 17).

In practice, however, the judges in the Supreme Courts follow in their decision making earlier precedents from their courts and the judges in the lower courts, in turn, follow the precedents of the Supreme Court (the District Courts, Courts of Appeal, the Market Court and the Insurance Court) or the Supreme Administrative Court (Administrative Courts, the Market Court and the Insurance Court). In case there aren't any suited precedents from the higher courts the judges usually try to follow case law from their own courts, if such can be determined.

There are normally no consequences for judges (other than that their decisions may be overturned by the higher courts) if they don't follow case law of the

higher courts. However, there may be cases where the neglect to follow the case law of the higher courts can be said to constitute a violation of official duty (e.g. if the legal rule set in the precedent is very self-evident) for which the judge may be prosecuted and sentenced to a punishment.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

See answer to question 3.6.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

The supervision of uniform application of law is exercised through the procedures of appeal and (less significantly) extraordinary appeals. If the lower court has departed from the case law established by higher courts a higher court may on appeal overturn (or change) the appealed decision. The supervision of uniform application of law is usually more or less random within a single court. There may be rules (e.g. in the Rules of Procedure of some Courts of Appeal) according to which e.g. a decision in a case where the court panel has not been unanimous is not to be rendered before the president of the court has gone through it and had the chance, if need be, to refer the case to a grand chamber or a plenary session of the court.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

Departing from the earlier case law is certainly acceptable if the facts in the present case differ in some significant way from the facts in an earlier precedent. The changes in legislation or e.g. the case law of the European Court of Human Rights may lead to a situation where the earlier case law has lost its relevancy or at least its relevancy can be regarded as questionable. In some cases a precedent may lose its impact essentially because of the length of time that has passed by since the date the precedent was given.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As already has been stated above the Supreme Court and the Supreme Administrative Court have a central role in establishing uniformity in application of law.

An appeal to the Supreme Court is in almost all cases subject to leave of appeal. This may only be granted if it is important to bring the case before the Supreme Court for a decision with regard to the application of the law in other, similar cases or because of the uniformity of legal practice; if there is a special reason for this because of a procedural or other error that

has been made in the case on the basis of which the judgment is to be reversed or annulled; or if thereis another important reason for granting leave to appeal.

The leave of appeal is not needed in cases which the Court of Appeal has decided as the court of first instance. The most important of these are prosecution cases against high public officials, e.g. prosecutors and judges in the District Courts and Administrative Courts.

In the Supreme Administrative Court leave of appeal is not needed in all types of cases. The percentage of the appealed cases where leave of appeal is needed has been in recent years approximately 45 – 50. The grounds for granting the leave of appeal vary somewhat depending on the types of the cases. Typically they include situations where granting a leave of appeal is important for the application of the law to other similar cases, or for the sake of consistency in legal practice.

3.11 How is the case law of the European Court of Human Rights (ECHR) and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The judges are able to get information about the case law of the ECHR in Finnish through the free of charge database Finlex in which the decisions, albeit with a considerable delay, are published. Information about its decisions is more promptly available through commercial site Edilex. The courts are also informed by the Ministry of Justice of the more significant decisions of the ECHR. The individual judges also follow HUDOC, the database of the ECHR.

The decisions of the EU courts can practically not be found in the database Finlex (more specifically there are only resumés of decisions between 1961 – 1995). News of the decisions are however published in commercial sites such as Edilex. The decisions can be found through Curia, the database of the Court of the EU, and the EUR-Lex - website.

All the courts try their best to take into account and follow the case law of ECHR and the EU courts. There is a strong tendency in our court system to adjust the application of the national law to the precedents of the ECHR and the EU courts. The courts may ask the Court of the European Union for preliminary rulings in questions relating to matters with a connection to the EU legislation.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

There is a public database called Finlex which is accessible for all free of

charge. Some of the newest court decisions can also be accessed free of charge through website oikeus.fi.

Furthermore there are commercial databases such as Edilex in which court decisions are published and that can be used by judges, other professionals and general public. The judges have this database available in their computers at their workplaces.

Regarding the above-mentioned international case law see answer to question 3.11.

3.13 Is the access to such database free of charge?

Access to Finlex is free of charge, to commercial databases such as Edilex not.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are commercial sources of information as indicated in answers to questions 3.11 – 3.13. The information in these originates from the court decisions.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The quality of legislation does, unfornately, in some cases pose a challenge for the unification of case law. This problem can not, however, be said to be especially serious.

It is only natural that the more open the definitions and concepts used in the legislation and the more discretion the provisions of the law give judges the more incoherent the application of the law will be, at least until the highest court instance has through precedents given guidance about the proper application of the law in question to the lower courts.

3.16 Any other point you wish to raise.

France

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

La Cour de cassation a pour mission d'assurer une application uniforme de la loi sur l'ensemble du territoire national par l'ensemble des juridictions de l'ordre judiciaire.

Elle tient cette mission de la loi.

Le Conseil d'Etat a une mission identique, pour les juridictions de l'ordre administratif

1.2 Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

- l'adoption, au niveau législatif, d'une législation cohérente;
- les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;
- la jurisprudence uniforme élaborée par les tribunaux.

Expliquez chaque point et indiquez l'importance relative de chaque point.

Le législateur s'efforce d'adopter une législation cohérente, mais il appartient aux tribunaux de se prononcer sur toutes les difficultés d'interprétation et d'application des lois, pour en assurer, si besoin, la cohérence.
Lorsqu'une incohérence flagrante apparaît, la Cour de cassation a le pouvoir de suggérer la modification de la législation dans le sens qui lui paraît approprié.
Le législateur n'est pas toutefois tenu de suivre les recommandations de la Cour de cassation.

1.3 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire?

La recherche de la sécurité juridique et de la prévisibilité de la règle de droit appliquée par le juge

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif?

Un service de contrôle interne au Parlement existe pour veiller au bon déroulement du processus législatif

2.2 Existe-t-il une hiérarchie des lois?

La Constitution prime sur tous les autres textes.

Viennent ensuite : les lois dites organiques ; les lois dites ordinaires ; les règlements et arrêtés pris par le pouvoir exécutif

2.3 Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application?

La Constitution prévoit la supériorité des traités internationaux régulièrement ratifiés sur les textes de droit interne

2.4 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international?

En principe, le traité international prime.

2.5 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exerce en pratique un rôle dominant dans ce processus?

Le rôle essentiel est tenu par le pouvoir exécutif, la plupart des lois étant votées à partir de projets préparés par le gouvernement.

2.6 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignant pour les tribunaux?

Les tribunaux doivent appliquer les règlements pris par le pouvoir exécutif, sous réserve de leur conformité à une norme supérieure

2.7 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?

L'une des critiques majeures est celle de la trop fréquente modification des lois, avec un problème d'articulation qui peut se poser par rapport aux normes existantes, lorsque le législateur ne procède pas à une refonte d'ensemble de la matière mais se contente d'y apporter des correctifs.

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation nationale?

Bien que certains universitaires continuent d'en nier l'existence, la jurisprudence est bien une source du droit, ne serait-ce que parce qu'elle doit interpréter la règle de droit afin de pouvoir l'appliquer à des situations particulières et que le juge doit trancher les litiges qui lui sont soumis en droit, même si une loi déterminée ne paraît pas être applicable à à la situation de fait litigieuse.

La jurisprudence a une portée contraignante mais le législateur a toujours la faculté de modifier la loi ou d'en adopter une nouvelle si les orientations jurisprudentielles ne lui paraissent pas appropriées.

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel?

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité?

Comme cela a déjà été indiqué, la mission unificatrice de la jurisprudence appartient, pour l'ordre judiciaire à la Cour de cassation, pour l'ordre adminsitratif au Conseil d'Etat.

Des dispositifs informels sont également mis en œuvre, au niveau des tribunaux et cours d'appel, pour assurer la cohérence de la jurisprudence de ces différentes juridictions.

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement.

Il existe différentes juridictions spécialisées, parmi lesquelles les tribunaux de commerce et les conseils de prud'hommes, composés de juges non professionnels. Les premiers jugent les affaires entre entreprises commerciales. Les seconds les litiges du travail.

Un recours contre les décisions de ces tribunaux spécialisés peut être formé devant les cours d'appel, juridictions composées de juges professionnels, puis devant la Cour de cassation, également composée de juges professionnels.

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?

C'est la loi qui donne mission à la Cour de cassation et au Conseil d'Etat d'assurer une application uniforme de la loi par les tribunaux relevant de leur autorité.

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges / les panels de juges de cette juridiction;
- tous les juges du pays;
- y a-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

En droit français, une juridiction inférieure peut ne pas suivre la jurisprudence de la juridiction supérieure, à condition d'expliquer de manière circonstanciée les raisons de son choix.

Dans l'ordre judiciaire, c'est l'assemblée plénière de la Cour de cassation (réunissant des représentants de toutes les chambres de la Cour de cassation) qui, en cas de « résistance » des juges du fond, a le dernier mot et a le pouvoir de prendre une décision qui s'impose aux juridictions inférieures.

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?

En pratique, dans la plupart des cas, les tribunaux inférieurs suivent la jurisprudence de la cour supérieure, qui a le mérite de trancher les difficultés de droit qui peuvent diviser les juridictions.

La « résistance » précédemment évoquée intervient dans des cas relativement exceptionnels.

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?

Comme cela a déjà été indiqué, ce sont la Cour de cassation et le Conseil d'Etat qui ont le pouvoir de trancher les divergences juridiques divisant les juridictions inférieures.

Il existe aussi une procédure d'avis qui permet au juge d'une juridiction inférieure, lorsqu'il est confronté à une difficulté juridique nouvelle et sérieuse, susceptible de se présenter dans de nombreux litiges, de demander un avis à la Cour supérieur.

Cet avis n'est pas contraignant mais, représentant en pratique la jurisprudence qui pourra ensuite être adoptée par cette Cour, elle a le mérite de donner dans un délai très bref aux juges du fond la position de la Cour supérieure sur cette difficulté juridique.

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence?

Il est très difficile de répondre à une telle question car il n'y a pas une typologie prédéterminée des hypothèses dans lesquelles la jurisprudence de la Cour supérieure peut ne pas être suivie.

Par exemple : inadéquation de la jurisprudence au regard de l'évolution de la société ; inapplicabilité manifeste de la jurisprudence à certaines situations qui n'avaient pas été envisagées ; contradiction de la jurisprudence avec une norme de droit qui n'aurait pas été prise en considération par la cour supérieure etc...

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)?

En l'état de la législation française, tout justiciable a le droit de former un recours devant la cour supérieure, judiciaire ou administrative selon les cas.

Il n'y a pas de conditions particulières, liées par exemple au montant des sommes en jeu dans le litige.

Cependant la Cour de cassation et le Conseil d'Etat disposent de procédures internes qui leur permettre de ne pas admettre certains recours, lorsqu'ils sont dépourvus de moyens de cassation sérieux.

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays?

Les jurisprudences de la CEDH et de la CJUE s'imposent dans l'ordre juridique interne et la Cour de cassation a déjà eu l'occasion de dire que la jurisprudence de la CEDH devait être suivie, même si elle concerne un autre Etat, dès lors que les procédures ou pratiques sanctionnées par la Cour européenne pour cet Etat existent à l'identique en droit français.

Un texte de droit interne, non conforme au droit de l'UE ou de la CEDH, doit être laissé inappliqué par les juges.

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

3.13 L'accès à cette base de données est-il gratuit?

Un site internet d'accès libre et gratuit (Legifrance) permet d'avoir accès à l'ensemble de la jurisprudence de la CEDH, de la CJUE , de la Cour de cassation et du Conseil d'Etat.

En l'état actuel des textes, ce site ne reproduit qu'un nombre limité de décisions des juridictions inférieures.

Le législateur a prévu de mettre à la disposition du public l'ensemble des décisions de justice (système de l'open data) mais la mise en application doit encore être organisé et prendre en considération la protection des droits fondamentaux des personnes.

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale?

De nombreux éditeurs juridiques privés fournissent, pour la plupart sur une base commerciale et par des abonnements payants, des informations sur la législation et la jurisprudence, le tout assorti de commentaires juridiques de nature à nourrir la réflexion sur les questions en débat.

La Cour de cassation peut fournir également, sous forme d'abonnement, l'ensemble des décisions des cours d'appel, sous une forme électronique, les serveurs informatiques des cours d'appel étant reliés à un serveur central de la Cour de cassation qui reçoit, dès qu'elles sont rendues, les décisions de ces cours d'appel (base de jurisprudence JURICA)

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

L'un des défis est celui de l'internationalisation du droit, avec le problème de l'application uniforme de textes qui devraient être appliqués d'une manière similaire dans les différents Etats.

Un autre défi est la mise en œuvre concrète d'un principe de confiance qui devrait exister au sein de l'espace juriciaire européen, pour assurer l'exécution des décisions rendues par la juridiction d'un Etat sur le terittoire d'un autre.

Un troisième défi est celui de l'application uniforme dans les différents Etats du principe de la hiérarchie des normes faisant primer les normes internationales sur les normes nationales : le juge doit-il se voir reconnaître le pouvoir de refuser d'appliquer une loi interne non conforme soit au droit de l'UE, soit au droit de la CEDH ?

3.16 Tout autre point que vous voulez soulever.

Georgia / Géorgie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In Georgia a concept of the uniform application of the law is a combination of both formal requirements established at the level of Constitution and other laws as well as informal requirements, discussed and set at various level and applied in practice through common understanding.

1.2 What is understood in your country under the concept of the uniform application of the law?

It is understood in the form of:

- **consistent legislation to be adopted at legislative level**

  This implies that the process for enacting laws should be transparent, accountable and democratic.

  Laws must be formulated with sufficient precision and shall be foreseeable as to their effects. Retroactivity of the laws shall be prohibited if they negatively affect rights and legal interests.

  Parliament shall not be allowed to override fundamental rights by ambiguous laws.

  Friquent amendments in laws are not encouraged because they negatively affect legal certainty in the country.

- **uniform practices by the executive institutions and law enforcement bodies**

  Executive institutions and law enforcement bodies have a duty to respect and apply in a foreseeable and consistent manner the laws that are enacted. They shall not apply discriminatory practices and shall ensure the protection of human rights and equality before the law.

  Undertakings and promises held out by the executive institutions to individuals should be honoured (the notion of “legitimate expectation”).

  Although discretionary power is necessary to perform a range of governmental tasks, such power should not be exercised in a way that is arbitrary. The procedures shall exist to prevent its abuse. A law which confers discretion to a

state authority must indicate the scope of that discretion and the manner of its exercise with sufficient clarity.

- **uniform case law developed by courts**

  Yes. Case law of the courts shall be coherent. Existing of conflicting decisions within the supreme or constitutional court is contrary to the principle of legal certainty. It is therefore expected that courts, especially the highest courts, establish mechanisms to avoid conflicts and ensure the coherence in their case law. Final judgments shall not be called into question and shall be enforced.

  All three requirements are equally important.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

Requirement of legality, legal certainty and prohibition of arbitrariness; ensuring access to justice, respect for human rights, non-discrimination and equality before the law, which are the necessary elements of the rule of law in the country.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

There are both formal and informal requirements for ensuring the uniformity in the legislative process. Formal requirements are included in various provisions of the Constitution, Law of Georgia on Normative Acts, Regulation of the Parliament and other laws (for details, see information below).

2.2 Is there a hierarchy of laws?

Yes. It is established by the Constitution and the Law of Georgia on Normative Acts as follows:

1. Constitution of Georgia, Constitutional Law of Georgia;
2. Constitutional Agreement of Georgia;
3. International treaty and agreement of Georgia;
4. Organic law of Georgia;
5. Law of Georgia, Decree of the President of Georgia, Reglament (Regulation) of the Parliament of Georgia.

Constitution of Georgia and all other legislative acts must be in conformity with generally recognized principles and norms of international law.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

According to the Constitution of Georgia, international treaties and/or agreements, if they do not contradict with the constitution, have supremacy over national laws.

International treaties and other international instruments form part of the national legislation and are applied directly. There is no requirement to adopt national implementing legislation.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

There is a hierarchy of laws established by the Constitution and the Law of Georgia on Normative Acts as described above (see 2.2). In case of contradiction between national laws, the law which has a higher place in the hierarchy prevails. In case of contradiction between national laws that belong to the same hierarchy the law which is adopted later and/or is special prevails.

In case of contradiction between the national law and the international treaty, the international treaty prevails (if it does not contradict with the Constitution).

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The following bodies have a power/right to initiate a law:

1. Government of Georgia;
2. Member of the Parliament;
3. Group of Parliament Members;
4. Parliaments of the Abkhazia and Adjara Autonomous Republics;
5. 30 000 individuals (having right to participate in the election)

(Article 67 of the Constitution)

In practice the Government of Georgia has a dominant role in this process. Members of the Parliament are also active in law initiating process.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Legal acts of Georgia are divided into Normative Acts and Individual Acts.

Normative Acts are divided into Legislative Acts (laws) and Sub-legislative normative Acts.

Acts of the executive power are Sub-legislative normative acts. They shall be in conformity with Legislative acts. They form source of law and are legally binding for the courts.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Yes. Laws are amended quite frequently in Georgia and it does affect the legal certainty in the country.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law, except decisions of the Grand Chamber of the Supreme Court of Georgia, does not have binding legal effect and is not a source of law.

Decisions of the Grand Chamber of the Supreme Court of Georgia (highest cassation court) are considered as a source of law and have binding legal effect for all other courts of the general jurisdiction (Article 17.5 of the Law of Georgia on Courts of General Jurisdiction).

Panel consisting of 3 judges of the Supreme Court, which deals with a particular case, if it does not agree with the previous decision of the Grand Chamber on a similar case, has a right to submit a dispute for consideration to the Grand Chamber to deliver a new judgment (or the same one). Thus, over time, the decision of the Grand Chamber can be replaced by the new decision of the Grand Chamber only.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Even if they do not have a binding legal effect, the decisions of the Supreme Court of Georgia (except decisions of the Grand Chamber that are binding) are widely recognized as important and necessary to consider for all other courts. Lower instance courts are expected to follow the decisions of the Supreme Court.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

All courts of Georgia are expected to unify the case law. However the Supreme Court has a leading role in this process.

There are special arrangements between courts both at horizontal and vertical level to ensure uniformity.

All decisions of the Supreme Court are published in print for judges and available on the web-site of the Supreme Court for general public.

The Supreme Court conducts regular meetings with all courts on the issue of unity of case law.

There are guidelines published by the Analytical Department of the Supreme Court containing the extracts from the important decisions of the Supreme Court containing various interpretations on legal issues.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

At present there are no specialised courts in Georgia.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Unification of case law is determined by long lasting practice. It is also encouraged by the Law on Courts of General Jurisdiction (Article 41).

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

All judges in the country are obliged to follow the decisions of the Grand Chamber of the Supreme Court. All judges are also expected (but not obliged) to follow the decisions of the panels of the Supreme Court.

If judge does not follow the decisions of the Supreme Court his/her decisions with be overturned by the higher instance courts. This will be reflected in the evaluation of quality of judge's work. There is no other liability for judges.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Decisions of the Supreme Court are important source for interpretation of the law. They are widely used not only by judges, but also lawyers, scholars and other legal professionals. They play an important role in ensuring the uniform application of law, which greatly contributes to legal certainty in the country.

In addition to the Supreme Court decisions, number decisions of the first instance and appellate courts (that were not appealed or remained unchanged by the Supreme Court) are also subject of utmost interest from scholars and legal practitioners.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

In case of contradictions or deviations in case law between different courts at the same level, appealing the decision at the higher court (appellate courts or the Supreme Court) is the available procedure.

In case of contradiction between the appellate courts or within the appellate court the appealing the decision at the Supreme Court is the available procedure.

In case of contradiction within the panels of the Supreme Court, the panel which does not agree with the decision of the other panel is obliged to submit a case to the Grand Chamber of the Supreme Court. Decision of the Grand Chamber is obligatory to all courts and judges.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

There are no such situations directly specified or described somewhere. However, every judge has a right to make a decision which differs from the case law if such decision is firmly grounded. Even Grand Chamber can change its previous case law if it finds its decisions not corresponding to new developments or new reality.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The role of the Supreme Court is crucial in establishing uniformity of application of law.

Decisions of the Supreme Court in practice have a binging legal effect for all judges, while decisions of the Grand Chamber of the Supreme Court are obligatory for all judges pursuant to the law.

Supreme Court is the highest cassation court of the country. It does not deal with all cases. There is an admissibility criteria established by law. Supreme Court will admit the cassation appeal for consideration if:

a) The dispute concerns free speech and freedom of expression;
b) The case is important for the development of the law and the establishment of the uniform case law;
c) Decision of the appellate court contradicts with the case law of the Supreme Court on this matter;
d) In civil dispute – the case is dealt with significant procedural violation by the appellate court and this violation might have effect on the final outcome of the dispute; in criminal dispute – the case is dealt with significant legal or procedural violation by the appellate court and this violation might have effect on the final outcome of the dispute;
e) The appellate court issued the second default judgment or approved the first default judgment regarding the case.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Case law of the ECtHR is part of the national law of Georgia. It has supremacy over national laws (see 2.2). Georgian courts are obliged to apply ECtHR case law in their decisions. It significantly effects the unification of national case law in the country.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

It is published in print.

It is available on the web-site of the Supreme Court of Georgia www.supremecourt.ge

There is a special program to find the decisions of the Supreme Court on the web-site. There is a special program to find ECtHR decisions translated into Georgian language on the web-site of the Supreme Court.

Analytical Department of the Supreme Court translates all decisions of the ECtHR made in relation to Georgia and other important decisions in Georgian language.

3.13 Is the access to such database free of charge? Yes.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are other providers who operate on not commercial basis.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

Main challenge is the frequent amendments in laws, which effects the legal certainty in the country.

3.16 Any other point you wish to raise.

Germany / Allemagne

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

There is no general formal concept of the uniform application of the law. The uniform application of the law takes place in the courts that apply the law to the individual cases. However there are rules that guarantee and promote a uniform application of the law. Especially the following:

The competence for the final interpretation of the law and the control about the application of the law in the individual case belongs to the courts. Therefore mainly the courts are responsible for guaranteeing a uniform application of the law. Such a uniform application of the law can only work out if the courts themselves decide in a uniform way. This is what we call the principle of a uniform jurisdiction.

The principle of a uniform jurisdiction is part of the guarantee of equal treatment in legal affairs in Germany. The idea of legal treatment itself belongs to the principle of equal treatment codified in Art. 3 German Constitution/Grundgesetz - GG). This principle is part of the rule of law.

Since the judges are not formally bound in any way to the decisions of other courts (principle of an independent justice, Art. 97 GG) there is the possibility of deviating decisions. Germany does not recognize a legally binding effect of earlier jurisprudence. The core of an independent justice has to be upheld and enforced.

Therefore there is no binding effect for the inferior courts to the jurisprudence of the superior (high) courts. In one situation a binding effect of a decision of superior courts is however accepted. The decision of a higher court has to be followed if the higher court remits the case back to the lower instance for the final ruling. Anyhow, a uniform application of the law is reached by the factual binding effect cases and decisions of the higher instances have.

In Federal Courts (courts of last instance) a chamber has the obligation to effect a submission to the joint chamber if it wants to deviate from the current known jurisprudence in one topic of law (see 3.3).

In conclusion, Germany knows only few mechanisms to guarantee a uniform jurisprudence. A uniform application of the law is mainly achieved by the Federal Courts, the procedure of passing through different instances and the certain legal obligations to submit a case if it is of relevance for a uniform jurisprudence.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

The uniformity of law in the German legal system mostly concerns the uniform practice by the executive institutions and the uniform case law developed by courts.

In case of the executive branch, the most elaborate system of regulations exists in tax law. There, the tax authorities have developed a very extensive system of guidelines which ensure the uniform application of the tax law in the multitude of tax cases (which concern practically every citizen). They even issue so called guidelines of the non-application of court cases ("Nichtanwendungserlasse") if an individual court has ruled against their view. By these guidelines – which are controversially debated among constitutional lawyers – the tax authorities limit the application of a certain decision to the case decided and restrict thereby the influence of court cases on the uniformity of application of law (see 3.1 and 3.2).

To uniform case law which is developed by courts see 1.1, 3.1.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The target of a uniform application of the law is to enforce the principle of equal treatment and to guarantee a certainty of law for the citizens, see 1.1

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

There is no formal requirement for ensuring the uniformity in the legislative process. The German legislative process has, however, informal checks and balances to ensure uniform results of the legislative process. The ministries concerned in the drafting of new laws normally have to coordinate new draft laws insofar. The ministry of justice has a leading role in reviewing new draft laws to secure no contradictions between new laws and the existing laws.

2.2 Is there a hierarchy of laws?

There is a hierarchy of laws. The Constitution has the highest legal importance, followed by the formal laws made in parliament. On a third level, executive authorities produce application guidelines which are binding for them and the citizens concerned. They need to be based on a regulative authority in the respective law, but have not the same legal quality as laws enacted through parliament.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

In order to implement an international treaty into German binding law, a law of acceptance by the parliament (on the federal level) is needed (Art. 59 (2) GG). By passing this law through parliament the treaty becomes part of the Germany body of law. In the hierarchy of norms these treaties stand on the same level as a normal law made by parliament. Also, to guarantee the conformity of national law with treaties there are several rules of interpretation that influence the application of the law (e.g. the principle to interpret the law in favour of international law – Art. 24 GG).

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

The later law supersedes the older law (*lex posterior derogat legi priori*). Treaties have the same legislative rank as "normal" laws. So later laws could overrule treaties. This so-called treaty override is legally accepted. This has been confirmed by a recent decision of the Federal Constitutional Court in relation to a law which conflicted with a tax treaty with Turkey.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Law is made in the parliaments (on a federal and a state level). The legislation process normally starts through draft proposals initiated by either the government or the parliament or parts thereof. The proposed law is normally developed within the ministries of justice and the ministries competent for the subject matter. The majority of legislation has to pass two chambers (one representing the interests of the states – Bundesrat - and the parliament – Bundestag). If no consensus can be found during this process there exists the possibility for a special procedure to find a solution (conciliation committee). The dominant role in this process has the parliament.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Acts of the executive can be source of law and binding for the citizens (especially in public law). However, as those executive regulations/laws were not approved by the parliament (representation of the people) there is always a possibility for citizens to challenge these executive regulations/laws in front of courts. The courts are then generally not bound to the executives' decisions if they conflict with existing laws, see 2.2.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

In general this is not the case. Frequent changes result from the necessity to convert European guidelines in to national law. In certain matters, however, law changes quite often, e.g. in family law, social law, tax law, and in other areas of public law. This concerns mainly areas in which legal provisions have to reflect frequent changes in the

economic circumstances. As far as law changes within one or two years, e.g. in tax law, such a legal uncertainty exists, especially if new laws are applied retroactively.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Germany belongs to one of the classical countries of the "civil law system" compared to the common law system. Primary source of law is the national legislation. As courts only deal with individual cases, such a binding effect remains only *inter partes*.

However, there is a factual binding legal effect of the decisions of the highest courts (e.g. the Federal Courts or the Federal Constitutional Court).
The task of the Federal Courts (Federal Court of Justice (Bundesgerichtshof, BGH), the Federal Administrative Court (Bundesverwaltungsgericht, BVerwG), the Federal Finance Court (Bundesfinanzhof, BFH), the Federal Labour Court (Bundesarbeitsgericht, BAG) and the Federal Social Court (Bundessozialgericht, BSG) are primarily to ensure uniform application of law, clarify fundamental points of law and develop the law. In general, they review rulings of the lower courts with regard to errors of law. Even if the binding effect of the judgments and rulings of the Federal Courts are technically confined to the respective case decided, in practice the lower courts follow their interpretation of the law virtually without exception.

The Federal Constitutional Court's duty is to ensure that the Constitution of the Federal Republic of Germany (GG) is obeyed. Since its founding in 1951, the Court has helped to secure respect for and effectiveness of Germany's free and democratic basic order. This applies particularly to enforcement of the fundamental rights. All government bodies are obliged to respect the Basic Law. Should any conflict arise in this respect, the jurisdiction of the Federal Constitutional Court may be invoked. Its decisions are final.

For the Federal Constitutional Court there is such a binding effect in cases in which the court has asserted the incomparability of a certain law with the constitution. Under these circumstances court decision has the same binding legal effect as national legislation (paragraph 31 organisational law of the Federal Constitutional Court/Bundesverfassungsgerichtsgesetz – BVerfGG).

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

As mentioned above there is a factual binding effect (informal level) of the decisions of the Federal Courts, see 3.1, 3.4. It is recognised as an important rule of law and is mostly followed by the judges of the inferior instances.

The far-reaching effect of rulings of the Federal Court of Justice is also due to the fact that, particularly in the field of civil law, legal practice is often guided by these rulings. Banks and insurance companies as well as landlords and divorce lawyers respond to a "ruling from Karlsruhe".

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or

between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

In principle, there is no legal mechanism for the courts to unify the case law.

The task of the Federal Courts (BGH, BAG, BFH, BVerwG, BSG) are primarily to ensure uniform application of law, clarify fundamental points of law and develop the law, see 3.1.

There are however special arrangements which aim to secure a uniform application of the laws.

Vertical level within the hierarchy of courts:

In the framework of the hierarchy of courts remedies of the parties could be admitted if they are necessary to secure a uniform application of laws in case the lower court decision deviates from the case law of the higher courts (e.g. “Berufungszulassung” paragraph 511 (4) Civil procedure code/Zivilprozessordnung - ZPO; “Revisionszulassung” paragraph 543 (2) ZPO).

Horizontal level within each court:

Each Federal Court (see 3.2.) consists of various chambers. The chambers of each Federal Court have to ensure to rule in a uniform way.

For the Bundesgerichtshof (Federal Civil and Criminal Court of Justice) the relevant rules are contained in paragrah 132 organisational law of the courts - Gerichtsverfassungsgesetz – GVG.

According to that law, one chamber which would like to deviate from a decision of a different chamber has to ask whether the latter still upholds the (older) decision/view.

In that case, the case would have to proceed to a joint chamber of judges in order to solve the discrepancies of views and to ensure a jointly respected position. The joint chamber of judges (“Großer Senat”) consist of the president and one judge of each chamber of the court. This procedure is called “Divergenzvorlage” (diverging submission). There is one joint chamber for criminal cases and one for civil cases.

In addition, a chamber could apply for a decision of the joint chamber of judges if a uniform decision is needed in a question of fundamental importance for the development of legal principles or for securing a uniform jurisprudence. This procedure is called “Rechtsfortbildungsvorlage”.

There is no legal duty to submit the cases to the joint chamber of judges. This chamber deals with the legal question of the submission issue. The submission is only permitted if the answering of the posed questions is of general importance for the development of the law. The answer to the legal question has either a prejudicial effect or will be shaping the material or procedural law.

The joint chamber of judges is not bound to the submission of the deciding chamber. However, the deciding chamber is bound by the rulings of the joint chamber. This binding effect only exists in the special procedure of submission to the joint chamber. In all the other cases there will be a binding effect only to that extent that the chamber will have to submit the case to the joint chamber if it plans to deviate from the joint

chamber of judges' opinion. The Federal Constitutional Court has no jurisdiction on the submission process. Only the final decision in the original case is controlled by the Federal Constitutional Court.

This exact process described above takes place in the Federal Court of Justice (for civil and criminal matters), but the other Federal Courts do have similar rulings to guarantee a uniform application of the law.

Also, there is another provision on the horizontal level. German legal system provides for a common chamber in between the Federal Courts that is meant to guarantee a uniform application of the law within the different Federal Courts (article 95 (3) GG). This is the joint chamber of the Federal Courts ("Gemeinsamer Senat der Obersten Gerichtshöfe des Bundes"). If a chamber of one of the Federal Courts plans to deviate from the current jurisprudence of one chamber of a different Federal Court it has to submit the case to the joint chamber of the Federal Courts. This chamber consists of the five presidents of the Federal Courts, the two presiding judges of the chambers that deal with question (originally) and one judge each of the involved chambers.

In family law there is another mechanism for a uniform application of the law on the horizontal level created through the practice of the courts. Specialized chambers for family law of the Higher Regional Courts have developed guidelines for the application of support law in their respective jurisdiction. There are even guidelines which apply across the jurisdictions of Higher Regional Courts. This practice is accepted by the courts and by legislator.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

The German court system is divided into five specialized branches or jurisdictions: ordinary (civil and criminal), labour, general administrative, fiscal and social. In addition, there is the constitutional jurisdiction, i.e. the Federal Constitutional Court and the Constitutional Courts of the states ("Bundesländer").

The highest ordinary court is the Federal Court of Justice. At regional level there are Local Courts ("Amtsgerichte") and Regional Courts ("Landgerichte"), which are the first or the second instance courts depending on the character of the case, and Higher Regional Courts ("Oberlandesgerichte"). The administrative, labour and social jurisdictions have three tiers and the fiscal jurisdiction has two. Each Federal Court rules the final decision in a law suit.

However after such a final decision there is the possibility to challenge the judgement in front of the Federal Constitutional Court if the plaintiff asserts that his/her fundamental constitutional rights are violated.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

A uniform application of the law is part of the principle of legal certainty, determined in the Constitution (article 20 (1), (3) GG, 95 GG, see 1.1, 3.3). In addition there are procedural rules (paragraph 132 GVG, article 45 law on the organisation of labour law

courts, ArbGG; paragraph 11 administration procedural code, VwGO; paragraph 11 fiscal law procedural code, FGO; paragraph 41 law on the organisation of the social law courts, SGG). Further there are legal practice guidelines, see 3.3.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

In the German law system there is no principle like “stare decisis”, which exists in the Common Law countries to guarantee a uniform application of the case law in the different courts. In general the only obligation judges have is to apply the law and to observe the fundamental rights of the constitution. Factually judges in the lower courts tend to follow the opinions of the higher courts. They do not have a legal obligation to follow that case law. If they do not so, their decision might get overruled by the court of next instance, and eventually by the Federal Constitutional Court.

If the Federal Court of Justice reassigns a matter to a lower instance court for additional revue that court is legally bound to the decisions and their reasoning (article 563 (2) ZPO).

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

In the German law system it is agreed that the judgements in general courts only have an “inter partes” effect in between the parties of a legal conflict, see 3.1., 3.2.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

There is no procedure to avoid deviating decisions in the courts or chambers below the level of the Federal Courts. For the rules applicable on the level of the Federal Courts, see 3.3.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

As there is no binding case law in Germany deviations from superior courts are permissible. This is a consequence of the legal independence of judges (article 97 GG). Even if the legal question at hand has already been decided in a certain way courts may decide differently and thereby cause the higher court to review (again) its position. If the higher court confirms its position the decision of the lower court may be repealed. This is the factual binding effect of the legal hierarchy of the German Court system, see 3.6.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Federal Court of Justice (in civil matters) decides on cases in which the Higher Regional Courts have permitted the appeal. If the appeal is not granted that decision can be reviewed by the Federal Court of Justice in cases the amount in dispute exceeds 20.000 Euro. There are no discretionary powers in granting right to hear other cases. The Federal Court of Justice decides only legal questions on the facts established by the lower courts. This practice then secures the uniform application of law and contributes to legal certainty in other cases, see 3.1.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

According to the Constitution (Art. 59 (2) GG) the treaties like the European Court of Human Rights are on the same level in the norm hierarchy as a usual formal law of our legislative body, see 2.2. In German cases there is a duty to implement a judicial decision by the European Court of Human rights or another supranational court.

Furthermore in other cases the decisions of the European Court of Human Rights will be respected because Germany has accepted the competence of the European Court of Human Rights. The Federal Constitutional Court has ruled that all courts in Germany have to take into account the decisions of the European Court of Human Rights if interpreting a law, even if the decisions were about/against other countries than Germany.

The judgements of the European Court of Justice have a binding effect in questions of European law which are relevant for the case to be decided.

The uniform application of the European law is guaranteed by Art. 236/256, 267 AEUV that allows a special submission procedure to the European Court of Justice if a national court has difficulties in reading and interpreting the European law (e.g. directives, regulations, recommendations etc.). In that case the European Court of Justice then decides on the question regarding the European law and remits the case to the national court, which then decides the case. German courts obey diligently the obligations under which they have to submit cases to the European Court of Justice.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

The Federal Courts provide their decisions on their own websites. These could be used free of charge by everybody. Various other public websites exist which cover the jurisprudence of lower tier courts.

As a federal state, the Federal Republic of Germany is characterised by decentralised structures. Therefore the federal states decide by themselves whether they provide judgements of first instance online. Most federal states provide a selection of judgements free of charge for non-commercial purposes (http://www.justiz.de/onlinedienste/rechtsprechung/index.php).

In North Rhine-Westphalia there is a database covering all decisions of courts in North Rhine-Westphalia which are of special public interest accessible via the internet free of charge (www.nrwe.de).

In addition, selected judgements of the courts of highest instance since 2010 are available to the general public free of charge on the website www.rechtsprechung-im-internet.de. The website is provided by the Federal Ministry of Justice and Consumer Protection in collaboration with the juris GmbH.

A broad range of judgements of first instance courts is available via the Federal Legal Information System. Registered users can get access via the commercial website www.juris.de (subject to costs). There are also other commercial providers. Those databases cover mostly national case law.

In addition courts or lawyers may send court decisions for publication to legal magazines. There are some commercial scientific literature for jurists, in which new (international) case law is presented and discussed on a regular basis (mostly every month).

3.13 Is the access to such database free of charge?

Public websites of courts are free of charge and accessible without restriction. Commercial databases which are most frequently used are not free of charge. There are no free licenses for judges, but special conditions might apply to courts, see 3.12.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are more providers, but mostly on a commercial basis. They are independent of the courts, see 3.12.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

There are no particular challenges. The uniform application of law is efficiently guaranteed by the court system as described above, see 3.3. The legislator rarely interferes to secure the uniform application of law.

3.16 Any other point you wish to raise.

No.

Hungary / Hongrie

1. Concept of the uniform application of the law

1. Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The concept of uniform application of law is established at the level of the Fundamental Law (i.e. the Constitution). According to Article 25 of the Fundamental Law, the Curia, the highest judicial authority of Hungary, guarantees the uniform application of law, its uniformity decisions are binding on all courts.

Act CLXI of 2011 on the organization and administration of courts contains more detailed provisions on how the Curia is to fulfil its constitutional duty: "In carrying out the functions delegated under Article 25(3) of the Fundamental Law the Curia shall adopt uniformity decisions, perform the analysis of cases resolved by final decision, and publishes Curia decisions of principle and court decisions of principle." (§ 25)

2. What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:
consistent legislation to be adopted at legislative level;
uniform practices by the executive institutions and law enforcement bodies;
uniform case law developed by courts.
Please explain each point and indicate the relative importance of each point.

In Hungary, "uniform application of law" primarily refers to uniform case law developed by the courts.

To a lesser extent, the concept includes uniform practices by executive institutions and law enforcement bodies.

The concept does not include consistent legislation as legislation (the "making" of law) is not understood as the application of law.

3. What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

It is supposed to produce legal certainty for citizens.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

1. Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

There are formal requirements. An Act of Parliament (Act CXXX of 2010 on the adoption of legal acts having the force of law) contains detailed uniform rules about the preparation, adoption and promulgation of statutes and subordinate legal acts.

2. Is there a hierarchy of laws?

Yes.

According to Article T (3) of the Fundamental Law (i.e. Constitution), legal acts having the force of law [for the list of such legal acts see answer to question 2.6] may not be contrary to the Fundamental Law.

According to Article 15 (4) of the Fundamental Law, Government decrees may not be contrary to Acts of Parliament.

According to Article 18 (3) of the Fundamental Law, decrees issued by the members of the Government may not be contrary to Acts of Parliament, Government decrees and decrees of the Governor of the Hungarian National (Central) Bank.

According to Article 23 (4) of the Fundamental Law, decrees issued by the heads of autonomous regulatory agencies may not be contrary to Acts of Parliament, Government decrees, decrees of the Prime Minister, ministerial decrees or decrees of the Governor of the Hungarian National (Central) Bank.

According to Article 32 (3) of the Fundamental Law, municipal decrees (i.e. decrees issued by local authorities) may not be contrary to any other legal act having the force of law.

3. How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The conformity of national laws with international treaties is ensured in two ways:

ex ante: during the preparation of the law, conformity with international and European law must be ensured (according to Act CXXX of 2010 on the adoption of legal acts having the force of law),

ex post: the conformity with international treaties is verified by the Constitutional Court (see answer to question 2.4).

International law is applied indirectly, through national implementing legislation. According to Art. Q(3) of the Fundamental Law (i.e. the Constitution): “Hungary shall accept the generally recognized rules of international law. Other sources of international law shall be incorporated into Hungarian law upon their promulgation by [national] laws.”

4. What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

The Constitutional Court verifies if legal acts having the force of law (see answer to question 2.6) are in conformity with the Fundamental Law (i.e. the Constitution).

According to Art. 24 of the Fundamental Law, the Constitutional Court has power to

- review, upon the initiative of any judge, of laws to be applied in a specific case with regard to their conformity with the Fundamental Law;
- review, on the basis of a constitutional complaint, of laws applied in a specific case with regard to their conformity with the Fundamental Law;
- review, on the basis of a constitutional complaint, of court decisions with regard to their conformity with the Fundamental Law;
- review laws with regard to their conformity with the Fundamental Law at the initiative of the Government, one-fourth of all Members of Parliament, the President of the Curia, the Prosecutor General, or the Commissioner of Fundamental Rights [ombudsman];
- examine the conformity of national legislation with international treaties.

The Constitutional Court has the power to annul
- any law or statutory provision that is contrary to the Fundamental Law or an international treaty;
- any court decision that is contrary to the Fundamental Law.

The Curia has the power to verify the legality of municipal decrees and may annul such decrees if appropriate.

5. How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

It is the Parliament that has the power to enact statutes (Acts of Parliament), but the government, members of the government, local authorities and other executive organs can also adopt subordinate legal acts having the force of law.

See answer to question 2.6.

6. Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

According to Article T (2) of the Fundamental Law (i.e. Constitution), legal acts having the force of law include
the Acts of Parliament (statutes),
government decrees,
decrees of the Prime Minister and other ministers,
decrees of the Governor of the Hungarian National (Central) Bank,
decrees of the heads of autonomous regulatory agencies,
municipal decrees,
decrees issued by the National Defense Council during a state of national crisis
decrees issued by the President of the Republic in a state of emergency.

Apart from Acts of Parliament, these are acts of the executive power and they are legally binding on the courts. (But judges/courts can apply to the Constitutional Court for the verification of the conformity of a given legal act with the Constitution.)

7. In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Yes, laws are all too frequently amended, even during the period of vacatio legis (i.e. between

the enactment and the entry into force) and often shortly after their entry into force. Naturally this has a negative impact on legal certainty.

3. Role of courts in ensuring the uniform application of the law

1. Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Only so-called uniformity decisions of the Curia are binding on all courts.

Uniformity decisions are not decisions in individual cases, but rather contain abstract statements about the correct interpretation of law and explanatory notes (i.e. explanation of the reasons underlying the abstract statements).

The Curia also publishes so-called "Curia decisions of principle" (Elvi Bírósági Határozat, abbreviated as EBH) which are only binding on the Curia. These are decisions given in individual cases. If a judicial panel of the Curia intends to deviate in a point of law from a previous Curia decision of principle, a uniformity decision must be adopted (in order to overrule the previous Curia decision of principle).

Other court decisions do not have a binding effect.

2. If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Court decisions which do not have a binding effect usually have persuasive authority, i.e. lower courts tend to follow the case law of higher courts.

3. In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

To promote and ensure the uniform application of law, the Curia

adopts uniformity decisions,
performs the analysis of case law (i.e. cases resolved by final decision) in working groups,
issues Curia decisions of principle and
selects and publishes lower courts' decisions of principle.

Each of these methods is regulated in detail in Act CLXI of 2011 on the organization and administration of courts.

Uniformity decisions

A uniformity procedure is to be conducted:

a) if a new uniformity decision or the amendment or withdrawal of a previous uniformity decision is required on an issue of principle to improve the case law or to ensure the uniform application of law, or

b) if a panel of the Curia intends to deviate in a point of law from a previous decision of another panel published as a Curia decision of principle or from a court decision of principle.

In the second case the panel (which intends to deviate from a Curia decision of principle or a court decision of principle) initiates a uniformity procedure and suspends the proceeding until the uniformity decision is adopted.

A uniformity procedure can be initiated by:
- the President or head of division of the Curia, or their deputies, or by the president of a regional court of appeal;
- the president of a panel of the Curia in the case b) described above;
- the Prosecutor General.

The President of the National Office of the Judiciary (OBH) does not have the right to initiate a uniformity procedure, but he/she may notify the President of the Curia if in his/her view a uniformity procedure should be conducted in order to ensure the uniform application of law.

The person who initiates a uniformity procedure must specify in the motion for the uniformity decision the issues and the reasons for requesting the uniformity decision, and in the case b) described above he must also make a recommendation as to the substance of the decision.

Each division of the Curia has a uniformity panel: there is one in criminal law, one in civil and commercial law and one in administrative and labour law. The uniformity panel is chaired by the President of the Curia, the Deputy President of the Curia, the head of division or the deputy head of division. The uniformity panel consists of the chair and four members. Members are selected by the chair of the uniformity panel.

If a uniformity procedure concerns the uniformity panels of different divisions, the chair of the uniformity panel appoints judges from each division affected. Such uniformity panels consist of a chair and six members, chaired by the President or Deputy President of the Curia.

The person who initiates a uniformity procedure may not be the chair of the uniformity panel, except for the case when all judges of the affected division of the Curia participate in the uniformity panel (see below). In the case b) (see above), members of the uniformity panel are selected in the following way: no majority is allowed for members of the panel which intends to deviate in a question of law from a Curia decision of principle or a court decision of principle, or for members of the publication panel which decided to publish the Curia decision of principle or the court decision of principle. (On publication panels see the section on Curia decisions of principle below.)

All judges of the affected division of the Curia participate in the uniformity panel if the purpose of the uniformity procedure is:
a) the amendment or withdrawal of a previous uniformity decision; or
b) to decide an issue of principle to improve (develop) the case law.

In this case,
the chair of the uniformity panel is the President or the Deputy President of the Curia,
the uniformity panel adopts its decisions with a two-thirds majority of the members present.
(In other cases, the uniformity panel adopts its decisions by a simple majority.)

Uniformity decisions are also published on the website of the Curia, see http://kuria-birosag.hu/en/uniformity-decisions

Working groups analysing case law

The Curia establishes working groups which have the duty to analyse the case law on a given topic and to prepare non-binding summary opinions on the result of their investigation.

The topics to be investigated are determined annually by the President of the Curia, following consultation with the divisions of the Curia. The heads of divisions of regional courts of appeal and courts of appeal, the heads of the administrative and labour regional colleges, the President of the National Office of the Judiciary (OBH), the Prosecutor General, law faculties and the Bar Association may also present recommendations.

On the topics recently analysed by the working groups see the English summaries at http://www.kuria-birosag.hu/en/forum-sententiarum-curiae-current

The chair and the members of the working group are appointed by the President of the Curia, separately for each subject, from among the judges of the Curia, based on a recommendation by the heads of the divisions. The chairperson of the group may invite judges of lower courts and external experts having theoretical or practical knowledge of the questions/field of law examined.

The affected division of the Curia holds a discussion about the summary opinion prepared by the group and, if approved, the opinion is published on the website of the Curia. See http://kuria-birosag.hu/en/jurisprudence-analysing-working-groups

Relying on the findings of the summary, the head of the relevant division of the Curia may propose – inter alia – the opening of a uniformity procedure, or may lodge a legislative initiative at the President of the National Office of the Judiciary (OBH) through the President of the Curia.

Curia decisions of principle

The Curia has four special panels (each consisting of 5 judges) to select and publish Curia decisions of principle and court decisions of principle:

a publication panel on general private (civil) law,
a publication panel on commercial law (including company and insolvency law),
a publication panel on criminal law and
a publication panel on administrative and labour law.

If a judicial panel of the Curia adopts a decision on a matter of principle in a case that concerns a large number of citizens or that raises fundamental issues of public interest, the presiding judge shall, after the decision is executed in writing, notify the head of the Division affected. The head of Division submits the decision to the publication panel which decides whether to publish the decision as a Curia decision of principle. As written above, a decision published as a Curia decision of principle has binding effect for the Curia only.

Court decisions of principle

If the President of the Curia or any head of any division of the Curia is informed that a lower court has adopted a decision that fits the above-mentioned criteria, and the conditions for the commencement of a uniformity procedure or for the publication of a Curia decision of principle (on the same issue) are not satisfied, they submit the decision to the publication panel affected which decides whether to publish the decision as a court decision of principle.

The role of lower courts

Lower courts [in the order of hierarchy: regional courts of appeal, courts of appeal, district courts] also have certain duties to ensure and promote the uniform application of law:

If a judge or a judicial panel of a regional court of appeal, a court of appeal, an administrative and labour court or a district court has adopted a decision that concerns a matter of principle, such decision of principle shall be presented to the president of that court when it becomes final.

The presidents and heads of divisions of regional courts of appeal and courts of appeal as well as the presidents of administrative and labour courts and district courts must monitor on an ongoing basis the decisions adopted by the courts they supervise.

If the president or the head of division of a regional court of appeal or a court of appeal (or the head of an administrative and labour regional division) finds – on the basis of the decisions submitted to him by judges or judicial panels or other cases decided by the court or on the basis of inspections or any other information – that

a decision of principle has been adopted, or
there is a contradictory judicial practice in matters of principle, or
final judgments have been adopted on the basis of contradictory doctrine in the court they direct or in a court they supervise (or in a court attached to the administrative and labour regional college),

he must notify the president of the higher court and must submit the decisions in question and any other document that may be necessary.

Before such notification the president or the head of division of the regional court of appeal or court of appeal (and the head of the administrative and labour regional division) may consult the judges of the division (or the administrative and labour regional division) affected.

To promote the coherence and consistency of case law, divisions of courts (including administrative and labour regional divisions)

monitor the practice of the courts within their jurisdiction and publish a formal “opinion” where there is any dispute regarding the correct application of the law on any matter [such opinions contain abstract statements, are not binding, but have a persuasive authority], and
participate in the working groups established by the Curia to analyse the case law if so requested by the chairperson of such working group.

The heads of divisions of regional courts of appeal and courts of appeal may make a

recommendation

to the head of division of the Curia or the president of the regional court of appeal for the initiation of a uniformity procedure, or

to the President or head of division of the Curia for the publication of a court decision of principle.

Judges of the Curia participate in the meetings of the divisions of regional courts of appeal and courts of appeal (and in the meetings of administrative and labour regional divisions).

A representative of the regional court of appeal attends the meetings of divisions of courts of appeal within its area of jurisdiction.

4. Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

At the level of district courts (i.e. the lowest level of the court system), there are specialised Administrative and Labour Courts. At the higher levels of the court system (i.e. courts of appeal, regional courts of appeal, Curia), there are only specialised administrative and labour divisions within the courts. Even if a judgment becomes final at the level of the Administrative and Labour Courts (e.g. in the case of judicial review of administrative decisions), it is possible to apply to the Curia for a review of the decision.

5. Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The various methods to promote the uniform application of law are determined and regulated in detail in Act CLXI of 2011 on the organization and administration of courts.

In addition, Article 25 of the Fundamental Law also provides that the Curia, the highest judicial authority of Hungary, guarantees the uniform application of law, its uniformity decisions are binding on all courts.

6. Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

judges/panels of that court;

all judges in the country;

are there any consequences for judges if they do not follow case law of higher court?

As already mentioned, only uniformity decisions of the Curia are obligatory to follow for all judges/courts of the country. Decisions of the Curia published as "Curia decisions of principle" are obligatory to follow for all judicial panels of the Curia, but not for other courts. (It happens that a regional court of appeal refuses to follow a Curia decision of principle, or one judicial panel of a regional court of appeal follows a Curia decision of principle, while another panel of the same regional court of appeal does not.)

The only consequence for a judge/judicial panel who/which fails to follow the case law of higher courts is that his/its decision may be annulled by a higher court. There are no

disciplinary consequences of failing to follow the case law of higher courts, but judges are subject to regular evaluation (in the 3rd year after the appointment, then every 8th year), and, as part of the evaluation, the head of division obtains the opinion of the head of division of the court of second instance (appeal/review court) about the work of the judge. This means that a judge who keeps ignoring settled case law and therefore his decisions are regularly annulled by the appeal/review court may receive worse results in the evaluation process.

7. If judgments of such courts are not obligatory, what kind of practical effect they may have?

See answer to question 3.2.

8. What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

See answer to question 3.3. The three most important methods to resolve contradictory interpretations of the law are

the adoption of a uniformity decision by the Curia,
the adoption of an opinion by a division of a court,
the analysis of the case law by a working group set up by the Curia (which may result in the recommendation of the opening of a uniformity procedure).

9. Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

If a court disagrees with a decision of any other court (whether lower or higher), the court may depart from the earlier decision except for uniformity decisions. There are no formally established criteria for the permissibility (or necessity) of such departure from earlier case law, but obviously this happens when the applicable statutory provisions are not clear, i.e. they allow for different interpretations.

10. What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

See answer to question 3.3.

It is possible to apply to the Curia for the review of a final decision on the basis of an alleged violation of the law. There are rather complicated statutory provisions about the cases when review by the Curia is excluded. In the new Civil Procedure Act (enacted in 2016, to take effect from 1 January 2018) the Curia is granted discretionary powers to permit an application for review even in cases when review is prima facie excluded. The Curia will have such power if the review of the final decision is necessary

a) to ensure the development or uniform application of law,

b) because of the social importance of the point of law raised in the case,

c) because the case should have been referred to the Court of Justice of the European Union for a preliminary ruling, but the court of second instance failed to make such a reference,

d) because of deviation from the published case law of the Curia. (§ 409 (2))

In addition to review by the Supreme Court, final decisions in individual cases may also be challenged before the Constitutional Court for alleged violation of the Fundamental Law (i.e. the Constitution). This is called a constitutional complaint.

11. How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

As mentioned above, it is possible to challenge final decisions of courts before the Constitutional Court for alleged violation of the Fundamental Law (i.e. the Constitution). In interpreting the Fundamental Law, the Constitutional Court takes into account and normally follows the case law of the European Court of Human Rights (ECtHR). In addition, regular courts (including the Curia) also take into account and refer to the case law of the ECtHR when relevant.

12. In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:
judges;
other legal professionals;
general public.

For judges, internal databases exist, for example a database with all decisions of the Curia and the regional courts of appeal.

For legal professionals (including judges, of course), case law is published in printed as well as online electronic format.

Printed

Important decisions of the Curia are selected and published in a monthly legal periodical (Kúriai Döntések, earlier: Bírósági Határozatok, BH for short). This contains not only uniformity decisions, Curia decisions of principle and court decisions of principle, but also other decisions in individual cases (in a somewhat shortened and edited version).

Important decisions of the regional courts of appeal are published in two legal periodicals (Bírósági Döntések Tára, BDT – monthly, Ítélőtáblai Határozatok, ÍH - quarterly). (The two periodicals are published by two different publishing houses.)

Electronic, online

On the website of the judiciary (www.birosag.hu) there is an online database (Bírósági Határozatok Gyűjteménye – Collection of Court Decisions) accessible free of charge with

almost all final decisions of all courts: http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara This database is accessible to the general public, not only legal professionals. Within this database, it is possible to search for decisions according to the court, division of court, area of law, type of decision (uniformity decisions, Curia decisions of principle, court decisions of principle, opinions of divisions, individual cases etc), year of decision, identification number of decision, keywords. However, this database is not quite user-friendly, e.g. decisions are only available in Word format, decisions of different courts in the same case are not linked, etc.

In addition, there are also other online legal databases which contain the case law (as well as other legal information, e.g. statutes). These are more user-friendly, but access is based on subscription.

13. Is the access to such database free of charge?

Only the above-mentioned database on the website of the judiciary (www.birosag.hu) is accessible free of charge.

14. Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

In addition to the database accessible free of charge on the website of the judiciary (www.birosag.hu), there are also providers operating on a commercial basis. These are two publishing houses (HVG Orac and Wolters Kluwer) which publish printed as well as online material.

15. What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

Broad definitions and legal concepts may of course pose a challenge, but they have always been used in law (e.g. the concept of bona fides has been used since Roman law) and for a good reason: they allow courts some flexibility and may be useful when the need arises to fill gaps in statute law.

Probably the greatest challenge is the large number of cases courts have to deal with, even at the highest level. (Compare that the Supreme Court of the UK deals with less than 100 cases a year, whereas the Hungarian Curia deals with thousands of cases every year.)

16. Any other point you wish to raise.

None.

Iceland / Islande

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents? ***It is informal and set in various level and applied in practice through common understanding.***

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point. ***It is understood in the form of consistent legislation to be adopted at legislative level as well as uniform practices by the executive institutions and law enforcement bodies and uniform case law developed by courts. It is therefore a mixture of all these factors.***

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce? ***The rationale of the uniform application of the law is that there should be consistency in the legislation and its implementation to ensure transparency and equal rights of all citizens of the country.***

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process? ***There are informal requirements for ensuring the uniformity in the legislative process according to what is generally recognized by those concerned.***

2.2 Is there a hierarchy of laws? ***Yes it is so. The constitution is in the first place, followed by the general law and the regulations and rules set by law.***

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation? ***The conformity of national laws to treaties and other international instruments is ensured by international treaties and EU regulations are implemented in national legislation and by the interpretation of national legislation in accordance with international treaties and EU regulations.***

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty? ***If the general legislation is not in accordance with***

the constitution the general law depart. As depart senior general law for new legislation on the same subject if there is an inconsistency between older and younger law (lex posterior derogat legi priori) as well as specific law prevail over the general law (lex specialis derogat legi genarali). If there are contradictions between national law and treaty the national law is to be interpreted in accordance with the international treaty to which Iceland has recognized and committed to implement.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process? ***The government and its individual ministries has in practice dominant role in law making process.***

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts? ***No.***

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country? ***No.***

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation? ***Yes, court case law can have binding legal effect as the national legislation.***

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level? ***Refer to answer to question 3.1.***

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity? ***No.***

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short. ***There is only one specialised court in Iceland, The Labour Court. There it is not possible to challenge its final judgment.***

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice? ***It is determined by long lasting practice.***

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Refer to the answer to question 3.3.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have? ***If the judgment shows that there is inconsistency in the legislation it is dealt with by changing legislation.***

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)? ***In Iceland there are only two judicial levels. In case of contradictions or deviations in case law the Supreme Court has the role to correct it.***

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law? ***Only if there are contradictions or deviations in case law.***

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)? ***The Supreme Court has no such role and can only decide if that is the case if it is claimed by the parties.***

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country? ***The national courts are obliged to follow the judgments of the European Court of human rights and advisory opinions of the EFTA Court.***

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Judgments are published on the websites of Icelandic courts. Judgments of the European Court of human rights and the EFTA Court are also published.

3.13 Is the access to such database free of charge? ***Yes.***

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis? ***As said before judgments of Icelandic courts are published on their website. Judgments of the EFTA Court are published by the court and judgments of The European Court of human rights are since 2005 published by the Institution on human rights of the University of Iceland. So there are only independent entities which are source for such information.***

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts? ***It cannot be seen that there are any special challenges.***

3.16 Any other point you wish to raise.

Ireland / Irlande

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

A. The issue of uniform interpretation or application is not expressly referred to in the Constitution or legislation. Really, this is not seen as a "really hot" issue in Ireland. I suspect this is because the judiciary is small, there are only about 150 judges in all, and the structure of the courts means that an authoritative interpretation is the preserve of a very small number of judges, so inconsistency of interpretation is rarely in issue. As will be referred to at a later section of this response an issue of greater significance arises where the law permits judges a wide discretion in how to apply the law and as a result significant divergences in how the law is applied can emerge.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;

A. Subject to not enacting any legislation which is repugnant to the Constitution the legislature enjoys a very wide discretion as to what legislation to enact, or what the terms of legislation should be. Legislation will often be enacted designed to deal with what is perceived by the majority in the legislature to be a pressing political or social problem. In deciding whether to enact proposed legislation or to reject, legislators are likely to focus on the merits or otherwise of the specific proposal before them. Certainly this can lead to inconsistencies or approach between different pieces of legislation. However given that the priorities and the political/ideological make up of legislatures will vary from time to time, this is probably inevitable.

- uniform practices by the executive institutions and law enforcement bodies;

A. The obligation on executive institutions and law enforcement bodies is to apply and implement the law. As law enforcement is organised on a national basis, there are no local or regional or State police forces, the issue of inconsistent application does not really apply. Greater differences can emerge in the case of local authorities, there are some 30 in the State, undertaking tasks and responsibilities delegated to them by legislation.

- uniform case law developed by courts.

A. The courts are organised on a hierarchal basis:-
- District Court (Local Courts)
- Circuit Courts (Regional Courts)
- High Court
- Court of Appeal
- Supreme Court

Courts are bound by interpretation of courts that are higher in the hierarchy. There are a number of statutory provisions which enable a court to obtain the opinion of a Superior Court if in doubt about the correct interpretation or the correct approach.

Please explain each point and indicate the relative importance of each point.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

A. There would a very broad consensus about the desirability of having a uniform or consistent application of the law. It is though recognised that on occasions there can be tensions between the desire for constancy and the need to respect the independence of individual judges.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

A. As will be apparent from responses to earlier questions because legislation is enacted by legislators, and because the make up of the legislature can vary from time to time, inconsistencies of approach can occur. However, if the fact of inconsistency with other measures on the statute book is identified during the legislative process, steps would normally be taken to bring the various measures in question into harmony.

2.2 Is there a hierarchy of laws?

A. Yes. The basic or fundamental law of the State is the Constitution of Ireland which can be amended only by the vote of the people in a referendum. At the next level come statutes enacted by both Houses of the Oireachtas (Parliament). The Oireachtas is specifically prohibited from enacting legislation that is repugnant to the Constitution. At a level below that comes the subordinate or delegated legislation eg. Ministerial orders and Statutory Instruments. The validity of such subordinate or delegated legislation is derived from an enabling Act of the Oireachtas. For the delegation to legislate to be valid, it is necessary that relevant

"principles and policies" to be applied can be identified from the primary legislation.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

A. The Constitution states expressly that the State observes the generally recognised principles of public international law. So far as International Treaties and Conventions are concerned, these are not directly applicable, but it is necessary that legislation be enacted to incorporate the Treaty and give it effect in domestic law. Different considerations of course apply in the case of EU measures.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

A. The courts will always seek the harmonious interpretation of the laws they are called on to interpret. In exceptional circumstances that may prove impossible, in which case it would be necessary for the Oireachtas/Parliament to act to resolve the situation. So far as international treaties are concerned, as already indicated, these are not directly applicable.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

A. I have already referred to the amendment of the Constitution, by vote of the people and to the enactment of a statute by the legislature and to the possibility of subordinate or delegated legislation. The power to make subordinate or delegated legislation is given to a wide range of bodies including the Government, individual Ministers, local authorities and a range of other public bodies.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

A. The Executive does not have any free standing or independent power to make laws. Statute passed by Parliament frequently authorise the Government or Ministers to make orders which are legally binding.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

A. In general that would not be seen as a valid criticism. There are some very contentious political issues which tend to be addressed frequently and sometimes new legislation is introduced or enacted as a political majority for change

emerges. That does not give rise to any uncertainty as such, but it can give rise to administrative difficulties if individual practices or structures are not allowed bed down.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

A. Under the common law system the precedent value of decisions of Superior Courts is very considerable indeed. A decision of the Supreme Court is binding on every court in the land. A final and authoritative court decision represents the law of the land and will continue to do so, unless and until that law as so laid down is altered by Parliament/Oireachtas. In some cases what is in issue is a matter of constitutional interpretation and the decision can only be set aside by vote of the people in a referendum.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

A. Case law can and does have binding effect.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

A. As indicated the court structure is hierarchal, so the decisions of higher courts as regards interpretation bind lower courts. Within a particular court, consistency of interpretation is regarded as desirable. If at a particular court level, differences of interpretation are emerging, the matter is very likely to be brought before a higher court for guidance. This could be done by way of the parties appealing a particular decision or by way of a trial court "stating a case" for the opinion of the higher court. There would probably also be discussions within the court where the divergence of approach was emerging designed to achieve a greater consensus. The Court President might well also play a role.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

A. In general there are no specialised courts as such. There is a specialised commercial division within the High Court. There are also a number of specialised Tribunals operating in areas such as employment matters, landlord and tenant matters and asylum. Decisions of these bodies are usually subject to an appeal to the courts and indeed sometimes then to a further appeal to a higher

court. The exact arrangement varies from body to body. Sometimes there is a full appeal and sometimes and increasingly so, the appeal is on a point of law only. Such bodies are also subject to judicial review. In general the focus in a judicial review will be on the procedure followed rather than the merits of the decision.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

A. The Superior Courts would by long standing practice, indeed from the foundation of the State and even before that have seen the role in promoting consistency of application and approach as being a central part of their function.

3.6 Are judgments of such courts(mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;

A. Judges are not obliged to follow decisions of other judges of the same court. However, the long established jurisprudence is that ordinarily they should do so and can depart from earlier decisions only if there is good and clear reason for doing so.

- all judges in the country;

A. All judges are obliged to follow decisions of all higher courts.

- are there any consequences for judges if they do not follow case law of higher court?

A. There are no direct consequences in that they will not be disciplined or removed form office. However, while it has never happened, if a judge consciously and deliberately and persistently decline to follow binding precedent, it is not inconceivable that this could amount to stated misbehaviour providing grounds for impeachment. A refusal to implement the law and apply it as laid down by higher courts would not be consistent with the oath every judge takes on assuming office.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

A. It is obligatory for lower courts to follow decisions of higher courts

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including

superior courts(appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

A. As already stated, if differences of interpretation or approach emerge, it is very probable that the matter will, by one route or another, be brought before a higher court.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

A. It is hard to imagine a case where it would be acceptable not to follow a binding precedent. However, that it is not to say that the lower court has no element of flexibility. It may be possible to argue that the case before the court can be distinguished ie. by identifying factors present in the case at hearing or factors not present in the case at hearing, which have the effect of taking it out of the category of cases covered by the earlier decision so that on a detailed analysis the earlier decision is not in fact a binding precedent.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

A. This is an area where there has been major change in recent times. Until 2014 when a Court of Appeal was established as a result of an amendment of the Constitution, an appeal lay from all decisions, subject to limited exceptions, of the High Court to the Supreme Court. The position now is that there is no automatic right of appeal. In the great majority of cases the decision of the Court of Appeal is final. A dissatisfied party can ask the Supreme Court to permit a further appeal. However, that would be allowed only if the case involves a point of law of exceptional public importance and it is desirable in the public interest that the view of the Supreme Court be obtained. There is also provision for the Supreme Court on application to it to permit so called “leap frog” appeals.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

A. By statute all courts are required to take account of decisions of the European Court of Human Rights. There is no comparable statutory provision in relation to other bodies, but it would not be unusual for decisions and rulings of international bodies to be referred to and they would be course be treated with great respect.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

A. Decisions of national courts of precedent value are published on the Courts' website. There are also a number of reports published either in hard copy and/or on line, such as the Irish Reports and the Irish Law Reports Monthly as well as reports focusing on specific areas of law eg. Employment Law. At this stage, though this was certainly not always the case in the past, relevant decisions are readily available to practitioners, students, academics, judges and indeed the wider public.

3.13 Is the access to such database free of charge?

A. The public databases are free of charge. There are also a number of private sites which in some cases charge, typically this would be by way of a subscription or membership feel.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

A. As indicated at the outset the issue which from time to time causes concern is the way in which judges exercise discretion vested in them by law. So, by way of example the maximum penalty for most criminal offences is prescribed by statute. However, that is a maximum and is rarely imposed in practice. The view is taken that the maximum should be reserved for the worst possible cases. It will therefore be for the judge dealing with the individual case to select a penalty. There can be significant differences of approach. There are judges who will be inclined towards leniency and judges inclined towards severe sentences. Similar situations can arise in other areas, another example might be the assessment of compensation for personal injuries suffered. Here there are judges who would be inclined to be generous and others whose instincts would be to be conservative.

In cases of this nature if appeals are brought, then the appeal court may seek the middle ground between leniency and severity or between generosity and meanness. Appeal courts will by that means offer a degree of guidance, in the hope of encouraging greater consistency, but it is very much a work in progress. Divergences persist and the extent of those divergences can give rise to public disquiet. On the other hand judges would tend to respond by saying that every case is different and every case has to be dealt with on its own facts.

3.16 Any other point you wish to raise.

I would draw attention to paragraph 3.15. I would be glad elaborate or clarify any aspect required.

Italy / Italie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In Italy scholars and case law usually refer to a "nomophylactic" function – i.e. the task of ensuring compliance with the law and its uniform interpretation – as being attributed to the Supreme Court of Cassation. This adjective derives from the Greek noun νόμος (the "norm", the law) and the verb φυλάσσω (indicating the action of "protecting").
This function attributed to the Supreme Court is formal, as it is provided for in art. 65 of the Italian Law on the Judiciary (Royal Decree 30 January 1941 no. 12):

*"*The Supreme Court of Cassation, being the supreme organ of justice, ensures the exact observance and uniform interpretation of the law, the unity of the national law, respect for the competences of the different jurisdictions; it settles conflicts of competence and fulfills other duties assigned to it by law."

Having said this, one should however clarify that, although the Supreme Court issues persuasive precedents, they are not binding, as Italy does not have a stare decisis *rule.*

Nonetheless in 2005 the Italian Parliament conferred on the executive the power to issue secondary legislation to ensure uniformity of application of the law, at least within the civil sector of the Supreme Court, with the aim of discouraging litigation. Consequently in 2006 a legislative decree introduced a minimal stare decisis *concept: if a panel of the Supreme Court wished to overrule precedents of the joint chambers, the panel itself could not do so, but would have to refer the case to the same joint chambers (article 374 of the Italian Code of Civil Procedure, as amended by article 8 of Legislative Decree of 2 February 2006, No. 40). It is worth mentioning here that, along this pathway, article 1 of Legisl. Decree of 2011, No. 195, has introduced a similar rule in article 99 of the Code of Administrative Procedure; so the several panels of the Council of State are in a weak stare decisis relationship with the Plenary Chamber of the same Council, from the precedents of which they cannot depart except by further referral.*

Although judges of the first and second instances are not, strictly speaking, obliged, in subsequent civil cases, to follow the new stare decisis *rule, the fact that the Supreme Court (or Council of State) are (partially) bound by (some of) their precedents introduced an incentive for uniformity both on panels (forced to either follow the previous decisions of the joint chambers or issue well reasoned new referrals to the joint chambers to persuade them to overrule their precedent) and lower judges.*

An important role in uniformity is played by the Supreme Court's documentation service – that is, the sector of the Court composed of judges who select decisions to be indexed and who alert when inconsistent interpretations arise. The data base of decisions prepared by

this service is widely used by judges and practitioners. The service also issues yearly publications[1]*.*

A further step has been represented by Decree-Law no. 168 of 2016, converted with amendments into Law no. 197 of 2016: from now on appeals before the Supreme Court (that are very numerous compared to other countries) will be dealt with in the ordinary way in a public hearing only in a limited number, when uniformity is at stake; in other cases, they will be treated in camera, without the participation of the private parties and the public prosecutor*. This will reinforce the value of those judgements that solve conflicts, which will progressively be the only ones to be cited.*

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

• consistent legislation to be adopted at legislative level;
• uniform practices by the executive institutions and law enforcement bodies;
• uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.
The most common understanding concerns uniform case law developed by courts. However, also executive institutions are bound by their precedents, but they can depart from them adopting a motivation. Citizen can challenge administrative acts departing from precedents in administrative tribunals.
As for Parliament, there exist a service in the Presidency of the Council of Ministers which provide legislators an evaluation of the impact of new legislation on preexisting legislation (article 5 of Law no. 50 of 1999 – "analisi tecnico normativa" (ATN)); the service also provides follow up time after the new regulation has been enacted ("analisi di impatto della regolamentazione" (AIR)); thus complying with OECD principles[2]*.*

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The control of interpretation is viewed as a tool to ensure legal certainty.
Given the great complexity of legislation and social change, it is not uncommon to observe frequent changes in interpretation, which fuel public debate on the so-called crisis of the nomophylactic function. As has been mentioned, recent legislation has tried to address this issue at the same time leaving unchanged the traditional lack of a stare decisis *rule.*

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Please see answer above concerning services warning legislators of impact of new legislation.
2.2 Is there a hierarchy of laws?

[1] For a wider perspective, see Müller A. (ed.), Judicial Dialogue and Human Rights, CUP, 2017, with a chapter concerning Italy: http://admin.cambridge.org/academic/subjects/law/human-rights/judicial-dialogue-and-human-rights?format=HB&isbn=9781107173583

[2] Recommendation of the Council of the OECD on improving the Quality of Government Regulation, adopted on 9 March 1995 and further texts.

Yes. A relationship between the sources of law is provided by an article of the Civil Code of 1942, as complemented by the Italian Constitution. In short, the Constitution and constitutional laws are at the top, then EU law is privileged over domestic legislative sources (laws, decree laws, legislative decrees); then regulatory sources, also known as secondary sources follow (regulations of the executive power, local authorities); at the bottom, customary unwritten sources.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

At present, the Constitutional Court has construed different legal frameworks, depending on whether the case in question concerns European Union (EU) law or international law (which includes the European Convention of Human Rights.

In the area of EU law, the Constitutional Court recognised article 11 of the Italian Constitution as the legal basis for allowing Italy's participation. In 1984 the Court recognised that EC law has primacy over Italian law within the so- called doctrine of competence, establishing that European law is not hierarchically above national law, but has a sphere of competence into which national law cannot enter. However, the Constitutional Court reserved the final word for itself: should European law breach the basic principles of the Constitution or the fundamental rights of individuals, then the Court itself could declare European law inapplicable (there is a preliminary ruling request in front of the CJEU concerning this topic). Concerning international law and the ECHR (which has been treated as any other piece of conventional international law), under article 10 of the Italian Constitution, as interpreted by the Constitutional Court, national judges could not refuse to apply domestic law, even if this law conflicted with the Convention rules as construed by the ECtHR. National courts could only refer such cases to the Constitutional Court and Constitutional Court judges could only have domestic law struck down because of its incompatibility with principles of the Italian Constitution. The ECHR is placed in an intermediate position between the Constitution and ordinary domestic law (art. 117 of the Constitution).
The domestic judge can also directly use the Convention as a guideline for the interpretation of domestic law. This is possible when no direct and clear conflict exists.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

See answer to 2.3.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Ordinary laws are approved by Parliament or by regional Assemblies, upon initiative of the members of the assemblies, the government or the people.
The Italian Constitution also provides for two normative acts having force of ordinary law, enacted by the executive power: the decree-law and the legislative decree.
The Decree-Law (Decree Law) is governed by Article 77 of the Constitution. It is approved by the Council of Ministers and issued by the President of the Republic. It may be adopted in extraordinary cases of necessity and urgency and loses effectiveness if it is not converted into law by Parliament within sixty days following its publication.
Legislative Decrees are governed by article 76 of the Constitution. They are also approved by the Council of Ministers and issued by the President of the Republic, but can be adopted only after the delegation of the Parliament, given by way of a law specifying the subject

matter of the discipline, the principles and criteria to be followed and the deadline within which it must be issued.
In present days the executive power, either as initiator of an ordinary law or as a delegated or urgency legislator, under the control of Parliament, is the dominant actor.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

The acts having force of law are binding (see 2.5).
Other acts (regulations, administrative acts) can be disregarded by the judge in the individual cases if they conflict with a law.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Yes.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law has no binding legal effect except for the parties to the lawsuit. Decisions of the Constitutional Court declaring laws unconstitutional are binding.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

See answer to 1.1.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

See answer to 1.1. As for lower courts, the Law on the organization of the Judiciary – at least for civil courts – provide that judges regularly meet in order to ensure uniformity.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

Yes. Please see answers to CCJE's questionnaire in preparation of the Opinion on specialisation of courts. It is possible to challenge final judgments of specialised courts before the Supreme Court.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

See answer to 1.1.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

• judges/panels of that court;
• all judges in the country;
• are there any consequences for judges if they do not follow case law of higher court?

See answer to 1.1.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

They are persuasive. See answer to 1.1.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

See answer to 1.1. The appeals system is the regular way to obtain uniformity. Before the Supreme Court, both the Prosecutor General and the Court ex officio *(when declaring a case inadmissible) can obtain that the Court renders a judgment* in abstracto.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

It is in general permissible, providing an adequate reasoning based on the law (except for panels in the Supreme Court, which have to refer the case before the Joint Chambers – see 1.1.).

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

See answer to 1.1. In Italy the Supreme Court is not given any discretion in selecting its cases, under the Italian Constitution which provides for an unlimited access of cases to the Court. The new article 360 bis of the Italian Code of Civil Procedure, introduced by article 47 of the Law of 18 June 2009, No. 69, was introduced to 'filter' the numerous civil cases that are traditionally brought before the Supreme Court. The reform of 2016 made the filter even stronger, since only relevant cases will be treated in a public hearing, other being dealt with in camera *with a written procedure.*

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

See answers above.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

• judges;
• other legal professionals;
• general public.

The decisions are accessible through the website www.cortedicassazione.it free of charge. Some cases are anonymized, according to privacy laws.

3.13 Is the access to such database free of charge?

Yes. A database with restricted access provides past decisions and indexes/links.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are many commercial providers, which so far have been the only way to access lower court decisions. In a few months, also lower court decisions will be publicly retrieved and accessible.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

It definitely poses a challenge.

3.16 Any other point you wish to raise.

Liechtenstein

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The Constitution requires uniform application of the decisions of the courts and the administrative authorities (executive powers). If there is already a uniform judicial and administrative practice, in principle, the citizen must be able to rely on it. There must be good and compelling reasons for not observing (for departing from) uniform practice. The Constitutional Court reviews (examines) whether there is sufficient justification for doing so. A change in practice must be factually justified (be based on factual reasons) and must not be a surprise without a legal hearing for the person concerned.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

uniform practices by the executive institutions and law enforcement bodies and
uniform case law developed by courts.; see 1.1

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The Constitution requires that the laws be applied equally to all citizens. A different application presupposes that there is factual justification for this.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The rules laid down in the constitution for the formation of a law (formal constitutional law) must be complied with.

2.2 Is there a hierarchy of laws?

There is a hierarchy in the legal norms. Constitutional law and international law are at the top level (rank on top level/ come first).

Below (then) there are the simple laws and the decrees (regulations) issued/adopted by the government.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

International treaties are applied directly in Liechtenstein, if they are suitably specific. If they are only framework contracts, appropriate laws and regulations for implementation must be enacted by the Parliament.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

In case of contradiction between national law and international law, the international treaties are more important than national law. This means that the authorities and courts must directly apply the provisions of the international treaties.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Parliament and prince have the dominant role. Firstly, a law has to be passed by Parliament (at the request of the government or a legislative initiative by citizens). On request of a corresponding (certain) number of citizens a referendum against a law of the Parliament may be raised. There must then be a popular vote. Ultimately, however, the prince must give his consent to a law.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

The government may issue decrees/regulations if authorized by a law. Such regulations are binding ; if they contradict the law, the Constitutional Court will declare them not valid on application by any other Court..

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

In certain fields amendments/changes are often made after a short time. That can lead to problems.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The decisions of the courts basically only apply to the specific case. If, however, there is a permanent (an established, a settled) case-law(jurisdiction) of the Supreme Court, a lower court must have good reasons for deviating from permanent case law. Courts do not have the role of a legislator. If a law is unclear or has gaps, the courts can interpret the law (by means of interpretation).

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

As already mentioned, a settled case-law of the Supreme Court has a de facto binding effect for the same case. Every judge can, however, deviate from (leave this) this, but he has to justify this well. There must be convincing and better reasons for a departure from the established case law (for not following/observing the established case law).

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The courts that rule/decide in the last instance (final authority) ensure legal certainty (legality). The President of the Supreme Court has the mission/task to aim at a uniform jurisdiction through discussion. The judges, however, are independent and free in their decision.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are courts for civil and criminal law as well as an administrative court and a constitutional court. Decisions of the Supreme Court (for civil and criminal law) as well as of the Administrative Court can still be challenged before the Constitutional Court for alleged unconstitutionality.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

There is a long lasting practice. But there is also the principle in the Constitution that every citizen has to be treated equally. A decision of the **Court of First Instance** (a lower court) and the Constitutional Court may therefore be challenged if, in a similar case, the same court has decided differently.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

There is no obligation (to follow case law of higher court). If judges refuse constantly a settled case law without justification, this can lead to consequences (law of employment/labor law).

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

By way of appeal, decisions are cancelled/annulled by the upper body/instance if there are no good reasons.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

The Constitutional Court may give its legal opinion to the other courts. The legal opinion of the Constitutional Court of Justice must be followed. The legislator can also clarify an unclear legal situation by making amendments.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

If the previous case law in a specific case would lead to a completely unsound/non factual result. If the social situation had changed. If criticism by the legal doctrine is convincing. New international treaties require a new interpretation.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Supreme Court and the State Court of Justice have established with their case law a uniform interpretation for the lower courts. In principle, the Supreme Court can be appealed to in case of divergent decisions by lower courts. The Constitutional Court can always be appealed to as an extraordinary court in cases of infringement of fundamental rights.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The Constitutional Court also decides on the basis of the European Convention on Human Rights (ECHR) . In the interpretation of the ECHR the Constitutional Court takes due account of the decisions of the Court of Human Rights. The Constitutional Court can, however, also refer to the EFTA Court for the interpretation of provisions of EEA law.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

On the Internet decisions are accessible to all. There are journals and legal collections.

3.13 Is the access to such database free of charge?

There are both free legal databases as well as those where a charge has to be paid.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are several providers. The government publishes anonymous decisions of the Supreme Court(s). That's for free. There are also providers that publish decisions on a commercial basis.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The quality of the laws is important. Legal databases are also important.
Coordination is also important as far as superior judicial bodies (Supreme Court) are concerned.

3.16 Any other point you wish to raise.

Lithuania / Lituanie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The Constitution does not provide for the regulation of the uniform application of the law. Article 109 of the Constitution deals with the provision stating that when considering the cases judges shall only obey the law. According to the doctrine of the Constitutional Court precedents are considered to be sources of law – auctoritate rationis; reliance on precedents is a uniform (coherent, consistent) case law implementation condition together with the principle of justice provided in the Constitution. A uniform case law is formed by the courts of general competence as well as specialised courts. The Law on Courts establishes that the courts, while reaching decisions in different cases, are bound by their own rules regarding interpretation of the law, which were formulated in analogous or basically similar cases. In compliance with the provisions of the above mentioned law the Supreme Court of Lithuania forms a uniform case law of courts of general competence while interpreting and applying laws and other legal acts. The law also provides for the fact that the Supreme Administrative Court of Lithuania forms a uniform case law of administrative courts while interpreting and applying laws and other legal acts. Taking such regulation into consideration, we can state that the requirement regarding the uniform application of the law is provided by the law.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;

  The legislative process is aimed at regulatory consistency. However, in Lithuania it is common to make a distinction between the legislative process and the application of the law. Therefore, the concept of the uniform application of the law is not usually related to regulatory consistency, its protection.

- uniform practices by the executive institutions and law enforcement bodies;

In some cases the uniform practices are formed by the executive institutions and law enforcement bodies. For example, the practice of labour law is formed by the State Labour Inspectorate, the practice of application of the law regarding taxes is formed by the State Tax Inspectorate, etc.

- uniform case law developed by courts.

The courts can be distinguished as the most significant institution which forms the practice of the uniform application of the law. The practice of the application of the law formed by the courts is not disputed by other institutions – states, other institutions and persons take into account the interpretations of the laws provided by the courts of general competence as well as specialised courts.

Please explain each point and indicate the relative importance of each point.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The formation of the practice of the uniform application of the law is understood as a trial to reveal the true objectives of the law, explain the possible contradictions of the regulation, avoid the mistakes while applying them, adapt to the requirements of the times. Reliance on precedents is a uniform (coherent, consistent) case law implementation condition together with the principle of justice provided in the Constitution. In addition, the Constitutional Court stated that disregard to the maxim that the same (analogous) cases have to be decided in the same way, which arises out of the Constitution, means disregarding the provisions of the Constitution on administration of justice, that of the constitutional principles of a state under the rule of law, justice, equality of people before the court and other constitutional principles.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The formal requirements do exist. The legislative framework law requires that the legal regulation established in the legal acts shall be logical, coherent, concise, comprehensible, precise, clear and unequivocal, the legal norms should be consistent with each other, the legal acts of lower legal power cannot contradict the legal acts of higher legal power, the legal acts regarding law enforcement shall be prepared and adopted together with the laws and their provisions, which are implemented by the above mentioned laws.

2.2 Is there a hierarchy of laws?

Yes. The classical hierarchy of laws is applied – the Constitution, international treaties, the law, subordinate legislations.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The international treaties, which were ratified by the Parliament of the Republic of Lithuania, comprise the legal system of the Republic of Lithuania. This provision claims that the ratified international treaties shall be applied as well as the laws of the Republic of Lithuania. The provisions of international legal acts are usually included into the national laws, although in some cases international acts are directly applied. The Constitutional Court can provide a conclusion whether the international treaties of the Republic of Lithuania do not contradict the Constitution. The Constitutional Court has also established that according to the

Constitution the law (the Constitution) corrections cannot be made which could deny the international obligations of the Republic of Lithuania as well as – the constitutional principle *pacta sunt servanda*, if these international obligations are not rejected while following the international legal norms.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

In the case of non-compliance between the international treaties and national laws the international treaties have priority over the application of national laws. The Constitution provides for the principle that the Republic of Lithuania obeys voluntarily undertaken international obligations, respects widely recognized principles of international law, which implies that in such cases when in the national legal acts (*inter alia* laws or constitutional laws) there is such legal regulation established which competes with the one established in the international treaty, the international treaty shall be applied. The Constitutional Act of the Republic of Lithuania on "Membership of the Republic of Lithuania in the European Union" provides for the fact that the legal norms of the European Union comprise the legal system of the Republic of Lithuania. If it is related to the treaties, which are based on the European Union, the legal norms of the European Union are directly applied, and in the case of conflict, they have priority over the laws and other legal acts of the Republic of Lithuania. While hearing the cases the issue is always solved depending on its particular case. The contradictions are managed while directly applying the hierarchy principles of the laws. If it is necessary, it is possible to apply to the European Court of Justice or the Constitutional Court.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The legal acts are adopted by a competent authority. The laws are only adopted by Seimas (the Parliament). The resolutions are reached by the Government. Seimas dominates in this process. The law drafts are often provided to Seimas by the Government.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes. While examining a particular case the courts follow the regulation provided by the executive power as much as this does not contradict the Constitution or the laws. If the court doubts whether the act of the executive power needs to be applied in a particular case, it avails itself of a right according to the law to apply to the Constitutional Court or the Supreme Administrative Court of Lithuania with the request for such legality of the act to be examined.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

No.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

According to the doctrine of the Constitutional Court precedents are considered to be sources of law. The Law on Courts provide for the case that while hearing the cases the courts follow the decisions reached by the Constitutional Court of the Republic of Lithuania which were oficially announced.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

The precedents formed by the courts in practice are taken into consideration by the courts and other institutions of the country. As it has alread been mentioned, the Supreme Court of Lithuania as well as the Supreme Administrative Court of Lithuania form a uniform case law of courts of general competence while interpreting and applying laws and other legal acts.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The Law on Courts provides for the fact that the Supreme Court of Lithuania forms a uniform case law of courts of general competence while interpreting and applying laws and other legal acts. The law also provides for the fact that the Supreme Administrative Court of Lithuania forms a uniform case law of administrative courts while interpreting and applying laws and other legal acts. In its decision the Constitutional Court has established that while examining the cases the courts can refer to such earlier decisions which were reached in analogous cases, i. e. the precedent can only be applied in the cases, whose factual circumstances are identical to the case, which dealt with the precedent.

In the competition case of the precedents (when there are some different decisions reached by the courts in analogous cases) the precedents created by the higher instance court shall be taken into consideration. The time of the precedent and other significant factors should also be taken into account, for instance: whether a particular precedent reflects the formed case law, or it is just a single case; persuasiveness of the decision argumentation; the composition of the court which reached a decision (whether the decision was reached by one judge, the chamber of the judges or an extended chamber of the judges, or all the composition (division) of the court); whether there were any different opinions expressed by the judges; possible significant changes (social, economic, etc.), which had some impact on the decision which was reached, etc.

According to the Constitutional Court, the court precedent is understood as a legal source in the vertical as well as horizontal aspect: the precedents present in the decisions reached by the higher instance courts are related to the lower instance courts, which have to reach decisions in the analogous cases.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts

before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

Yes, there are specialised administrative courts. As the first instance courts there are regional administrative courts and as a higher (final) instance – the Supreme Administrative Court. The significance of the above mentioned court in the administrative cases – is the same as of the Supreme Court of Lithuania. The decisions reached by the Supreme Court of Lithuania as well as the Supreme Administrative Court do not compete with each other.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

In the Constitution and laws the necessity of the unification of the case law of the courts of general competence and administrative courts is not directly stated. In practice, the Supreme Administrative Court of Lithuania forms the case law in the administrative cases. In such cases, when in the administrative cases there are norms applied, whose practice was formed by the Supreme Court of Lithuania, the Supreme Administrative Court of Lithuania sticks to the practice formulated by the Supreme Court of Lithuania. And on the contrary, if in the courts of general competence there are norms applied, whose practice was formed by the Supreme Administrative Court of Lithuania, the courts of general competence are also related to. The decisions reached by the Supreme Administrative Court of Lithuania are final and not subject by appeal to the Supreme Court of Lithuania.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;

Yes

- all judges in the country;

Yes

- are there any consequences for judges if they do not follow case law of higher court?

  Generally, the non-compliance of the binding court precedent comprises the ground for the vacation of the court decision which has been reached, and the renewal of the proceedings in the cases provided by the law. The non-compliance of the formed law case only in exceptional cases can be evaluated as negligent performance of the duties fulfilled by the judge and the judge then may be brought to disciplinary responsibility.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

The case law in particular cases needs to be adjusted and new court precedents in such cases can be created only when it is inevitable, objectively necessary, based and justified constitutionally. Such adjustment of the case law (deviation from the earlier precedents and creation of the new ones) in all the cases shall be clearly argumentative in the particular decisions reached by the courts.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

The court of the higher instance reaches a decision and corrects the deviations regarding the case law made by the court of the lower instance. In the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania the chambers of the judges comprising three judges hear the cases. If the deviations of the law case are noticed, the case can be transferred to be heard by the extended chamber of the judges, who specify the practice which is being formed. Moreover, consistency of the case law is observed by some divisions in the courts of the higher instance. They are responsible for the analysis of the case law which is being formed. They provide the judges and employees of the court with the reports, conclusions and other information, which is related to formation of the case law, if necessary – make offers for the case law to be unified.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

The case law in particular cases needs to be adjusted and new court precedents in such cases can be created only when it is inevitable, objectively necessary, based and justified constitutionally. As it has already been mentioned, such adjustment of the case law (deviation from the earlier precedents and creation of the new ones) in all the cases shall be clearly argumentative in the particular decisions reached by the courts. The case law is also to be amended when the European Court of Human Rights states that the decision reached by the court of the Republic of Lithuania contradicts to the Convention for the Protection of Human Rights and Fundamental Freedoms, its additional protocols, or when the European Court of Justice makes a different decision rather than the interpretation of the national court.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As it has already been mentioned, the Law on Courts establishes that the Supreme Court of Lithuania forms a uniform case law of courts while interpreting and applying laws and other legal acts. The precedents are exclusively formed by the Supreme Court of Lithuania only in the procedural documents while hearing the cases by cassation. All the participants of the case can apply to the Supreme Court of Lithuania with the petition for cassation if they are not satisfied with the decision reached by the appellate court. The system for the petitions for cassation is established in Lithuania, i. e. the chamber of the judges is composed of three judges of the Supreme Court of Lithuania. The selection panel decides if the petition for cassation can be examined by cassation. These are the following grounds for the case to be heard by cassation:

The Supreme Court of Lithuania can verify the appealed judgment and/or ruling only from the aspect of the application of the law. The court does not deal with questions of fact.

The Code of Criminal Procedure states that cassation appeal is heard by the Supreme Court only if one of these grounds exist: violation of substantive criminal law or serious breach of the Code of Criminal Procedure. The court is entitled to refuse to admit cassation appeal when it is evident that no violation of substantive criminal law or serious breach of the Code of Criminal Procedure has been done.

In civil cases cassation appeal is admissible only if one of these grounds for reviewing a case in a cassation procedure exist:

1) a violation of the rules of substantive or procedural law, which is essentially important for the uniform interpretation and application of the law, if this violation could lead to adoption of an unlawful judgment (ruling);

2) if in the appealed judgment (ruling) the court deviates from the practice of application and interpretation of the law formulated by the Supreme Court of Lithuania;

3) if on the question at issue the case law of the Supreme Court of Lithuania is not uniform.

The law also provides for the fact that the Supreme Administrative Court of Lithuania forms a uniform case law of administrative courts while interpreting and applying laws and other legal acts. The uniform case law of administrative courts is formed while dealing with particular disputes, which occur because of legal administrative relations. All the participants of the administrative proceedings avail themselves of a right to apply to the Supreme Administrative Court of Lithuania with the petition for appeal if they do not agree with the decision reached by the court of first instance.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

In their procedural decisions while forming the case law the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania take into consideration the decisions reached by the European Court of Human Rights and the European Court of Justice. Respectively, the courts of the lower instance also take into consideration the decisions reached by the European Court of Human Rights and the European Court of Justice. While developing and protecting the uniform interpretation and application of the law these courts analyse the case law of the European Court of Human Rights and the European Court of Justice, other sources of law. The material, which deals with the decisions reached by the European Court of Human Rights and the European Court of Justice and which is significant for Lithuania, is announced in the judicial bulletins and reports. If necessary, particular measures regarding the formation of the case law corresponding to the position of the above mentioned international courts are taken (for example, the institute of the renewal of the proceedings is applied according to the law).

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

The material, which is significant for the uniform interpretation and application of the law, is announced in the judicial bulletins published by the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania. Moreover, the divisions of the above mentioned courts are responsible for the observation of the tendencies in the decisions reached by the Constitutional Court of Lithuania, the European Court of Human Rights.While implementing this task the case law of the above mentioned courts is analysed and summaries as well as reviews of the case law are prepared.The judges of the courts as well as the employees of the courts are regularly distributed with the above mentioned documents, they are also provided in the websites of the courts and are available to all the interested persons. The exception is only made in exceptional cases when the information cannot be announced due to the protection for the interests of the injured parties, underage persons, business subjects.

3.13 Is the access to such database free of charge?

Yes

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Such information is also announced by the providers operating on commercial basis. In such a case, the search for the information itself is easier, it is more comfortable to use, etc. However, the same information is provided.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The hearing of the cases conducted by the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania is directed towards the formation of the case law. This is done purposefully and effectively. There are some cases, when contradictory, inconsistent laws with the loops of the legal regulation are adopted, but these are only exceptions to the rule.

3.16 Any other point you wish to raise.

In our opinion, it would really be useful to more analyse the relationship between binding court precedents and judicial independence. As it has already been mentioned, Article 109 of the Constitution deals with the provision stating that when considering the cases judges shall only obey the law. Therefore, the direct regulation provides for the priority of the law but not the precedent. The judge of the lower instance court, disagreeing with the precedent which is being formed, shall apply the precedent but not the law.

It is under the dispute whether one decision reached by the court which dealt with the particular precedent is enough, so that the other courts could follow it while hearing the cases with the same factual circumstances. The question is what should be understood by "the cases with the same factual circumstances“.

Regarding the form of the precedents. In Lithuania the court precedents are formed in the court procedural documents, which were adopted while hearing a particular case. In such a case all the decision reached by the court is considered to be "precedential", although it only dealt with the specific problem peculiar for that particular situation.

It is difficult to establish the fact about the significance of the formed precedent if the legal regulation is partly changed.

The important question is, whether the court itself in all the cases shall find out all the important case law in the particular case and apply the precedents in compliance with the principle of *iura novit curia*, or the application of the precedents could be the business of the parties themselves and they should indicate the precedents. This is especially important, when the amount of the case law is abundant, and the judge finds it difficult for all the case law to be found and analysed.

Luxembourg

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

Non

1.2 Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

- l'adoption, au niveau législatif, d'une législation cohérente;
- les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;
- la jurisprudence uniforme élaborée par les tribunaux.

Expliquez chaque point et indiquez l'importance relative de chaque point.

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1.3 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire?

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2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif?

Non

2.2 Existe-t-il une hiérarchie des lois?

Non

2.3 Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application?

La conformité des lois nationales aux traités et autres instruments internationaux est soumise au contrôle du Conseil d'Etat qui intervient dans le processus législatif en donnant son avis consultatif avant le vote de la loi par la Chambre des députés. Cet avis peut être accompagné de propositions d'amendements et de contre-projets.

Le choix entre application directe et l'application par le biais d'une transposition législative nationale dépend de la nature des textes internationaux. Ainsi les

règlements UE sont appliqués directement, tandis que les directives nécessitent un texte de transposition nationale.

2.4 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international?

Il n'existe pas de telles dispositions.

2.5 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exerce en pratique un rôle dominant dans ce processus?

Le projet de loi émane du Gouvernement. Il est soumis pour avis au Conseil d'Etat et il est approuvé par la Chambre des Députés.

Le règlement ne peut être pris qu'en exécution d'une loi ou d'un traité. Le pouvoir réglementaire appartient au Grand-Duc. Le projet de règlement est soumis pour avis au Conseil d'Etat et il est délibéré par le Gouvernement en conseil. Il est soumis pour signature au Grand-Duc.

2.6 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignants pour les tribunaux?

Oui, les règlements sont source de droit. Les tribunaux n'appliquent les règlements que s'ils sont conformes à la loi (article 95 de la Constitution).

2.7 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?

Non

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation nationale?

Non

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel?

L'autorité de la jurisprudence est purement intellectuelle. Elle guide les juges dans l'application de la loi.

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité?

Oui, les tribunaux jouent un rôle dans l'unification de la jurisprudence puisque le juge tranche en tenant compte des décisions antérieures, en essayant d'intégrer sa décision

dans la ligne de la jurisprudence. Les décisions de la Cour d'appel et de la Cour de cassation jouissent d'une autorité intellectuelle supérieure à celle des juridictions inférieures. Elles jouent un rôle régulateur et unificateur de la jurisprudence.

Il n'existe pas de dispositions spéciales au sein des tribunaux garantissant l'uniformité.

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement.

Non

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?

Elle est déterminée par une pratique établie.

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges / les panels de juges de cette juridiction;
- tous les juges du pays;
- y a-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

Il n'existe pas de caractère obligatoire de la jurisprudence. A part le risque d'être réformé, il n'existe pas de conséquence pour le juge qui ne suit pas la jurisprudence d'un tribunal supérieur.

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?

Ils ont un effet d'unification de la jurisprudence, de sécurité juridique pour le justiciable et de source d'inspiration pour le législateur.

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?

Il n'y en a pas.

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence?

Le juge saisi d'une affaire est toujours libre de suivre ou de ne pas suivre la jurisprudence. Les dissidences et les revirements de jurisprudence sont toujours possibles.

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)?

Les arrêts de la Cour de cassation jouissent d'une autorité intellectuelle telle que la dissidence ou le revirement par une juridiction inférieure est rare.

La cassation est une voie de recours extraordinaire qui n'est ouverte que pour les cas d'incompétence ou d'excès de pouvoir, pour violation des formes procédurales et pour violation de la loi. A part les règles de procédure applicables au pourvoi en cassation, il n'existe pas d'autre filtre.

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays?

Cette jurisprudence est suivie et appliquée par les juridictions nationales au même titre et dans les mêmes conditions que la jurisprudence nationale. Son rôle unificateur est le même.

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

Elle est rendue accessible par des banques de données et par des revues générales ou spécialisées.

3.13 L'accès à cette base de données est-il gratuit?

Oui

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale?

Oui, les juridictions sont les seuls fournisseurs d'information par l'intermédiaire du Service de documentation rattaché au Parquet Général.

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

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3.16 Tout autre point que vous voulez soulever.

1)

Malta / Malte

1.1 In Malta there is no formal concept of a uniform application of the law. A decision on any matter is left in the hands of the courts who are free to decide as to whether they should follow past jurisprudence on a particular point. As a rule, lower courts follow decisions of superior courts, but there is no law in this sense. Each case is decided by the judge on the facts and in accordance with the law as understood by him, and a judge is, technically, free to decide as his conscience dictates, but usually follows what other judges might have said in the past on a particular point.

1.2 In our country, by uniform application of the law, we understand uniform principles as developed by the courts.

1.3 The rationale of uniform application of the law is certainty of law. Once a point of law has been discussed and decided by a court of law, especially the court of appeal, it is wise to follow the relative judgments so as to provide lawyers with legal certainty. One judge may not fully agree with the interpretation given, but to prevent confusion, it is understood that it would be best to follow what was decided in the past. Any new direction should be treated carefully and only after a profound study of the legal principle involved.

2.1 There are no formal requirements to ensure uniformity in the legislative process.

2.2 No, but we do follow the principle the lex specialis derogat generalis.

2.3 Treaties have no effect in a court of law unless they are incorporated in local legislation by Parliament. If they are not so, treaties remain an obligation on the state enforceable only in international fora.

2.4 If the court is faced with contradictions in laws, it will try to reach its own conclusions on the matter by trying to decipher what was the intention of the legislature.

2.5 The law making process is vested exclusively in Parliament. Once a principle is established by the Courts, it is usually followed, but only so long as subsequent courts do not decide to change the principle. We do not have judge made law.

2.6 Administrative acts of the executive power have no legal effect. The executive can issue subsidiary legislation through Legal Notice when it is so empowered to do so by an Act of Parliament. An Act of Parliament may set out the main principles of the law, and authorises the executive to issue regulations by Legal Notice to provide details for the operation of the law. These Legal Notices have full effect of law.

2.7 Laws in the civil and commercial field, with little or no political implications, are not often amended.

3.1 Case law in Malta, in the strict sense of the word, does not exist. Judgments have persuasive effect only.

3.2 As noted, judgments have only an informal persuasive effect. A judge who is aware that a point has, in the past, been consistently decided in one way, would, generally, follow the trend, but he is not bound to do so.

3.3 The courts have no official role to unify case law. Judges feel that they should follow past decisions to avoid uncertainty.

3.4 The Maltese Courts are divided into the Criminal Courts, the Family Court and the Civil Court, this last catering for all cases which do not fall under the previous two categories. Every decision is appealable before the Court of Appeal composed of three judges; the Court of Appeal is composed of the Court of Criminal Appeal, which hears appeals from the criminal courts, and the Court of Appeal, which hears all other appeals (Family and the rest).

3.5 By long lasting practice.

3.6 Judges are not bound to follow past decisions (although, they usually do so), and there are no consequences if a judge decides not to follow past dicta and decide as his conscience feels is the correct way. It is for the Court of Appeal, then, to try and remedy the situation, but the Court of Appeal is not itself bound by its own decisions, although, in principle, the Court of Appeal would be reluctant to alter its point of view on any legal point fully debated and decided in a previous case, even if by different judges.

3.7 All judgments have legal binding effect only on the parties.

3.8 The only remedy is an Appeal.

3.9 As a rule, a judge will depart from past jurisprudence, if he feels that the principle should be changed due to changing circumstances, changes in the social structure, developments in legal thought or a changed mentality in society.

3.10 Any person aggrieved by a decision of a lower court can file an appeal, and there is no need to get any prior permission from any authority. The decision of the Court of Appeal, which is our supreme court, has only informal persuasive effect on other courts.

3.11 Decisions of the European Court of Justice, again, have only persuasive but not binding effect (they are obviously binding on the parties involved in the case, but not on the courts). The decisions of the European Court are, however, held in high esteem and any ruling is generally followed by the courts in subsequent cases.

3.12 All decisions are available to the general public via the internet. A decision is generally on line within one or two days from its delivery.

3.13 Yes

3.14 There is a private company which publishes in book form what it considers to be important judgments, but once all judgments are easily and freely available on line, it is felt that there is no need for further publications.

3.15 Sometimes you come across a particular judge who feels he should not toe the line on a particular issue. He is, technically, free to do so, but it creates uncertainty and may involve parties in unnecessary expense to have the matter cleared by the Court of Appeal. Judges who err in this way are informally talked to by the Chief Justice, but there is no rule binding a judge to follow a trend. In the past we did have one or two judges who sought to go their own way, but fell into line when talked to by the Chief Justice. Everything, however, is carried out in an informal way. Since 2001, when all judgments began to be published on line, it has been easier for judges to follow what their colleagues are doing and generally a common trend is maintained.

Republic of Moldova / République de Moldova

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

There exists a concept for a uniform application of the law, just it is not expressly written into the Constitution text, only in its subordinate documents.

However the constitutional provisions on the separation of powers into legislative, executive and judiciary (article 6), on the independence, impartiality and irremovability of judges sitting in the courts (article 116 paragraph (1), on the establishment by an organic law of the organization of courts, their competence and judgment procedure (article 115 paragraph (4) define the legal status of the judge in the Republic of Moldova and establish justice as an independent and impartial branch of the state power.

In addition, the Provisions of the article 114 and of the article 116, paragraph (1) from the Constitution and the article 17 of the Law on the Status of Judges establish the principle of judges' independence, without which one we cannot speak of a genuine activity of justice enforcement.

The realization of the principle of judge independence, as basis for the judicial autonomy shall be provided by the justice enforcement procedure, method of appointment, suspension, resignation and dismissal of a judge.

In the Republic of Moldova, judges have the duty and must keep the power to exercise their judicial responsibilities which are their duties in order to ensure the correct application of the law and case processing are in a fairly, efficient and expeditious way.

Over time, this institute has undergone many changes.

Thus, at the level of acts, subordinate to the Fundamental Law designed concerning the uniform application of law is regulated in:

1. Law On legislative acts, where at the article 4 is stated that the legislative act must conform with the constitutional provisions and to be consistent with the existing legal framework, with a coding and unification system of legislation.

2. In the Code of Civil Procedure where it is stated in the article 12 that if in the process of judging a case in the court there are observed difficulties in the proper application of the rules of substantive or procedural law, the court asks from the Plenum of the Supreme Court of Justice, ex officio or at the request of the participants in the process, to issue an advisory opinion on how to implement the law.

The advisory opinion is published on the website of the Supreme Court of Justice. If the court rejects the demarche of the participants in the process on the request for an advisory opinion from the Plenum of the Supreme Court of Justice, this one will issue a ruling (conclusion) incapable of appeal.

Where it decides to reject the request, the Plenum of the Supreme Court of Justice issue a motivated irrevocable conclusion that is published on the website of the Supreme Court of Justice.

The advisory opinion of the Plenum of the Supreme Court of Justice is not any more binding on the Court if the subsequently the law is changed or is changed the way of its implementation.

The judgment of the case is postponed until the issuance of the advisory opinion of the Plenum of the Supreme Court of Justice.

And at the article 17 it is established that for a correct and uniform application of the legislation, the Supreme Court of Justice generalizes, ex officio, the practice of examination by the courts of certain categories of cases, adopt and publish explanatory decisions on the correct application of the rules of law and fair settlement of the civil cases.

3. Code of Criminal Procedure establishes at the article 39 that the Supreme Court of Justice adopt explanatory decisions in matters of judicial practice of uniform application of both criminal law and criminal procedure law.

4. Law on Supreme Court of Justice establishes in the article 1 that the Supreme Court of Justice is the highest court that ensures the correct and uniform application of the law by all courts, settlement of disputes arising in the application of laws, ensures the accountability of the state to the citizen and of the citizen to the state, and the article 16 establishes that the Plenum of the Supreme Court of Justice: examine the results of judicial practice generalization and adopt explanatory decisions, and in order to ensure the uniformity of the judicial practice, it issues, at the request of the courts, advisory opinions in case of problems linked with the law enforcement.

5. Law on the Status of Judges states in the article 15 that judges are obliged to strictly observe the requirements of law when making justice and to ensure the uniform interpretation and application of the legislation.

6. The Law on judicial organization establishes in the article 43 that the Supreme Court of Justice is the highest court that ensures the correct and uniform implementation of the legislation by all the courts.

7. Consequently, the Law on disciplinary responsibility of the judges clarifies in the article 4 that a disciplinary offense is the: intentionally, bad faith application or repeated application from gross negligence of the legislation contrary to the uniform judicial practice.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

- At the legislative level, there are the adopted normative acts and that were exposed to clause 1.1. of the questionnaire. Moreover, the legislative act must comply with the provisions of international treaties to which Republic of Moldova is a party, universally recognized principles and norms of international law, including the community legislation.

The legislative act must conform to the constitutional provisions and be consistent with the existing legal framework, with the coding and unification system of the legislation.

The following principles shall be respected at the development, adoption and implementation of the legislative act: a) of opportunity, coherence, consistency and balance between the competing regulations; b) of consecutiveness, stability and predictability of the legal norms.

- In terms of uniform jurisprudence developed by the courts it is manifested by the fact that the Supreme Court of Justice generalizes, ex officio, the practice of examination by the courts of certain categories of cases, adopts and publishes explanatory decisions on the correct application of legal norms and the fair settlement of civil cases. And if during the process of judging the case in a court of law there are observed difficulties in the proper application of rules of substantive or procedural law the court asks the Plenum of the Supreme Court of Justice, ex officio, or at the request of the participants in the process, to issue an advisory

opinion on how to implement the law. The advisory opinion is published on the website of the Supreme Court of Justice.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The purpose of a uniform application of the legislation in the Republic of Moldova is a stage of the law enforcement process, the ultimate goal being to highlight the materialized will of the legislator.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

The state fulfills three basic functions: legislative, executive and judiciary. For the realization of each function there have been set up three powers:

- legislative power – the Parliament;
- executive power - the President and the Government;
- judicial power – the judicial bodies;

The Supreme Law of the Republic of Moldova stipulates that the Parliament, through its powers, is the supreme representative of the people and the sole legislative authority of the state, because the exercise of the legislative function is strictly of the Parliament and belongs to it exclusively.

In accordance with the provisions of the Law on Government No. 64-XII of 31.05.1990, one of the tasks of the Government is promoting in life of the laws and decisions of the Parliament, of the decrees of the President of the Republic of Moldova, as well as exercising the control over the execution of decisions and ordinances of the Government. At the same time, the Government is responsible for ensuring the legality and public order. The Government adopts decisions, ordinances and provisions. The Government decisions are adopted for the correct organization of the execution and interpretation of laws.

Thus, in the Republic of Moldova is observed a bilateral relation between the legislative and executive power, which directly contribute to the uniform application of the law in time, space and on the people.

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

On the basis of any legal systems both nationally and internationally there exist certain requirements for the uniformity of the legislative process. Compliance therewith is inextricably linked to the good and proper conduct of legal relations.

According to the Constitution, the sole legislative authority of the state is the Parliament. Legislation carries by itself the compliance of certain mandatory and informal requirements. By these, we emphasize one of the golden rules of law, which says that the law must follow the collective interest, but not a minority interest. The law should intervene as a last resort when all avenues have been exhausted to resolve a dispute. Alternatively, the primary purpose of the law and of the legislation in general in the Republic of Moldova is to redress the disputes, to guide the smooth running of the things. The formal requirements are mandatory the exemption of which carries out certain penalties. It should be relevant to appreciate that the stages of the legislative process: the legislative initiative, the endorsement of the draft laws, the debate, the voting, the promulgation of law, publication in the Official Gazette (Monitorul Oficial) and the final result will be the entry into force of the law. The law is not

simply a collection of words, but a text that has an important legal value. This must have a clear and structured content. I.e., to comprise all the constituent parts of the law.

2.2 Is there a hierarchy of laws?

The Constitution of the Republic of Moldova hierarchies and classifies comprehensively the laws. The Parliament, being the legislative body of the state, adopts laws - constitutional (which revise or amend the Constitution) take the first place in the hierarchy of laws - organic (covering the electoral system, organization and holding of referendum, organization and functioning of the Parliament, Government, Constitutional Court, the Superior Council of Magistrates, court activity, etc.) and - ordinary laws, laws that intervene in all areas of social relations. They are distinguished between them by the voting procedure.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

We start from the idea that the Constitution is the fundamental law of any state. Thus, no specific legal norm that is contrary to the constitutional provisions will have any legal value.

Article 8 of the Constitution of the Republic of Moldova incorporates one of the principles of the international law – *pacta sunt servanda*, which means mandatory compliance with the provisions of the UN Charter, respecting the universally recognized principles in the framework of the international law. That is, Republic of Moldova pledges to respect the treaties to which it is party. In addition, the entry into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of this one.

Republic of Moldova pledges to respect the general principles of international law, thus is deduced an apparent supremacy over the national law provisions. This finding, however, is not also a general rule in the field of human rights.

Article 4 of the Fundamental Law also states that if there exists a conflict between the covenants and treaties on fundamental human rights to which Republic of Moldova is a party and its domestic laws, international regulations have priority.

Moreover, the Government of the Republic of Moldova take the necessary steps to ensure the implementation of the international treaties.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

In the case of conflict between the national laws, there is no common superior court or a law of uniform settlement. This role lies with the Constitutional Court aiming to control the constitutionality of laws. Unification of conflict resolution between national laws is not possible.

Under the legislation in force, the international treaties to which Republic of Moldova is a component part presents a source of law in its domestic legal order. As long as the provisions of the treaty are in accordance with the Republic of Moldova law there will apply both acts.

The situation is different when there is a conflict between *lex fori* and one or more foreign laws. Thus, there can appear various procedural issues, such as - procedure, which is applicable to the dispute, the effects of the judgments issued by foreign courts.

In this regard, during the judgment of civil cases, the court shall apply the law of another state in accordance with the law or international treaties to which Republic of Moldova is party.

In order to ascertain the existence and content of a law or of another legal foreign act the court requires, as established, the assistance of competent authorities of the Republic of Moldova.

In our law, the foreign law is applicable based on the conflicting rules without relying on appreciation of the court or on parties' intentions, but not all rules are of an imperative nature.

In civil law matters, such as contractual obligations or provisions pertaining to the form of legal acts, the parties can select the applicable law.

The court shall apply to the foreign law regardless of whether the Republic of Moldova law applies to analogous relations in the foreign state concerned, except where the enforcement of foreign law rules on the principle of reciprocity is stipulated by the law of the Republic of Moldova.

If the application of foreign law is conditional upon reciprocity, its existence is presumed until a contrary evidence.

Yet we must admit that if Republic of Moldova will become party to a treaty which provisions are inconsistent with the Constitution, in this case, the treaty will be legally binding and will come into force only after there will be reviewed namely those constitutional provisions, which could cause legislative destabilization situations.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The process of drawing up legal norms has certain stages, namely: the legislative initiative from the part of the subjects with the right of legislative initiative, approval of draft laws, debate of draft laws, voting them in and signing them by the President of the Parliament, the promulgation of the law by the President of the state, publication of the law in the Official Gazette (Monitorul Oficial) and entry into force of the law.

The legislative initiative takes place through the notification of the Parliament. There are distinguished two categories of legislative initiatives: constitutional and for the adoption of organic and ordinary laws.

The notification is a thorough analysis of the draft law, which is achieved by Parliament's committees and by the Legal Directorate. Subsequently, the draft laws is submitted for debate in the Parliament, which can occur in two forms - general and by articles.

When adopting laws, these must be voted and have a minimum number of votes - organic laws with the majority vote of the elected deputies and after at least two readings. While ordinary laws are adopted by a majority vote of the deputies present.

Promulgation means that a law has been officially adopted by the Parliament. Any law must be available and accessible to the public.

Thus, after promulgation, the law will be published in the Official Gazette (Monitorul Oficial), with the enclosing of the Presidential decree of promulgation of the relevant law. The final stage is the entry into force of the law. The effective date is the date when this law was published in the Official Gazette (Monitul Oficial) or the date specified in the law text.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

The executive power enforced by the Government, has the most important attributions in fulfilling the function of implementing laws. According to the legislation, the judges are independent and subject only to the law when making justice. However, according to the functional principles of law, namely those of legality which is also detached from the fundamental act of the Republic of Moldova - justice is carried out in the name of the law, which suggests the obligation of the courts to properly apply the rules of law and to conduct procedural actions in order to meet and comply with the legal norms.

Also the national law expressly regulates that the courts resolve the causes under the fundamental law, of the laws, decisions of the Parliament, Government decisions and ordinances, legal acts, international treaties to which Republic of Moldova is party. The legality is the essential rule at the level of the entire system of law, and building a state of law is inconceivable without observance of the law.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

The laws in the Republic of Moldova are not changed so often. Legislative power performs its duties in accordance with the prerogatives invested and does not make a legislative imbalance by modifying or promulgating new normative acts. However, there are taken into account the changes in society, the new needs and gaps that appear and is tried to adjust and unify the legislation to the current standards development phase.

The problem consists in the form, which is borne by the new provisions. Trying to bring the current legislation under the European standards the political, economic, social indices, etc. are marginalized and it is created a disparity between the provisions and current situation.

Thus, the process of change is a laconic one, in order not to disturb public the safety and public order. On the other hand, the normative acts serve the best interests of the entire community, and the civil society should play an important role. Therefore, the opinion of the society is an inextricably think linked to the legislative process and should be given greater significance.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Here it is necessary to start from the sources of law. In our legal system, the sources are those guiding ideas, rules that contribute to the formation of a legal coat of the law. They are: the Constitution, the principles of law (legality, freedom, equality, etc.), international treaties on human rights and freedoms, laws (constitutional, ordinary and organic), codes (civil, criminal, financial, etc.), government decrees and ordinances. Their compliance is imperative, which ignoring implies sanctions.

In our country, the jurisprudence has no binding effect, but still is imposed as an impressive recommendation character.

In the system of the Republic of Moldova, the courts are not bound to follow previous court decisions and each new decision should be based under the influence of legal norms. Each case, though similar, must be viewed individually and decided based on the initial authority of the law.

Moreover, in solving a case, the judge shall be solely based on the law and only on good faith. The interference in his work reveals the violation of the principle of independence

and immovability of the judge and any attempt to disrupt this process will be punished.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

In the Republic of Moldova, the law has a binding legal effect. The trial is conducted only under the rule of law.

According to the Law on Status of Judge article 1, paragraph (3) court judges are independent, impartial and irremovable and subject only to the law. In the text of the same law is stated also one of judge obligations namely legal compliance in the administration of justice and ensuring uniform interpretation and uniform application of the law.

In the event that the law will be applied unevenly intentionally or by negligence, this one will be liable to disciplinary action.

Disciplinary sanctions are: warning, reprimand, severe reprimand, dismissal from the position held, release from the office of vice president or president. Disciplinary sanctions are ordered by the decision of the Superior Council of Magistracy.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The court, which also has an active role in unifying the jurisprudence in the Republic of Moldova, is the Supreme Court of Justice. According to the Law on the Supreme Council of Justice, the Supreme Court of Justice is the highest court that ensures the correct and uniform application of the law by all the courts, settles the disputes arising in the application of laws, guarantees state's responsibility to citizen and of the citizen to the state.

Supreme Court of Justice generalize the judicial practice. Subsequently it analyzes this judicial statistics.

The binding jurisprudence in the Republic of Moldova is the practice of ECHR and the explanatory decisions of the Supreme Court of Justice.

Recently, the Supreme Court of Justice has reacted to the Judgment of the Constitutional Court regarding judicial practice recommendations, reiterating that these must act as a recommendation rather than a binding law. This reduces the judge's impartiality and independence. Thus, currently, these only have a consultative role.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

After declaration of independence, in the Republic of Moldova was initiated the judicial reform, in which was adopted the Constitution on July 29, 1994 and on July 6, 1995 was adopted the Law on Judicial Organization.

Studying the specialized legislation, we identify the following categories of courts:

- Courts;
- Courts of Appeal;
- Supreme Court of Justice;

These are common law courts. However, there were specialized courts, which currently are not working. Namely - the military court and commercial circumscription court.

The courts are courts of first instance, which judge all the processes, except those in the competence of other institutions of law.

The Courts of Appeal judge in the first instance the insolvency procedure, appeals submitted against the decisions issued by the court of first instance and recourses against the rulings (conclusions) pronounced by the court of first instance.

Supreme Court of Justice examines the recourses against the decisions of the courts of appeal and against the judgments pronounced during the insolvency proceedings.

However, the Constitution regulates in the article 115 that, for certain categories of cases there can operate, according to the law, specialized courts and the establishment of extraordinary courts is prohibited.

As for the contestation of final decisions of the specialized courts by a superior judicial authority, in this case, for Moldova, there is the Supreme Court of Justice and it is made similarly like other common law courts.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Unification of Jurisprudence is determined by acts that have the force of law. We exemplify by the Law on the Supreme Court of Justice, which expressly provides one of the tasks of this entity namely to generalize the judicial practice and to ensure the uniform application of the legislation by all the courts.

A similar task conferred by law has the Constitutional Court, which exerts upon appeal, the constitutionality of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, of decisions and orders of the Government as well as of the international treaties to which Republic of Moldova is party.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

The explanatory decisions issued by the Supreme Court of Justice are necessary for all the judges in the country. At the current stage, they have advisory status and, if these one are not cited in the decisions issued by the judges, there are not provided any sanctions. This change occurred because in the decisions there shall be made a reference to the legislation relevant to the case, but not to the explanatory decisions. The consequence exists only if the judge intentionally erroneously applies the provisions of the law, the law having a mandatory character.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Some legal rules have place for their own interpretation. To bring clarity, the decisions explain the primary meaning of the provisions in order to contribute to the uniformity of the legislative process and that the rule concerned should be interpreted correctly and similarly in all the common law institutions.

Another practical effect of these decisions is the explanation of the new novation in the field of law. As long as there are attempts to improve the legislature, are introduces many changes, novation, procedures. In this regard, the judges face difficulties and uncertainties in the correct application of new mechanisms, and these decisions (models) serve as direct guidance and explanations for the perception of the direct methods of updates application.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

There are susceptible two legal remedies: appeal and recourse. According to the Code of Civil Procedure the decisions subject to appeal may be appealed before they remain final in the court of appeal which, based on the material from the file and those presented in addition, check the correctness of the finding of the factual circumstances of the case, of the application and interpretation of the rules of substantive law and the procedural law compliance, at the judgment of the case in the first instance.

The conclusion given in the first instance may be appealed separately from the decision by the parties and other participants in the proceedings in the cases provided by this Code and other laws as well as where the conclusion makes it impossible to conduct further the process. It shall be examined in a recourse under the rules established by this chapter.

For the correct and uniform application of the legislation, the Supreme Court of Justice generalizes, ex officio, the examination practice by the courts of certain categories of cases, adopts and publishes explanatory decisions on the correct application of the rules of law and on the fair settlement of civil cases.

And if during the judging of the case in a court of law are attested any difficulties in the proper application of the rules of substantive or procedural law the court asks the Plenum of the Supreme Court of Justice, ex officio, or at the request of the participants in the process, to issue an advisory opinion on how to implement the law. The advisory opinion is published on the website of the Supreme Court of Justice.

And if during the judging of the case it is found that the rule of law to be applied or which has already been applied is inconsistent with the Constitution of the Republic of Moldova and the control of the constitutionality of the normative act is the competence of the Constitutional Court, the court shall make a referral to the Constitutional Court which is transmitted through the Supreme Court of Justice.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

In the Republic of Moldova, the judicial practice of the ECHR is called practice of judicial precedent and in the case if one of the procedural decisions handed down by a court of the Republic of Moldova is considered illegitimate, being established the violation of the human rights and freedoms, the ECHR creates a precedent, binding on the authorities of the Republic of Moldova.

At the moment we cannot rule on the fact that would reflect how the ECHR practice influences the interpretation by Moldovan courts of the rules of national legislation and the issues that arise in the judicial practice in connection with this. We actually affirm this fact basing on the idea that the number of cases against the Republic of Moldova remains high,

while the adoption of precise standards reflected in the ECHR practice would certainly contribute to the essential reduction of this number.

The majority of judicial acts contain the invocation of the Convention or of the ECHR decisions. Simultaneously, based on the documents where is made such a reference, it is sometimes difficult to identify the implementation mechanism of the Convention and of the practice of the ECHR and the general principles of their application;

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

In accordance with the article 1, paragraph (2) of the Law on the Supreme Court of Justice, the Court is the highest court that ensures the correct and uniform application of the legislation by all the courts, settlement of disputes arising in the application of laws, ensures the accountability of the state to the citizen and of the citizen to the state.

As results from the notorious jurisprudence of the European Court of Human Rights the divergences are, by nature, an inherent consequence of any judicial system, which is based on a number of courts of first instance, having authority over their territorial jurisdiction. The role of the supreme court of Moldova is precisely the one to regulate these contradictions of jurisprudence.

Building an effective mechanism for creating and maintaining a unitary judicial practice, both in the Supreme Court and lower courts, has become the main purpose of the activity of the Supreme Court of Justice.

As an example, if during the judging of a case in a court of law there are observed difficulties in the proper application of rules of substantive or procedural law the court asks the Plenum of the Supreme Court of Justice, ex officio, or at the request of the participants in the process to issue an advisory opinion on how to implement the law. The advisory opinion is published on the website of the Supreme Court of Justice.

If the court rejects the demarche of the participants in the process on the request for an advisory opinion from the Plenum of the Supreme Court of Justice this one will issue a ruling (conclusion) incapable of appeal.

Where it decides to reject the request, the Plenum of the Supreme Court of Justice issues an irrevocable reasoned conclusion, which is published on the website of the Supreme Court of Justice.

The advisory opinion of the Plenum of the Supreme Court of Justice is not binding on the Court if subsequently the law changes or changes the way of its implementation.

The proceedings are postponed until the issuance of the advisory opinion of the Plenum of the Supreme Court of Justice.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Entered into force in September 1953, the European Convention on Human Rights has established certain rights in the favor of the man that should be insured and respected by all the signatory states.

Incorporation of the Convention rules and other international treaties into the national law is expressly enshrined in the Constitution text.

Thus, the article 4 paragraph (1) states that the constitutional provisions on the rights and freedoms of the man are interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Republic of Moldova is party.

Moreover, if there is conflict between the covenants and treaties on fundamental human rights to which Republic of Moldova is a party and its domestic laws, international regulations have priority.

European Court rulings have also as result an adaptation of the national jurisprudences. This result is especially visible in the case of jurisdictional bodies, under the form of new judicial practices or of a revival of the jurisprudence of the Supreme Court, or by the cancellation by the latter of a domestic judicial decision regarding which a judgment of the European Court finds that it violates the Convention.

The interpretative dynamism of the European judge has favored a synchronized jurisprudence with the evolution of our society and closed to the contemporary concerns of Europeans. Moreover, the methods of interpretation of the Convention used by the Court - independent concepts, positive obligations – aim the „Europeanisation" of its jurisprudence and, consequently, the increase of the authority and consistency.

The authority of interpreted work can also prevail that, based on the analogy of the cases, the Court has extended the direct effect of its decisions, both before the national judge of a State concerned by an earlier judgment, and by the judge of a third state, surpassing the relative authority of res judicata.

Over time, Republic of Moldova has recorded amendments in the field of human rights. There have been achieved progresses on respecting the right to life and the right not to be subjected to ill-treatment by adjusting its legislation to the international standards.

There has been adopted the Law on ensuring the equality. Republic of Moldova has amended the legal framework governing the right to privacy and was brought in line with the principle of confidentiality of information on health status.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Primarily, we remember on the official website of the Supreme Court of Justice.

Here we find the jurisprudence of the Supreme Court of Justice, the explanatory decisions, the ECHR jurisprudence, the recommendations of the Committee of Ministers of the Council of Europe.

Given the fact that the Supreme Court of Justice is vested with the function of legislative unification, on the official website, under the rubric „unification of the judicial practice" we find recommendations of the Supreme Court of Justice, advisory opinion, explanatory decisions of the plenum, decisions on the applications for recourse in the interest of law, the relevant jurisprudence and drafts of explanatory decisions of the Plenum. This information is published and accessible to absolutely anyone either judge or citizen.

Justice.md – is the state register of legal acts of the Republic of Moldova. Here can be found all the updated legislation of the Republic of Moldova, the ECHR jurisprudence, international treaties ratified by the Republic of Moldova. This registry is available to all.

There also exists an Information System „Legislation of the Republic of Moldova". The present System is used in the Parliament, Government and the Presidency of the Republic

of Moldova, the Supreme Court of Justice, the Superior Council of Magistracy, the Constitutional Court, the Courts of Appeal, judges, all the ministries, the Prosecutor`s General Office and the territorial and specialized prosecutor`s offices, National Anticorruption Center, National Bank, commercial banks, agencies, businesses etc. Currently the database contains about 53 500 documents.

The database contains legal acts adopted and published in the „Official Gazette (Monitorul Oficial) of the Republic of Moldova" and other official publications, since 1989, in Romanian and Russian. At the same time, the database contains the laws and normative acts modified (updated) according to the documents about amendments. The amendments are operated under the Law No. 317 of July 18, 2003 upon their entry into force.

The database includes the following information sections - Laws of the Republic of Moldova, decisions of the Parliament of the Republic of Moldova, decrees of the President of the Republic of Moldova, decisions, provisions and ordinances of the Government, Constitutional Court decisions, Court of Accounts decisions, decisions of the National Bank, ministerial acts, acts of the central administrative authorities, international acts, etc.

Apart from this, there are several private sites with search engines (eg. MoldLex, E-lex, etc.) where there are materials on the legal issues, practice on the causes of other states, the theory about general problems of law, judicial power and justice, theory on the civil cases, criminal and administrative offenses.

3.13 Is the access to such database free of charge?

The access to this legislative database of the Ministry of Justice of the Republic of Moldova is free and the legislative database of private companies that provide this service based on a surcharge. The supply and installation of the legal database and of the software for updating them on the computer or server, as well as the software installation for updating the database, instructions, also requires payment.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

According to the provisions of the article 20, paragraph (1) of the Constitution of the Republic of Moldova, everyone has the right to obtain effective protection from competent courts against the acts that violate the rights, freedoms and his / her legal interests. Thus it is established the principle of free access to justice. This right is not wearing a free character, because the realization of justice carries out a number of expenses incurred both by the state, and by the participants in the process.

The Code of Civil Procedure expressly regulates the court costs. Thus, according to the article 82, court fees consist of the state fee and expenses for the judgment of the case.

The state tax represents an amount that is charged by law, by the court in the state benefit from people in whose interests are exercised the proceedings acts of civil case judgment or to whom are issued copies of the documents from the file.

It requires a state fee each application for summons (initial and counterclaim), the application of the main intervener, the application regarding the causes with special procedure, the application for issuing a judicial ordinance, the application for declaration of insolvency, the application for issuing the writ of execution of arbitral decisions, the appeal, the application of recourse and the application for issuing the copies (duplicates) on judicial acts.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

Any change carries by itself both advantages and challenges. In the Republic of Moldova, the mechanism for unifying the jurisprudence has as final aim the establishment of judicial precedent.

Starting from the idea that this is a source of law in a different legal system, we are already in the phase of a challenge, both for vigilantes, and for litigants.

The Supreme Court of Justice would play a highlight role in this respect. Thus, it should deal not only with the unification of the judicial practice and its statistical analysis, as well as its transportation into jurisprudence.

The judges will learn new skills in order to provide similar solutions to similar cases.

Among the advantages of this change there should be the predictability of law, thus of the decisions issued by judges. This would lead in the decrease of corruption, in the transparency of the legal and in the increase of the public confidence in the legality of judicial processes.

3.16 Any other point you wish to raise.

Monaco

1. Le concept d'application uniforme du droit

1.1 Existe-t-il dans votre pays un concept d'application uniforme du droit? Est-il formel, établie au niveau de la Constitution et/ou de la législation, ou plutôt informel, discuté et établi à différents niveaux et appliqué dans la pratique par une compréhension commune? Est-ce une combinaison des deux approches, dans une mesure variable?

En Principauté de Monaco, la proximité qui existe entre les différentes institutions eu égard à la dimension modeste de cet Etat implique de fait une application uniforme du droit qui n'est en revanche imposée par aucun texte

1.2 Comment le concept de l'application uniforme du droit est compris dans votre pays? Est-il compris comme:

• l'adoption, au niveau législatif, d'une législation cohérente;
• les pratiques uniformes des institutions exécutives et des organismes d'application de la loi;
• la jurisprudence uniforme élaborée par les tribunaux.

Expliquez chaque point et indiquez l'importance relative de chaque point.
Les cours et tribunaux et plus particulièrement la Cour de Révision,la plus haute juridiction de l'ordre judiciaire , veillent à une application et une interprétation uniformes des textes législatifs votés
1.3 Quelle est la raison d'être de l'application uniforme du droit dans votre pays et quel résultat pour la population est-elle censée à produire? **L'objectif est d'assurer une sécurité juridique aux justiciables**

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Existe-t-il dans votre pays des exigences formelles ou informelles pour l'uniformité du processus législatif? **L'uniformité dans le processus législatif découle également du fait que celui-ci relève de la compétence d'un nombre relativement restreint de personnes qui en ont la charge soit au sein du gouvernement princier soit au sein du Conseil National(à savoir le Parlement) qui comprend seulement 24 élus**

2.2 Existe-t-il une hiérarchie des lois? **Le principe de la primauté de la Constitution résulte de la Constitution elle-même.Les conventions internationales occupent quant à elles la deuxième place dans la hiérarchie des normes.Viennent ensuite la loi et les principes généraux du droit**

2.3 Comment la conformité des lois nationales aux traités et autres instruments internationaux est-elle garantie? Comment ces derniers sont-ils appliqués dans votre pays: directement ou par le biais de la législation nationale d'application? **Les pouvoirs éxécutif et législatif projettent et votent des lois ou peuvent meme réexaminer des anciennes législations afin**

que tous les textes en vigueur soient conformes aux traités internationaux auxquels la Principauté de Monaco est liée

2.4 Quelles sont les dispositions en cas de contradiction entre lois nationales, ou entre une loi nationale et un traité international? **Il appartiendrait au Tribunal Supreme, dans la première hypothèse, d'annuler des dispositions législatives nationales en contradiction et , dans la seconde hypothèse ,aux cours et tribunaux d'appliquer le texte international**

2.5 Comment le processus d'élaboration des normes juridiques est-il généralement effectué dans votre pays? Lequel des pouvoirs de l'État exerce en pratique un rôle dominant dans ce processus? **La loi implique l'accord des volontés du Prince et du Conseil National auquel appartient la délibération et le vote des textes législatifs. La sanction des lois appartient au Prince ,qui leur confère force obligatoire par la promulgation,et leur application relève du pouvoir judiciaire**

2.6 Les actes du pouvoir exécutif sont-ils une source de droit dans votre pays et, à cet égard, sont-ils juridiquement contraignant pour les tribunaux?**Les ordonnances souveraines(prises par le Prince)nécessaires à l'éxécution des lois mais aussi les arretés du ministre d'Etat(le chef du gouvernement princier) et du Directeur des Services judiciaires font partie des normes applicables**

2.7 À votre avis, les lois sont-elles trop souvent modifiées dans votre pays et la sécurité juridique est-elle affectée?**Non**

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 La jurisprudence dans votre pays a-t-elle un effet juridique contraignant et est-elle une source de droit? Si oui, dans quelle mesure? Dans la même mesure que la législation nationale? **Non**

3.2 Si la jurisprudence dans votre pays n'a pas effet juridique contraignant, dans quelle mesure est-elle reconnue comme étant importante pour les juges, soit au niveau formel ou au niveau informel? **Les juges, meme s'ils n'y sont pas contraint, s'efforcent de rendre une décision conforme à la jurisprudence pour assurer une sécurité juridique.Mais ils peuvent aussi opérer un revirement ou encore ,s'agissant des juges du premier degré , « résister » c'est-à-dire ne pas rendre une décision conforme à celle rendue précédemment pour un cas similaire par la juridiction du second degré voire par la Cour de Révision**

3.3 Dans tous les cas, les tribunaux ont-ils un rôle dans l'unification de la jurisprudence et, si oui, quels tribunaux et de quelle manière? Existe-t-il des dispositions spéciales au sein de chaque tribunal - ou entre différentes juridictions au niveau horizontal ou vertical dans la hiérarchie des tribunaux - pour garantir l'uniformité? **Ce role appartient essentiellement à la Cour de Révision**

3.4 Existe-t-il des tribunaux spécialisés dans votre pays? Existe-t-il une hiérarchie de tribunaux spécialisés, si un tel système existe? Est-il possible de contester des jugements définitifs de tribunaux spécialisés devant un organe juridictionnel supérieur (la cour suprême ou tribunal d'un rôle similaire)? Si oui, veuillez expliquer brièvement. **Il existe en effet des tribunaux spécialisés comme le tribunal de travail par exemple entre lesquels aucune**

hiérarchie n'a été instituée et dont les décisions peuvent l'objet d'un recours examiné par la cour d'appel

3.5 L'unification de la jurisprudence (mentionnée dans la question 3.3) est-elle déterminée par la Constitution, les lois, les règlements ou par une pratique établie?**Il est logique que cette unification ou encore uniformité de la jurisprudence appartienne à la plus haute juridiction de l'ordre judiciaire à savoir la Cour de Révision**

3.6 Les jugements de ces tribunaux (mentionnés à la question 3.3) sont-ils obligatoires pour:

- les juges / les panels de juges de cette juridiction;
- tous les juges du pays;
- y a-t-il des conséquences pour les juges s'ils ne suivent pas la jurisprudence d'un tribunal supérieur?

Non

3.7 Si les jugements de ces tribunaux ne sont pas obligatoires, quel effet pratique peuvent-ils avoir?**Les décisions rendues par la Cour de Révision sont dans la pratique respectées par les juridictions des premier et second degrés dans la mesure où les parties peuvent in fine porter leur litige devant cette haute juridiction**

3.8 Quelles sont les procédures, le cas échéant, appliquées en cas de contradictions ou d'écarts dans la jurisprudence entre les différentes juridictions, ou entre les différents niveaux au sein d'un même tribunal, y compris les tribunaux supérieurs (recours contre un jugement, avis juridique des tribunaux, décisions préliminaires *in abstracto*, etc.)?**Il appartient aux justiciables de faire un pourvoi afin de saisir la Cour de Révision .Le directeur des Services judiciaires peut également exercer un tel recours dans l'interet de la loi lorsque se pose une question juridique importante**

3.9 Soit dans le cas où la jurisprudence a un effet juridique contraignant, soit dans le cas où elle n'est pas contraignante mais a un autre effet, dans quelle situation, le cas échéant, il pourrait être considérée possible ou peut-être même nécessaire de s'écarter de la jurisprudence? **Il relève de l'appréciation souveraine des juges du fond de prendre toute décision conforme ou en contradiction avec une jurisprudence**

3.10 Quel est le rôle de la cour suprême ou de tout autre tribunal de votre pays dans l'unification de l'application de la loi? Veuillez expliquer comment il est possible avoir un accès à la cour suprême et y a-t-il des pouvoirs discrétionnaires pour accorder le droit d'entendre l'affaire et quels seraient les critères pour cette possibilité (critères de filtrage)? **Outre le directeur des services judiciaires comme évoqué ci-dessus ,toute partie insatisfaite d'une décision ayant été rendue par la Cour d'appel peut former un pourvoi à l'encontre de l'arret prononcé et saisir alors la Cour de révision qui pourra se prononcer non pas sur l'appréciation factuelle qui aura été faite souverainement par les juges du fond mais uniquement sur l'argumentation juridique apportée par ces derniers**

3.11 Comment la jurisprudence de la Cour européenne des droits de l'homme et d'autres juridictions supranationales ou quasi judiciaires est-elle garantie et appliquée au niveau national et comment cette jurisprudence influence l'unification de la jurisprudence nationale dans votre pays? **Les juridictions monégasques appliquent et respectent dans leurs décisions les principes énoncés et rappelés par la Cour Européenne des Droits de l'Homme**

3.12 De quelle manière la jurisprudence, y compris la jurisprudence internationale susmentionnée, est assemblée, publiée et rendue accessible pour:

- les juges;
- les autres professionnels du droit;
- le public en général.

La jurisprudence de la Cour Européenne des Droits de l'Homme est diffusée chaque mois dans un bulletin adressé aux magistrats qui ont également accès ,ainsi que les avocats,aux différentes décisions prononcées par les juridictions monégasques sur un site sécurisé 5

Enfin un projet de loi est actuellement à l'étude pour permettre l'accés au public par internet des décisions de justice qui seront anonymisées

3.13 L'accès à cette base de données est-il gratuit? **Oui**

3.14 Les tribunaux sont-ils la seule source d'information ou il y a plus de fournisseurs (sur une base commerciale ou par un accès gratuit)? Si c'est le cas, ces entités sont-elles des entités indépendantes et fonctionnent-elles sur une base commerciale ou non commerciale? **Ces sites sont et seront alimentés uniquement par les juridictions et plus précisément par leurs chefs qui sélectionneront les décisions méritant selon eux d'etre publiées**

3.15 Quels sont les défis pour l'unification de la jurisprudence dans votre pays? La qualité de la législation nationale pose-t-elle un défi - par exemple, la nécessité de la société moderne d'utiliser des définitions et des concepts juridiques relativement large?

3.16 Tout autre point que vous voulez soulever.

Montenegro / Monténégro

1. Concept of the uniform application of the law

1. Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Yes, there is a concept of the uniform application of the law. The Constitution stipulates that all persons shall be deemed equal before the law, regardless of any particularity or personal feature and that everyone shall have the right to equal protection of the rights and liberties thereof. Further, according to the Constitution, the Supreme Court provides equal application of the laws by the courts.

2. What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

- *Consistent legislation is of the crucial importance for the uniform application of the law, as efficient and effective application of the law essentially depends on the quality of the law. Clarity and predictability of the law is condition for effective practicing of justice;*
- *Executive institutions and law enforcement bodies in the administrative proceedings are deciding on the rights and obligations of legal subjects, so they are expected to take a unique practice while applying the law. However, decision of the administrative bodies can be impugned with a claim in the administrative dispute in which the court has to take care if the administrative bodies have consistent practice at reaching decisions;*
- *Uniform case law is of the essential importance for executing legal certainty as the key aspect of the rule of law. So the principle of the unique protection of human rights and freedoms is imperative in the work of courts.*

3. What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

Rationale for the uniform application of the law is the same for all societies which base their grounds on democracy and rule of law. The uniform protection of human rights and freedoms means that everyone have equal opportunities before the state bodies when deciding on their rights and freedoms regarding both procedural status and application of the substantive law.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

1. Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

There are formal requirements for ensuring the uniformity in the legislative process. In proposing draft law drafting authority and Government body – Secretariat for Legislation are taking care about compliance of the law with the legal system, and in Parliament, while adopting the law, of great importance are attitudes of the working body constituted with the aim of taking care about mutual compliance of the laws and its compliance with the Constitution and accepted international Agreement.

2. Is there a hierarchy of laws?

The Constitution stipulates that the law has to be in compliance with the Constitution and accepted international Agreements, and the other regulation has to be in compliance with the Constitution and the law. Regarding the laws, they are of the same legal power.

3. How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Conformity of the laws with accepted international Agreements is ensured during the process of their adoption. The Constitution provides that accepted international Agreements and generally accepted rules of the international law are integral part of domestic legal order and they have priority over domestic legislature. They are directly implemented when regulate relations different than domestic legislature. That way is verified legal effect of the international Agreements and determined that they have supremacy over domestic legislature, and at the same time, they remind the state bodies on the obligation of harmonization of national legislature with international law.

4. What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

The Constitutional Court decides on compliance of the law with Constitution and accepted and published international Agreements, as well as about compliance of other regulations and general acts.

5. How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Parliament of Montenegro enacts the laws. Right to propose the law have the Government and a Member of a Parliament. Right to propose the law have also 6,000 voters through a Member of Parliament. Regularly, the Government is proposer of the law in majority of cases, as conducting internal and foreign affairs are in their capacity. When enacting the law, legal entities are consulted through organized public hearings, and when it comes to the regulations in the area of judiciary it is predicted that Judicial Council, as independent body which takes care on independence and autonomy of the courts and judges, give its opinion on drafts of regulations.

6. Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

It is in the Government's competence to enact decrees, decisions and other acts for enforcement of the law. When the Government enact by-law general act, it becomes an integral part of the legal system and as such is source of law for all legal subjects, and therefore for courts. These acts have to be in compliance with the law and they can be the subject of evaluation of lawfulness and constitutionality before the Constitutional Court of Montenegro.

7. In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Transitional process which the state is going through has been marked with a numerous changes of laws in a good will to be accepted international standards and regulations of the European right. Anyway, it makes harder work of the state bodies as there is a need of frequent adjustment on the changes of the laws, which opens numerous challenges when it comes to the requests of the legal safety.

3. Role of courts in ensuring the uniform application of the law

1. Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law has not been explicitly defined as formal source of law, considering the fact that the Constitution of Montenegro stipulates that the court shall rule in compliance with the Constitution, law and accepted international Agreements. But, the case law is the most important factor for providing uniform application of the law.

2. If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

On the formal level, it has been established obligation of the courts to adjust case law (see below 3.5). Judges are achieving quality work in the application of the law through consistent practice.

3. In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The courts are obliged to take care about taking up the uniform case law. It is especially expressed on the vertical level, as higher courts hold the legal position when deciding on claims of lower courts. If there is a difference in the approach in application of the law between judges and panel of judges, the uniformity will be achieved on the sessions of the court departments or on the sessions of all judges.

4. Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts

before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are only two specialized courts in Montenegro:

- *Commercial Court of Montenegro which is the court of the first instance in commercial-legal matters. On claims on its decisions decides Appellate Court of Montenegro, and on extraordinary remedies the Supreme Court of Montenegro;*
- *Administrative Court of Montenegro which decide in the administrative dispute on legality of the final legal acts. Versus its decisions can be appealed extraordinary remedy – request for extraordinary review of the court decision on which decides the Supreme Court of Montenegro.*

5. Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The Supreme Court, according the Constitution, provides the uniform application of the law by the courts. This obligation of the Supreme Court has been performed through reaching decisions under its jurisdiction. But, the Supreme Court is, by the Law on Courts, authorized to hold principle legal positions on matters at issue from the case law with the purpose of the uniform application of the law. The principle legal position is not a rule, but interpretation of the law in the same or similar cases. It affects the case law of the lower courts through authoritative interpretation of the law taken on the session of all judges of the Supreme Court (general session) and not as mandatory rule. The Supreme Court holds its general legal position ex-officioor on the request of the lower court. Anyway, it is a legal position inabstracto. All general legal positions are published on the web page and printed bulletins of the Supreme Court.

Also, lower courts have to take care about the uniform application of the law. The Law on Courts stipulates that on the session of judges are discussed issues of the application of the law if there is a difference between panel or judges of certain court. In courts are kept records of the case law.

In the Supreme Court is formed department for the case law, and in other courts such department can be formed and it is formed only in the courts with greater number of judges. The focus of this department, in compliance with the Court Rules of Procedure, is following the court practice and composition of proposals which will be presented on the session of judges, with the purpose of holding certain position with the aim of unification of the case law.

6. Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

- *Positions agreed on the sessions of the court apartments and on the sessions of the judges of certain court are obliged for judges and panels of that court.*
- *Positions of the higher courts hold in decisions on remedies are obliged also for judges of the lower courts who are guided also with positions of the higher courts*

which they held on the sessions of the department and sessions of judges.

- *Failure to act in compliance with positions of the higher courts is not regulated as disciplinary offence for responsibility of judges. But, at last, it can have effect on the quality of the work of the judge and on the evaluation of the work of the judge.*

7. If judgments of such courts are not obligatory, what kind of practical effect they may have?

The answer on this question has been contained in other answers.

8. What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Acting of the high instance courts on appealed claims is of crucial importance for unification of the case law. Also, holding of the legal stands on the sessions of the court departments and sessions of the judges is important instrument for holding uniform case law. In the cases when a great number of complaints have been submitted to the court in which requests are based on the same or factual condition and the same legal ground, in civil matters, the court can resort reaching so called "Pilot judgments". With the aim of providing of the uniform application of the law in the civil matters, it has been introduced the institute of so called extraordinary revision (see below 3.10). Preliminary decisions in abstracto mean the only authorisation of the Supreme Court to hold general legal positions (see above 3.5).

9. Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

Failure to act in accordance with the case law is possible only in the case when there are changed facts and circumstances which are of importance for reaching the court decision.

10. What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The subject matter jurisdiction of the Supreme Court of Montenegro has been regulated by the Law on Courts („Official Gazette MN", no. 11/2015). Regarding the institutional court jurisdiction, for the Supreme Court has been established:

1) decide in third instance as provided by law;
2) decide on extraordinary legal remedies versus decisions of the courts in Montenegro;
3) decide versus decisions of its panel of judges, as provided by law

The Supreme Court has the jurisdiction to act in criminal, civil and administrative matters, and remedies on which decide the Supreme Court have been regulated by process laws for mentioned types of cases.

a) Criminal cases

In criminal matters the Supreme Court has the jurisdiction to decide on the claim on the judgment of the court of the second instance court (claim to the third instance court). Admissibility of the claim to the third instance court has been limited in three cases, if:

- *The second instance court reached the longest prison sentence or upheld the judgment of the first instance court by which such sentence has been reached (regarding the case when the sentence is 40 years of prison);*
- *The second instance court reversed the judgment of the first instance court by which the accused has been acquitted and reached the judgment by which the accused has been found guilty as charged.*

On the complaint will be decided according to the provisions applicable to the second instance proceeding.

As it is a word about the complaint, it is a regular remedy whose timely submitting postpones the execution of the judgment.

In deciding of the complaint the Supreme Court examines regularity and lawfulness of the second degree judgment, or examines if it is based on the important violations of the provisions of the criminal procedure, wrongly and incompletely established facts or on the violations of the Criminal Code, which are stipulated in the complaint.

The Supreme Court has the jurisdiction to decide on the legal remedy – request for protection of lawfulness. This request can be submitted by the Supreme Prosecutor's Office versus final court decisions and proceeding followed by those decisions, if it considers that there has been a violation of the law.

When the Supreme Court find that the request for protection of lawfulness is admissible, which has been submitted in the benefit of the accused, it can reverse or set aside the judgment of the first instance and second instance court.

When the request for protection of lawfulness is appealed on the damage of the accused, and the Supreme Court find that it is well-founded, it will be found only that there is a violation of the law without examining of the final judgment.

Accused who is sentenced on unconditional prison sentence of one year or more can suggest to the Supreme Prosecutor's Office to submit request for protection of lawfulness. If the Supreme Prosecutor's Office reject the proposal, accused can submit complaint to the Supreme Court. In the case when the Supreme Court accept the proposal of the accused or his attorney, it will be considered as request for protection of lawfulness and the Supreme Court will decide on merits in further procedure on the panel session.

When deciding on the request for protection of lawfulness, it is examined lawfulness of the judgments of the lower courts. If during deciding on the request for protection of lawfulness for the benefit of the accused the court find considerable doubts on the exactness of the decisive facts established in decision versus which, and that is the reason why is not possible to decide on the request for protection of lawfulness, the Supreme Court will reach a judgment by which will quash the previous decision and back the case on the new trial.

B) Civil cases

In the civil cases the claim to the Supreme Court cannot be appealed as regular remedy.

Law on Civil Procedure recognizes two extraordinary remedies on which the Supreme Court will decide – revision and request for protection of lawfulness.

Revision is not allowed in property proceedings in which the value of the impugned part of the final judgment is under EUR 20,000.00 (or EUR 40,000.00 in commercial disputes). But, there are three cases in which the revision is allowed regardless the value:

1) in disputes on maintenance support when the maintenance support has been determined for the first time or reversed;

2) in disputes regarding the compensation of damage for the lost maintenance support due to the death of supporter of the maintenance and due to the loss of earning or other income from work when those compensations have been determined for the first time or reversed;

3) in property disputes arising from unconstitutional and illegal individual acts and actions by which legal or natural persons are placed in an unfair position in the market due to their seat or place of permanent residence or the market is violated in some other manner, involving disputes on the compensation of damage caused by it.

Revision can be appealed for essential violations of the provisions of the civil proceeding and wrong implementation of the substantial law, but not for wrongly and incompletely fund facts. But, if the Supreme Court find that there was wrong application of the substantive law and, as a consequence wrongly found facts and so there are no conditions for reverse of judgment, it will quash completely or partially both judgments of the lower courts or just a second instance judgment and back the case on the new trial.

On revision will be decided without discussion.

The newest changes and additions of the law on Civil Procedure stipulates possibility that revision can be allowed versus second instance judgment, which, in accordance with mentioned conditions could not be quashed by revision, if it is necessary to reconsider legal issue of importance for providing legal certainty or uniform application of the law (Article 397 – Law on Criminal Procedure). Ratio legis of this law position is the need to be provided consistent and unique practice in the same or similar cases.

Proposal for allowing of revision in this case is submitted by the party, and the Supreme Court will decide in the panel composed of five judges.

If the Supreme Court allows to the party to appeal the revision in the case mentioned above, in its decision will cite in which part, or regarding which concrete questions the revision is allowed.

Versus the decision by which has been accepted proposal for revision, the complaint is not allowed.

The party has the time-limit to appeal the revision within 30 days from the day of delivering decision on allowing revision.

The request for protection of lawfulness can be submitted versus the first instance judgment and only in the case when impugned judgment is based on the illegal disposals of the parties. Such situation is when the party has on his/her disposal requests which are in collision with compulsory regulations, as it is the case with illegal disposal with the state property, avoiding financial obligations etc.

For submitting the request the Supreme Prosecutor's Office is in charged.

On the request will decide the Supreme Court on the panel session.

When deciding on the request for protection of lawfulness, the court is limited only on the examining violations alleged in the request.

On the procedure on the request for protection of lawfulness are applied provisions of the procedure on revision.

C) Administrative – court cases

In the administrative cases, the complaint has not been provided as regular remedy but as an extraordinary remedy – request for extraordinary examination of the court decision, or decision of the Administrative Court of Montenegro.

Above mentioned legal remedy can be appealed versus the judgment of the Administrative Court by which has been rejected the complaint in the administrative dispute.

On the above mentioned request the Supreme Court will decide, as a rule, on the first next session.

The request can be submitted because of violation of the substantive law and violation of the regulations of the proceeding in the administrative dispute which could influence on the solving the matter.

The Supreme Court will in its judgment accept or reject the request. The decision cannot be changed on the damage of the party if the party is the only who submitted the request.

The Law on Administrative Dispute stipulates applying of the Law on Civil Procedure regarding issues which are not defined by that law.

Accordingly, the Supreme Court is the third instance court when deciding in the criminal and civil cases. In the administrative matters the Supreme Court decides on the request for extraordinary examination of the decision of the Administrative Court, which means that acts as the second instance court.

In the process laws has been regulated that in examination of merits will not be taken the remedy which is time-barred or inadmissible, as it is the case with the remedy submitted by unauthorized person or when the remedy is submitted out of conditions regulated by the law for its admissibility. In such cases, the remedy will be rejected.

Beside above mentioned law authorizations, there are no any other forms of selection of cases in which the Supreme Court is supposed to decide.

11. How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

    Case law of the European Court of Human Rights is taken into account while reaching decisions on the national level, which contributes to the unification of the case law. Positions from decisions and judgments of the European Court are more and more incorporated in reasoning of the decisions of the courts of Montenegro.

12. In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

    - judges;
    - other legal professionals;
    - general public.

    Judgments of the European Court of Human Rights in the cases versus Montenegro are published on the web page of the Supreme Court. On the same way have been published also some leading judgments of the European Court. On the regional level has been established electronic decision base of the European Court of Human Rights. That base has been established and updated with the cooperation of the Representatives of the states before the European Court of Human Rights and AIRE Center from London. In the data base are judgments versus Montenegro, Serbia, Bosnia and Herzegovina, FYR Macedonia, Albania and Croatia. Approach to the data base is at www.ehrdatabase.org.
    The courts can approach to the data base of the state bodies from the region where can be found judgments of the European Court of Human Rights for that states, which is of great importance because there is no language barriers.

13. Is the access to such database free of charge?

    Approach to the data base is free of charge.

14. Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

    There are providers which on commercial or non-commercial ground in certain measure publish extracts from decisions of the European Court of Human Rights as printed publications or on the internet pages.

15. What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

    Unification of the case law is permanent challenge of the national legislature.

16. Any other point you wish to raise.

Netherlands / Pays-Bas

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various levels and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

From a constitutional point of view, the hierarchy of the laws laid down in the Dutch Constitution – vide answer 2.2 – like in most other Western democracies, presupposes the concept of uniform application of the law. The concept of the uniform application of the law is relevant to all three powers of state: the legislature, the executive and the judiciary. In this respect too, the three powers of state are interconnected and interdependent. The basic and underlying principle is that the rule of law should guarantee legal certainty to citizens. To that end all three state powers have an obligation to foster coherent legal rules and coherent application of these rules.

With regard to the role of the courts, several remarks can be made. In the first place, the systems of appeal and cassation have the function to guarantee the uniform interpretation and application of the law. Although, in the Netherlands, there is no formal binding effect of case law, more in particular of the highest courts, judges tend to follow established case law. In civil cases, judges from first or second instance can ask the Supreme Court for preliminary rulings. The boards of the courts and the Council for the Judiciary also have duties to promote the uniform application of the law; they may not intervene, however, in the judicial assessment of cases.
In the second place, there are institutional and informal mechanisms to promote the uniform interpretation and application of the law between the various highest administrative courts. (see under 3.4).

In the third place, judges seek to establish consensus on several points of procedural and material law when practice shows divergent case-law; this results in "guidelines" that generally leave room for individual assessments. This is a delicate issue and a balance is sought between the principles of equality and independence of each individual judge. This is also reflected in the ethical Code of the Dutch Association of Magistrates (2011), par. 2.2:

"(…) The development of law is important and so, by extension, is the uniform application of law: for this reason individual judges may be expected to cooperate in developing substantive collaboration with their peers. There are two aspects to the uniform application of law: on the one hand, it leads to a limitation of the autonomy of the judge while, on the other, it represents an important facet of the quality of the legal system. The judge takes the importance of promoting the uniform application of law into consideration when applying the law and, in principle, is directed by the recommendations which enjoy the support of his fellow judges, such as the maintenance allocation norms and the subdistrict court judge's formula on dismissals. Any deviation from this kind of recommendation will require the judge to motivate his decision for doing so."

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

Vide answer to question 1.1

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

See answer to 1.1

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Yes. In the Netherlands, the Council of State is a constitutionally established advisory body to the Dutch Government and houses of parliament. The Council of State must be consulted by the legislature before a draft law is submitted to parliament. In assessing draft laws the Council of State uses a framework made up of three elements: policy analysis, legal issues and technical aspects. Under the scope of the legal assessment the Council of State will test the compatibility of an act with higher law: the Constitution, treaties (such as the human rights conventions) and European Union law. It will also test whether a bill is in accordance with the principles of democracy and the rule of law, with the principles of good legislation, such as equality before the law, legal certainty, proper legal protection and proportionality, and if the act eventually can be easily incorporated into the existing legal system.

2.2 Is there a hierarchy of laws?

Yes, the ranking order is as follows:

1. *Treaties (with direct force of law)*
2. *Statute of the Dutch Kingdom*
3. *Dutch Constitution*
4. *Acts of Parliament*
5. *Decrees*
6. *Ministerial Regulations*
7. *Provincial Ordinances*
8. *Municipality Ordinances.*

2.3 How is the conformity of national laws to treaties and other international instruments ensured? How are the latter applied in your country: directly or through national implementing legislation?

Vide answer to question 3.11

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and a treaty?

See under 3.11

2.5 How is usually the law making process carried out in your country? Which of the powers of the state has in practice dominant a role in this process?

The primary law-making body in the Netherlands is formed by the Dutch parliament in cooperation with the government. When operating jointly to create laws they are commonly referred to as the legislature. The power to set regulations can be delegated by the legislature to lower governments or specific organs of the State, but only for a prescribed purpose. A trend in recent years has been for parliament and the government to create "framework laws" and delegate the creation of detailed rules to ministers or lower governments.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes. The decrees and ministerial regulations are in principle binding for the courts, subject to assess their conformity with higher law. The government's power to produce secondary legislation is based on primary legislation (Acts of Parliament) which set out broad outlines and principles. By delegating regulatory authority the legislature empowers the executive branch to regulate in detail issues within the scope of the statutory provision.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

There is a general concern, shared e.g. by the Council of State, the Council for the Judiciary and the judges, that the frequent, sometimes incoherent and hasty, change of laws does affect the quality of legislation and legal certainty. This is e.g. the case in criminal law, social security law and economic administrative law.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Although lower courts are not formally bound by judgments of higher courts, they usually will follow their decisions in similar matters. Consequently court rulings, especially of the Dutch Supreme Court and the highest administrative courts, have a wider importance than the specific case in respect of which that ruling was given. It is the task of the highest courts to uphold the uniformity in law. In their cases, therefore, the lower courts will take the decisions of the highest courts into account. Lower courts will usually follow the judgements of higher courts. In this sense court rulings, particularly of the highest courts, can be looked upon as a source of law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Vide answer to question 3.1.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

See above under 1.3. It is also the task of each court to promote consistency. As observed above, there is a delicate balance between the principles of equality and judicial independence.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

On the first instance level, there are (11) district courts, competent in civil, criminal and administrative cases. In appeal, apart from the (4) ordinary Courts of Appeal, there are three separate jurisdictions in administrative law matters: 1) the Judicial Division of the Council of State in general administrative law matters, 2) The Central Appeals Tribunal in matters of social security and civil servants, and 3) the Administrative High Court for Trade and Industry in economic administrative law matters.

Uniform interpretation of the law between these three administrative high courts is established by the mechanism of referring a case to a grand chamber, in which judges of the other relevant courts participate and by the mechanism of advisory opinions of advocates-general. Also informal consultations between the various jurisdictions take place. There is a growing concern about the lack of transparency of these informal consultations and there are initiatives to provide for a proper legal basis.

3.5 Is the unification of case law (mentioned in question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

It is primarily a system based on long practice.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

In this respect also, there is no formal binding effect of the case law of the highest, specialised courts, but in practice judges tend to follow these.

3.7 If judgments of such courts are not obligatory, what kind of practical effect may they have?

See under 3.6

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Several dimensions can be distinguished. The first is the role of appeal and cassation.

The second are formal and informal mechanisms between the highest administrative courts and between these and the supreme court. The third is informal consultation among judges.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

If the judge considers that the circumstances of the case require to deviate. In that case, the judge will generally give explicit reasons why this is required.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As the highest court in the fields of civil, criminal and tax law in the Netherlands, the Supreme Court is responsible for hearing appeals in cassation. The aim of cassation is to promote legal uniformity and the development of law. Regularly, the Supreme Court gives guidance in the form of so-called "survey-judgments", in which all aspects of a certain issue are summarized. The court examines whether a lower court observed the proper application of the law. At this stage, the facts of the case as established by the lower court are no longer subject to discussion. An Attorney General's office is attached to the Supreme Court. Its members main task is to provide the Supreme Court with independent advice, known as an advisory opinion, on how to rule in a case. Until now, there is no formal filtering system for the Supreme Court. However, the Supreme Court may decide that the request for cassation is denied without giving extensive reasons if the case does not give rise to questions of law important for the unity or development of the law. Likewise, the three other highest administrative courts foster the uniform interpretation and application of the law.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

According to Article 94 of the Dutch Constitution, statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons. The provisions of the European Convention are directly applicable – for the purposes set in the Convention – and can be invoked directly before all courts in the Netherlands. The provisions of the EU Charter have direct effect by virtue of the special characteristics of primary EU legislation, and can be invoked directly within the scope of applicable EU secondary legislation.

The case law of the ECHR has a great impact on national level, at the level of legislation and administration, and especially in the courts. Traditionally international case law plays an important role in the Netherlands, because according to the Dutch Constitution judges are explicitly forbidden to test the constitutionality of Dutch Acts of Parliament. Neither does the Constitution provide for a Constitutional Court. Therefore in human rights issues judges are highly guided by the case law of the ECHR.

3.12 In which way the court's case law, including above-mentioned international case law, is assembled, published and made otherwise accessible:

The case law of European courts is directly accessible by the well-known HUDOC and Curia databases.
A substantial part of case law of all the Dutch courts is published, making use of ECLI classification. In the future, all case law might be published online. Dutch and international case law is also published by commercial editors, often annotated by legal scholars. The Dutch Court of Appeal in Amsterdam, together with the Dutch network of European Court-coordinators provides for monthly overviews of EU and ECHR case-law, which is distributed in all courts in the Netherlands and in the Flemish speaking courts in Belgium, and is online accessible to the public free of charge.

Judges:

Apart from the databases that are publicly accessible, judges have access to all the case law of the courts in the Netherlands, which is electronically archived for internal purposes (not publicly accessible). All commercial editions of annotated case law are accessible online for judges.

Other legal professionals:

Apart from the internal databases of the courts most other legal professionals have access to the same public and commercial sources of law as judges.

General public:

Case law is published and accessible for the public at large on www.rechtspraak.nl.

3.13 Is the access to such database free of charge?

Yes, vide answer to question 3.10

3.14 Are courts the only source of information or are there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Vide answer to question 3.10.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

This is a broad issue. As observed above, there is growing concern about the issue of the uniform application of the law and formal and informal mechanisms are put in place to ensure equality. On the other hand, the principle of judicial independence must also be assured.
Further steps will be taken to foster greater uniform interpretation between the highest administrative courts and between these and the supreme court. In general, it is recognised that broad definitions and "open norms" are often indispensable and do not create, as such, great problems.

3.16 Any other point you wish to raise.

Equality, uniform interpretation and application of the law are fundamental values in the rule of law. However, they should not lead to rigidity and to obstacles for the

development of law. The ECHR noted: "Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement" (judgment of 20 October 2011, 13279/05, par. 58). Moreover, judging implies the assessment of all the specific circumstances of the case at hand. In this perspective too, there are limits to uniformity.

Norway / Norvège

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Article 2, second sentence of the Norwegian Constitution, states that its purpose is to safeguard democracy, human rights and the rule of law. The concept of the uniform application of the law may thus be seen as a consequence of the principles of the rule of law, separation of powers and legality; equal and uniform application of the law ensures the generality of the law and equality before the law.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

The term "application of the law" refers first and foremost to the appliers of the law, including the courts and the executive branch. The makers of the law – the legislature – has an important role to play in this respect as the laws must as far as possible be clear, foreseeable and consistent. The Supreme Court is a court of precedence, clarifying and developing the law. The Supreme Court rulings are formally binding only upon the parties to the case, but the interpretation of the law in question will have a more general application. Thus, the Supreme Court rulings will have decisive effects on the uniform application of the law.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale is the rule of law. Equal and uniform application of the law ensures the generality of the law, equality before the law and legal certainty.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

No formal requirements, but consistency in legislation is considered carefully as a part of the process of preparing and adopting legislation.

2.2 Is there a hierarchy of laws?

Yes, the highest level is the Constitution. Statutes made under the Constitution are subordinate to it. Regulations made under such a statute are subordinate to such law.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

A special act of implementation is in principle required in order for the treaty to apply as part of internal law. Normative harmony is ascertained during the preparation of the implementation, making sure that the national law is in accordance with the treaty or the convention.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

The national statute will be interpreted in accordance with the treaty, or the statute will be amended and harmonized in accordance with the treaty. The courts exercise control to ensure that no legislation violates the incorporated conventions that take precedence over other Norwegian law. The fundamental human rights conventions are incorporated through the Human Rights Act of 1999.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

A bill is introduced to parliament by a member of government, normally following the publishing of a white paper prepared by an expert committee. The executive and the parliament have the dominant roles in the process. The parliament is the legislative body, but the initiative for the adoption of legislation is mostly taken by the government. The government also carries out the preparatory work. From time to time, judges are members of expert committees preparing the law. A bill may also be introduced to parliament as a private member's bill, by an individual representative.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Regulations made by the executive under a statute are subordinate to such law, still binding, but subject to review by the courts as any other legislation.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

A lot of laws and regulations are amended during one year, but that is how it is in a highly regulated welfare society.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The Supreme Court is a court of precedence, clarifying and developing the law. The Supreme Court rulings are formally binding only upon the parties to the case, but the interpretation of the law in question will have a more general application as it will be followed both by the courts and by the executive in their application of the law, cf. 1.2. In that respect, the Supreme Court's case law may be seen as a source of law. Due to the precedent effect, Supreme Court decisions have to some extent the same effect as the laws enacted by the parliament.

The Norwegian courts have the right and the duty to review the constitutionality of laws when constitutional review is invoked or otherwise relevant. Although the binding force of the decision of the Supreme Court in such a case is limited to the case in question, the decision will be applied to other cases that raise the same issues of constitutional conflict.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

As mentioned, the Supreme Court is a court of precedence, clarifying and developing the law. The Supreme Court is provided with filtering mechanisms enabling the court by its appeal section committee to grant leave for appeal for cases suited for clarification and uniform application of the law. Although the Supreme Court according to the Constitution is the court of last resort, in practice, due to heavy filtering of appeals by the Supreme Court's appeal section committee, the six courts of appeal are the courts of last resort for the vast majority of cases. Thus, the courts of appeal have a crucial role to play in order to ensure in practice the uniform application of the law in the case-law of the courts. There are no special arrangements within the courts or between the courts to ensure uniformity.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

The Norwegian court structure is quite simple. It is a three-tier system including 66 district courts, six courts of appeal and the Supreme Court, all of which are courts with general jurisdiction and composed of generalist judges. Apart from the land consolidation courts, special courts play a minor role in the administration of justice. The ordinary courts of appeal are the appellate courts for judgments and decisions made by the land consolidation courts. The ordinary courts undertake constitutional review as well as judicial review of administrative actions. There is no separate jurisdiction for administrative courts.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

By long lasting practice.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

The Supreme Court rulings are formally binding only upon the parties to the case, but the interpretation of the law in question will have a more general application as it will be followed both by the courts and by the executive in their application of the law, cf. 1.2 and 3.1. No disciplinary sanctions have been imposed on judges who in their decisions have deviated from Supreme Court's case-law.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

There are no specific procedures besides what is described above.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

One quite obvious reason for the Supreme Court to depart from its previous case-law, is the need to "bridge the gap" between law and society. Changes in society might imply the need for a new interpretation of the law. The need for consistency in the case-law, or the need for improving a previous interpretation of the law, might be other reasons for deviation from previous precedents. Also decisions from supranational courts might influence the interpretation of national law in such a way that departing from previous national case-law is necessary.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As to the role of the Supreme Court, see above. Leave to appeal can only be granted if the appeal raises issues of significance beyond the scope of the case, or if it is of importance for other reasons that the case is decided by the Supreme Court. Leave may be limited to specific claims and to specific grounds of appeal, including invoked errors in the application of the law, in the procedure or the factual basis for the ruling.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

No specific measures are implemented. Also in this respect, the Supreme Court plays a crucial role. The lower courts will follow the Supreme Court's interpretation and application at national level of the case-law of supranational courts. Access to databases containing legal information, is one of the most important tools for judges in order to maintain coherency within the law, see below.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Currently, Norwegian judges are provided with access to databases containing:

- all Norwegian statutes since 1687 now in force and all historical versions since 1998
- legal commentary to all statutes in force
- all regulations in force, national and local
- the circulars of the tax and social security authorities
- the *Norwegian Legal Gazette* from 1986
- travaux prépatoires – preparatory works
- treaties signed by Norway since 1992
- Supreme court decisions from 1836
- all appellate court decisions from 1993
- selected decisions on a regular basis from other courts
- Norwegian summaries of the ECtHR's category 1 cases
- Nordic court decisions concerning maritime law from 1952
- opinions by the Civil Ombudsman (from 1963)
- opinions by special boards dealing with complaints from private customers of banks and insurance companies
- opinions of the Market Council
- the opinions of about 40 different governmental and other appeal boards
- digital publishing platform for academic journals and books, containing more than 26,000 articles within a range of disciplines
- publications highlighting legal developments within the European Union

This information is accessible to all, but charges apply.

3.13 Is the access to such database free of charge?

The website Lovdata.no provides access to a collection of online legal resources. Some of the legal documents are available free of charge to all non-subscribers; and such documents may be used on a personal basis as long as such use is for a non-profit and/or non-commercial purpose.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

The providers of the services mentioned above, are private entities. One of them, Lovdata, providing the most comprehensive services, was established on 1 July 1981, as a private foundation by the Ministry of Justice and the Faculty of Law at the University of Oslo. The purpose of Lovdata is to establish and operate legal information systems on a non-profit basis.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

A quotation from the Norwegian Supreme Court Justice dr. juris. Arnfinn Bårdsen, may sum up the challenges and judicial duties:

"Faced with the dynamic forces of legal fragmentation and of overlapping jurisdictions, maintaining coherency within the law is of the very essence of judicial duty. This includes clarifying the proper interaction of legal rules on different levels, in order to secure that co-existent and partly integrated systems of law are functioning as a whole."

(*Supreme Court Justice dr. juris Arnfinn Bårdsen, The Norwegian Supreme Court:* Supreme Courts and the Challenges posed by the Transnationalisation of Law, *Faculty of Law, University of Bergen, 21st September 2015*.)

3.16 Any other point you wish to raise.

Poland / Pologne

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In Poland there is a concept of the unification of application of the law by courts.
It is both formal (established at the level of the ordinary legislation – some acts of law) and informal (applied in practice by common courts, the Supreme Court and the High Administrative Court).

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

It is understood rather as the unification of application of the law by courts than others forms.

However, administrative courts (which deal with administrative cases, i.e. the appeals against administrative decisions given by different executive institutions) can create standards of understanding (interpretation) of administrative law, what can result unification of application of administrative law by executive institution.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The unification of application of the law by courts is one of the conditions of legitimization of the judiciary (courts) and let achieve the trust of people to courts and judges.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Yes, there are.

2.2 Is there a hierarchy of laws?

Yes, there is: the Constitution,

the EU Treaty,
the international multilateral conventions (e.g. European Convention on Human Rights)
the ordinary internal legislation (the acts of law) + the EU regulations
the government orders

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

Treaties and other international legislation instruments are both applied directly or through national implementing legislation (it depends on the particular international act – e.g. the EU Treaty, the European Convention on Human Rights are applied directly, the EU directives are implemented to national legislation – ordinary acts of law).

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

It depends on the kind of contradiction.

On the national level (what concerns national legislation) there are some rules:
lex posterior derogat legi priori,
lex superior derogat legi inferiori,
lex specialis derogat legi generali,
lex consumens derogat legi consumptae etc.
What means that there are special rules of interpretation of law on the case of contradiction.

On the European (EU) level – there are special instruments provided by the EU law.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The government has the dominant role.
The government prepares the draft projects of acts of law.
The parliament in most cases accepts them.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes, they (so called the government orders) are the source of law, binding for bodies and institutions from the governmental sector.
However, they are not binding for the courts - in this meaning, that when there is a contradiction between the government order and the act of law, court can refuse to apply the government order and can apply the act of law directly.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

This is the real problem in my country.
Laws are amended too often and it affects the legal certainty in the country.
For example: the Code of civil procedure was amended 15 times only in 2016.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law has not general binding effect in Poland.
It is not a source of law.
But in some cases judgments (or resolutions) of the Supreme Court or the High Administrative Court are binding for the courts of lower instance.

For instance:

In civil cases:
If during the hearing of an appeal a legal issue arises which poses serious doubts, the court may refer that issue to be resolved by the Supreme Court, whereupon the hearing of the case shall be adjourned. The Supreme Court shall be competent either to hear the case itself or to refer the issue to be resolved by an extended panel of that Court. A resolution by the Supreme Case of a legal issue shall be binding in the case concerned.

In criminal cases:
If, in the course of examination of an appeal measure, a juridical question is disclosed requiring a substantial interpretation of the Act, the appellate court may adjourn the hearing of the case and refer the question to the Supreme Court. The Supreme Court may refer the resolution of such a juridical question to an enlarged panel of that court. The resolution of the Supreme Court shall be binding as to a given question.

Similar regulations concern the procedure inside the administrative courts (in administrative cases).

This is institution of so called legal questions or pre-judicial questions transmitted to the Supreme Court or to the High Administrative Court. (Both those highest courts are courts of cassation – the Supreme Court for civil, criminal and labour cases, the High Administrative Court for administrative cases. But they have also tasks concerning unification of interpretation and unification of application of the law by the courts.)

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

At formal level – see the answer to the point 3.1.

There are another formal legal instruments. For example:

In civil cases:

If the hearing of an appeal in cassation reveals legal issues which pose major doubts, the Supreme Court may adjourn the adjudication of a case and refer the issue to be resolved by an extended panel of Supreme Court judges. The resolution of an extended panel of the Supreme Court judges shall be binding in the case concerned. An extended panel of Supreme Court judges may also decide to hear the case.

The court to which a case is referred shall be bound by the Supreme Court's interpretation of the law with respect to that case. An appeal in cassation from a ruling issued after the reconsideration of a case may not be founded on arguments which are contrary to the Supreme Court's interpretation of the law with respect to that case.

In criminal cases:

A court to which a case has been referred for re-examination shall adjudicate as to the limits within which the case has been referred. Reversing a ruling only in the part regarding the ruling on a penalty or other measure does not prevent the acquittal of the accused or the discontinuance of proceedings. If a case is referred for re-examination, the court which has adjudicated in the first instance, in conducting proceedings with respect to evidence which was irrelevant to the reversal of the ruling, may restrict itself to a disclosure thereof. The legal opinions and directions of the appellate court with respect to the further course of proceedings shall be binding upon the court to which the case has been referred for re-examination.

At informal level – judgments of the Supreme Court and the High Administrative Court (although do not have formally binding effect) are recognised as very important for judges of common courts. Common courts judges mostly accept the interpretation of law presented in judgments of this highest courts.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The unification of interpretation of the law is the fundamental task and duty of the Supreme Court and the High Administrative Court.
There are special arrangements within both highest courts (the Supreme Court and the High Administrative Court) to ensure uniformity of interpretation and application of the law.

See the answer to the point 3.2.
If the President of the Supreme Court or the President of the High Administrative Court find the divergence in case law, can refer the issue to be resolved by an extended panel of the Supreme Court or the Highest Administrative Court judges.

The resolutions of an extended panel of the Supreme Court judges (i.e. seven judges, all judges of a chamber, two joined chambers or all chambers) may or shall be binding for all judges of the Supreme Court in other cases.

There are not such formal arrangements within each court (particularly common courts).

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are two different jurisdictions.

First - for civil, criminal, family, company, labour, land register, company register etc. cases (common courts).
Second - for administrative cases (administrative courts).
Each pillar of jurisdiction has its own “highest court” - the Supreme Court and the High Administrative Court. The role of them is very similar.
There are not specialised courts outside the common and administrative courts.
So, there is not regulation concerning the challenge of final judgments of specialised courts before the Supreme Court.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

By laws: the Code of civil procedure, the Code of criminal procedure, the act on the Supreme Court, the act on the court administrative procedure and the act on administrative courts.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

The judgments of the Supreme Court are never obligatory for all judges in the country.

The resolutions of an extended panel of the Supreme Court judges may or shall be binding for all judges of the Supreme Court in other cases. Are not binding for other judges (judges of common courts).

The court to which a case is referred shall be bound by the Supreme Court's interpretation of the law with respect to that case. An appeal in cassation from a ruling issued after the reconsideration of a case may not be founded on arguments which are contrary to the Supreme Court's interpretation of the law with respect to that case.

There are some consequences for judges if they do not follow case law of higher court (but not disciplinary).

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Judges of the common courts respect the judgements of the Supreme Court voluntary as this Court has considerable standing.
Judges of the administrative courts respect the judgements of the Highest Administrative Court for the same reason.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

The president of each common court can refer to the First President of the Supreme Court issue of contradictions or deviations in the case law between different courts,

asking for the intervention (what means presentation by the President of the Supreme Court the legal issue to the extended panel of the Supreme Court judges).

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

In situation of new legislation (national or within the EU), amendments of legislation, judgments of the Constitutional Tribunal, judgements of Court of Justice of European Union.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The role of the Supreme Court in establishing uniformity of application of law is fundamental.
See the answers to points 3.1, 3.2, 3.3, 3.6, 3.7, 3.8.

Access to the Supreme Court in civil cases:

A. An appeal in cassation is not possible in cases for property rights where the value of the subject of the appeal is less than fifty thousand Polish zlotys or, in cases falling within the scope of the labour and social insurance law, less than ten thousand Polish zlotys. However, in cases falling within the scope of social insurance, an appeal in cassation is possible notwithstanding the value of the subject of the appeal in cases for the awarding or suspending of retirement and disability pensions and for mandatory social insurance. An appeal in cassation is also possible notwithstanding the value of the subject of appeal in cases for redress of damage caused by the issuance of a final and non-appealable judgment against the law.

B. Moreover, an appeal in cassation shall not be admissible in cases:
1) for divorce, legal separation, maintenance claims, rent for leased or rented property, or infringement of possession,
2) concerning penalties for breach of order, certificates of employment and related claims as well as benefits in kind or their equivalents,
3) adjudicated according to the simplified procedure.
§ 3. An appeal in cassation against a judgment declaring marriage non-existent or annulling a marriage shall not be possible if at least one of the parties entered into the marriage after the judgment became valid.

C. An appeal in cassation may be founded by a party on the following grounds:
1) misinterpretation or misapplication of substantive law,
2) infringement of the rules of procedure, where such infringement could significantly affect the outcome of a case.
Allegations against the establishment of facts or evaluation of evidence may not serve as a basis for an appeal in cassation.

D. The Supreme Court shall accept an appeal in cassation for hearing if:
1) a major legal issue is involved,
2) it is necessary to interpret legal provisions which cause major doubts or cause discrepancies in case law,
3) the proceedings were invalid, or

4) an appeal in cassation is evidently justified.
The Supreme Court shall decide in camera whether to dismiss or accept an appeal in cassation for hearing. Such decision need not be justified in writing.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Government and Parliament:
On 19 July 2007 the Prime Minister set up the Interministerial Committee for Matters of the European Court of Human Rights, an advisory body aimed at ensuring that Poland implements, to the fullest extent possible, recommendations arising from the judgments of the European Court of Human Rights. The Committee is tasked with developing the Government's positions on communicated applications and the ECHR judgments, analysing the compliance of major bills with the European Convention and presenting relevant proposals. It monitors the execution of judgments and decisions of the Court against Poland on the basis of action plans and reports submitted by competent ministers.
The Committee analyses problems arising from communicated applications and the ECHR judgments and drafts proposals for relevant measures. It also serves as a forum for discussion on major issues relating to compliance with drafted amendments with the Convention which could lead to significant consequences for Polish law or its application.
On 5 February 2014 the Parliamentary Subcommittee on Execution of Judgments of the ECHR was established. Its terms of reference include examination in detail of information submitted by the Council of Ministers on the state of execution of judgments of the European Court of Human Rights by Poland; monitoring of judgments of the European Court of Human Rights adopted in respect of Poland; and preparation of draft desiderata or opinions for the Justice and Human Rights Committee and the Foreign Affairs Committee concerning fulfillment by the Council of Ministers of the obligations of Poland to execute judgments of the European Court of Human Rights.

Judiciary:
The case law of the European Court of Human Rights (judgments, agreements, standards) is the subject of training in the National School for Judiciary and Prosecution.
The judgments of the ECHR are accessible on the website of the Ministry of Justice.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

All judgements of administrative courts (courts of first instance and the High Administrative Court) are accessible in the Internet, and at the same time selected judgments are published in the official journal (in traditional paper form).

Selected judgments of the Supreme Court (not all, but most of them) are accessible in the Internet, and at the same time selected judgments are published in the official journal (in traditional paper form). Each Chamber has its own collection of the most important judgments published in traditional form.

Selected judgements of common courts are published in the Internet. The Ministry of Justice works on the programme for publishing all judgments of common courts in the Internet.

All judgements of ECHR against Poland are accessible on the website of the Ministry of Justice or Ministry of Foreign Affairs (in translation to Polish language).

All judges and prosecutors have access to commercial collection of judgements of all courts – also judgements of both European Courts (the Ministry of Justice buys such commercial databases for all courts and public prosecutors offices).

3.13 Is the access to such database free of charge?

Access to databases published by courts and ministries are free of charge.
Commercial databases are not free.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Courts are providers of judgment through free access.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

1. Number of cases and judgments.
Courts in Poland decide every year about 15 million cases and produce more than 15 million courts decisions. It difficult to uniform such big among of case law.
2. No comments.

3.16 Any other point you wish to raise.

No comments.

Portugal

1. Le concept d'application uniforme du droit :

1.1 Au Portugal existe un concept d'application uniforme du droit , au niveau constitutionnel, législatif, exécutif et judiciaire.

1.2 La Constitution consacre les principes de l'égalité et de la confiance, corolaire du principe de l'État de droit que s'impose au législateur, au pouvoir exécutif et aux tribunaux.

Les procédures législatives soit au Parlement (ordonnance de l'Assemblée de la République), soit au Gouvernement (ordonnance du Conseil de Ministres) sont soumises à des règles impératives. Les règles du procès législatif ont la préoccupation d'une production législative uniforme. Les règles du procès législatif ont cette préoccupation et il y a des organes spécifiques qui veillent par la qualité et la cohérence de la législation – les services juridiques du Parlement et au niveau gouvernemental central, le Centre Juridique de la Présidence du Conseil de Ministres. Au niveau départemental, on doit mettre en évidence le Bureau de Politique Législative du Ministère de la Justice.

Au niveau de l'application des lois par l'Administration, l'uniformité est poursuivie par le biais de l'élaboration de règlements (des normes générales, obligatoires et hiérarchiquement subordonnés aux diplômes législatifs, lois du Parlement et « décrets-lois » du Gouvernement. Il y a aussi des règlements indépendantes destinés à discipliner l'exécution des lois en général et des règlements obligatoires, seulement, pour l'Administration (règlements interprétatifs qui garantissent l'application uniforme de la loi par l'Administration et que non sont pas obligatoires pour les tribunaux).

L'application uniforme des lois est encore poursuivie par l'émission de lois interprétatives, avec le même degré hiérarchique (l'interprétation authentique).

2. Le rôle des pouvoirs législatif et exécutif dans l'application uniforme du droit

2.1 Oui, comme on a déjà fait référence.

2.2 Oui, constitutionnellement prévue. Il y a, même, des lois du Parlement avec une par une majorité qualifié. En principe, les actes législatifs du gouvernement ont la même valeur des lois du Parlement mais les « décrets-loi » émis à l'abri des autorisations législatives doivent respecter la loi parlementaire que les autorise.

2.3 C'est la Cour Constitutionnelle que surveille sur la conformité des lois internes avec les conventions internationales qui sont directement applicables dans l'ordre juridique interne.

2.4 Une loi contradictoire avec une autre la révoque, implicitement. La contradiction de la loi avec un traité international rend invalide la loi.

2.5 Le Parlement et le Gouvernement exercent le pouvoir de légiférer. Il y a des matières de la compétence absolue ou relative du Parlement. Si la réserve de compétence est relative, le Gouvernement peut légiférer, moyennent, une autorisation législative. Au-delà de la compétence réservée, il y a une compétence concourant. Le gouvernement a, seulement, compétence législative réservée en ce qui concerne à son organisation interne. Le Parlement peut annuler les « décrets-loi » du gouvernement, sauf ceux de sa compétence réservée. Dans la pratique c'est le gouvernement qui plus légifère.

2.6 Oui, sauf s'ils se destinent à être obligatoires, seulement, pour l'Administration. Mais les tribunaux peuvent n'attendre pas à ces actes, avec le fondement qu'ils sont inconstitutionnelles ou illégaux. Les tribunaux administratifs peuvent même déclarer son illégalité.

2.7 Oui

3. Le rôle des tribunaux dans l'application uniforme du droit

3.1 Dans le nôtre système, depuis l'abolition de la figure dos « assentos », la jurisprudence des Cours supérieurs n'a pas force de majorat générique, ne constituant pas source immédiate de droit. Mais, en tous cas, elle a force obligatoire interne pour tous les tribunaux en cas de procès d'uniformisation de jurisprudence par la Cour Suprême.

3.2 Les décisions des Cours Suprêmes que n'ont pas une force obligatoire générique, ne constituant précédant obligatoire, elles ont une manifeste importance dans l'application du droit, en s'imposant, naturellement, par sa valeur doctrinaire et par la nature de l'organe dont elles sont provenant. Elles constituent un précédant persuasif dans l'interprétation des régimes légaux, fournissant à la doctrine une typologie des cas et des situations, utiles à l'élaboration dogmatique.

3.3 La tâche de uniformisation des courants jurisprudentielles, par les voies de recours échoie sur les Cours Suprêmes.

3.4 Les ordres juridictionnelles spécialisées en raison de la matière, comme l'administrative et tributaire, constituent des vrais ordres juridictionnelles avec une Cour Suprême Administrative, à laquelle incombe l'uniformisation de la respective jurisprudence.

3.5 Le besoin de mécanismes destinés à l'uniformisation de la jurisprudence bien que non prévus dans la Constitution peuvent, nonobstant, s'induire des principes constitutionnels de la sécurité juridique et l'égalité.

3.6 Les jugements de la Cour Suprême quand proférés par la plénière des chambres (civiles ou pénales), sont obligatoires dans le procès qui a été jugé et dans les limites de la chose juger. Au-delà du procès en cause, l'interprétation uniformisée d'une norme de droit doit être appliquée à des autres cas semblables, sauf si les tribunaux ont des arguments nouveaux non discutés dans l'uniformisation. La Cour Suprême peut modifier, dans un autre procès, la position antérieurement prise par le biais d'une nouvelle interprétation

3.7 Répondu en 3.2

3.8 L'uniformisation de la jurisprudence uniquement peut avoir place dans la Cour Suprême par le biais d'un recours extraordinaire pour l'uniformisation ou d'un recours amplifier (avec toutes les chambres civiles) pour la résolution du cas.

3.9 Répondu à la deuxième partie de 3.6.

3.10 L'accès à La Cour Suprême peut exister avec le fondement en contradiction d'arrêts au niveau des Cours d'Appel ou même par des contradictions de décisions au niveau de la Cour Suprême.

3.11 Il n'est pas obligatoire suivre la jurisprudence de CEDH. Il est obligatoire suivre la CEDH. En tout cas les tribunaux et les Cours ont la préoccupation d'analyser cette jurisprudence et de l'encadrer, s'il faut, dans le contexte uniformisateur quand il a lieu

312. Il y a une base de donnés accessible à tous : juges ; professionnels du droit ; justiciables et public en général

3.13 L'accès à cette base est gratuit

3.14 Les tribunaux ne sont pas la seule source d'information. Il y a d'autres entités commerciales ou non que ont en charge ce type de travail

Romania / Roumanie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Answer to 1.1

1.1. Yes, we have in Romania a formal concept of unification of law, both in the Romanian Constitution, inside the art 126, alignment 3 as well as in law 304/2004 with later modifications about judicial organization, in the dispositions of art 18 alignment 2 that stipulate that „the High Court of Cassation and Justice ensures the interpretation and uniform application of the law by the other judicial instances, according to its competency."

Moreover the criminal and civil codes contain dispositions referring to the ensuring of a uniform judicial practise in respect to those pertaining to the recourse in the interest of law (art. 471-474/1 from the Code of Criminal procedure and art. 514-518 from the Code of civil procedure) and at the specific intimation of the High Court with respect to offer a preliminary decision in the court cases issues of law matters. (Art 475-477/1 from the Code of Criminal procedure and art 519-521 from the code of civil procedure).

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- Uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

1.2. The concept of uniform application of law in Romania is seen by the way in which the laws are applied by the courts of law, but also by applying the decisions with an interest wo the law or the decisions with a view of solving some law cases as they are pronounced at the High Court of Cassation and Justice.

For the time being legislative adoption of coherent legislation in many domains is aggravated by the way in which the changes are perceived and understood at the immediate reality level, as some needs for correction of some recent laws appear, especially in the administrative and fiscal legal department, which makes a unified application of law in this field to be harder to achieve.

1.3. What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

1.3. The uniform application of law in Romania is necessary for ensuring trust for all the citizens in the justice system, for the simplification of social and economic processes, jurisdictional procedures and the transparency of the justice act.
This process ensures the raising of awareness inside the society that there is need for consolidation of the new dispositions introduced in the codes of procedure in order to get a uniform application of law, which reflects into the obey of equality principles for all citizens versus law, and the consequences as known by the law makers.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

2.1. Indeed, there are, at formal level in Romania, demands regarding the standardization of the legislative process included in Law 24/2000 regarding the norms of legislative technique for establishing legal acts, republished in 2010. Article 2nd, paragraph 1 of the law provides: "the legislative technique ensures the rationalization, unification and coordination as well as the content and juridical form appropriate for each law"

2.2 Is there a hierarchy of laws?

2.2 Indeed there is a hierarchy of the laws: the Constitution, the qualified laws, laws, decrees, government resolutions, orders, and internal regulations.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

2.3 In the legislative process in Romania, state subject to the rule of law, member of the European Union, of the European Council, of NATO, the drafting of laws harmonises both with the treaties and other international instruments as well as with the bilateral and multilateral treaties. Up to the moment of ratification of the international instruments, these have a direct implementation and from the moment they are ratified and transposed in national laws, they are implemented in accordance with the national law provisions.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

2.4. Article 20, paragraph 2nd of the Romanian Constitution provides that "in case of disagreements between the pacts and treaties regarding the fundamental human rights, in which Romania is a member, and the internal laws, the international regulations prevail except for the case in which the Constitution and the internal laws contain more favourable provisions".

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

2.5 During the law drafting process there is general and special legislative initiative at the level of the Ministry of Justice that either advocates or endorses a law that they do not draft. There is also initiative in drafting the laws from the members of Parliament, Parliament groups that can submit their initiative at the Parliament's chambers and follow the procedures expressly provided by the law.
The drafts of the bills made by the ministries, or by the Ministry of Justice are submitted to the Romanian Parliament that allocates them to either the Senate of the Chamber of Representatives according to the laws and parliamentary regulations, establishing the decisional board. Within the Boards, there are juridical commissions at each level. The legislative process takes place with the participation of the initiator of the law, of observers who are specialized in the respective field and after asking for their opinion a report is adopted, drafted, and then submitted to the full Board to be adopted. The project then reaches the decisional Board where it follows the same procedure (juridical commission, vote and report) and then is submitted to the full Board. There is a prior constitutionality control and an ulterior one, through the mechanisms expressly provided by the law.
Thus, the Romanian Parliament is the only legislative Board and only when it is closed for the Parliamentary holidays the Government has the possibility of adopting resolutions, which are going to be submitted to pass by the Parliament afterwards.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

2.6. Indeed the deeds of the executive power are sources of law and can be brought up before the Court that is before the administrative and fiscal Courts within the courts of law, Court of Appeal, the High Court of Cassation and Justice.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

2.7. Indeed, in some subjects such as public acquisitions, fiscal areas, there are many modifications and this makes it difficult for the law to be uniformly enforced.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

3.1. Yes, the uniformization of the case of law in decision making in the interest of the law and of the prior decisions for settling questions of criminal and civil law, delivered by the High Court of Cassation and Justice is a source of law meaning that the court of competent jurisdiction when is notified with a similar cause will resolve them based on the decisions taken by the Supreme Court these being binding decisions published in the Official Gazette just like the laws, the regulation norms of the codes expressly underlining their obligation.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

3.2. Not necessary, see answer from 3.1

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

3.3. At internal regulations level. The internal regulations of the courts of competent jurisdiction in Romania there includes in the 4th section, norms regarding the unification of the judicial practices, both at horizontal and vertical level.

Within these provisions it is mentioned that at the level of each section or jurisdiction there are going to be organized monthly meetings of the judges to discuss the law questions that have triggered different solutions or brand new questions of law, the judges draft their studies and the opinions about the discussed questions are recorded in the meeting minutes following the model of the semester minutes that are analysed during the meeting of the Appeal Court.

In the situation in which, in a case that he has to award a solution to, a judge notices very complex and brand new juridical questions and estimates that the courts will keep receiving similar cases that can be awarded non-uniform solutions; the judge can request the President to organize an ad-hoc meeting of all judges that are to solve some similar cases.

The procedure for quarterly meetings is established by the Judge Department from the Superior Council of Magistrates at these may be invited also judges from the special section from the High Court of Cassation and Justice, to discuss issues of non -uniform practise at national level.

The courts of law must complete and update the portal by publishing.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

3.4. Yes, there are specialized courts of law, specialized sections to the courts of law, tribunals, courts of appeal as well as specialized sections in certain matters, such as intellectual property law.
Yes, their decisions are challenged using ordinary means of appeal in court, courts of appeal or High Court of Cassation and Justice.
For example, the judgment of the juvenile specialized Court in Brasov in criminal matters can be appealed at the Brasov Court of Appeal, Criminal Division for cases involving minors, using the procedure provided by law, judging the devolution character of the appeal and also by using evidence.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, and by-laws or by long lasting practice?

3.5. The unification of the practice is an exclusive prerogative of the High Court of Cassation and Justice laid down in the Constitution and in the Organic Law, and for other courts of law founded in the regulation.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- Are there any consequences for judges if they do not follow case law of higher court?

3.6. The decisions of the High Court of Cassation and Justice in the matter of law practices uniformization are mandatory for all judges in the country and their application failure to comply, is considered a disciplinary offense, punishable by law.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

3.7. Lower court decisions are not binding for the other, but they respect the decisions of the Supreme Court.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstract* etc.)?

3.8. It was explained by the response from section. 3.3.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

3.9. The removal of a non-unitary jurisprudence is taken by the decisions of the High Court of Cassation and Justice.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

3.10. The High Court of Cassation and Justice plays the main role in the practice of standardization, using appeal in the interest of the law, or by referral to a judgment prior to unravelling a question of law.
Regarding the appeal in the interest of the law, this is introduced by the General Prosecutor's Office attached to the High Court of Cassation and Justice ex officio or at the request of the Minister of Justice, the leading board of the High Court of Cassation and Justice or the management boards of appeal courts, asking the Supreme Court to rule on points of law that have been resolved differently by other courts. This is going to be judged in a panel of 25 judges whose speciality is different in accordance with the matter of law that has to be solved, their assignment is random, and one reporting judge is nominated.

The report will include the different solutions given to the matter of law and the arguments that they are founded on, jurisprudence relevant to the Constitutional Court, of the High Court of Cassation and Justice, European Court of Human Rights, the Court of Justice from The European Union and the opinion of consulted specialists, if the case may be as well as the doctrine.

The decision is taken just in the interest of law and has no further effects over examined judicial decisions and not relevant to the situation of parties that are under trial in court.

The solution of the law matters is mandatory for the law courts from the date of their publication in the Romanian Official Gazette, Section 1.

Effects of the decision terminates in the case of abrogation, finding of unconstitutionality or amending of legal provisions that generated the law matter to be solved, with the exception that it subsists in the new regulation.

In the second procedure, if during the trial, a panel of judges of the High Court of Cassation and Justice, the Court of Appeal or the court in charge of solving the cause in its last instance, noticing there is a matter of law, of whose explanation depends the settlement of the cause in question and on which the High Court of Cassation and Justice has not ruled in a prior judgment or through an appeal in the interest of law and that is not subject of appeal to the pending law, it may request from the High Court of Cassation and Justice to issue a decision that may in principle solve the matter of law with which it has been notified. The notification shall be sent to court in front of a panel of eight judges from the respective department, randomly assigned, and a judge is appointed rapporteur. The report will have similar contents as for the other procedures mentioned. Unravelling of the law matters is mandatory for the courts of law from its publication in the Official Gazette of Romania, Part I. Termination or modification of the effects of the decision are the same, such as in terms of the decision in the interest of law, as previosuly mentioned.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

3.11. The jurisprudence of the European Court of Human Rights and other supranational courts has applicability under the conditions of article 20, alignment 2 from the Romanian Constitution and Community Treaties, sometimes it is applied directly, sometimes it is kept in mind as basis for national laws and applied through these laws.

The new codes of criminal and civil matters that have been adopted in 2010 and 2014 and that are also enforced now guarantee fully the application of the European Convention for defending Human Rights and Fundamental Freedoms, the jurisprudence of the European Court, Community Treaties , these have harmoniously regulations in accordance with several European states, but also as a consequence of Romania's condemnation at the European Court that led to the imposing of such norms.

3.12. In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- General public.

3.12. The relevant jurisprudence for all courts from the Romanian judicial system is published on the portals: *just.ro, scj.ro* , in the newsletters dedicated to jurisprudence and cassation easily accessible to all judges, professionals and the large public in general.

3.12 Is the access to such database free of charge?

3.13. Access to this database is free.

3.13 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

3.14. There are also applications of jurisprudence, Jurindex, Lex Expert, the Legal Universe and on line professional platforms, accessible in exchange to a fee.

3.14 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

3.15. Yes, unification of jurisprudence in Romania becomes a challenge, the quality of laws, imposing yet even more the functioning of these mechanisms, quality of laws, even if it has increased, based on the principles of transparency and after consultations with the entire professional law makers, however, it needs to control by means of these tools. Any other point you wish to rise. I believe that the unification of the national jurisprudence is a constantly challenging situation resulting from specific legal matters, from the way of comprehension of law, its application, and acceptance of the role and importance of law in a state law. I also assess that as realities do change, a simplified use of tools and procedures is needed, by increasing the dialogue among the three powers of state, with a view of ensuring the trust of the parties involved in the law court.
The simpler the laws, the more coherent, predictable and of high quality, the easier it will be for them to be applied, by simplified procedures and alternatives, by the courts of law, and the sides within the court of law will have to accept their quality, but also the Service of Justice.

Slovenia / Slovénie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

Although the concept of the uniform application of the law is not formally established in the Constitution or national legislation in a sense of a principle or a formal definition, it may be concluded that the concept is inherent in our legal system, and it is recognizable through various constitutional principles (rule of law, principle of legality, conformity of legal acts, equality before the law, right to a fair trial). The aforementioned principles gained a crucial status through the decisions of the Constitutional Court, which had a significant impact on the actions of the legislative, executive and judicial power, directing them towards the concept of the uniform application of the law. Such concept is also incorporated into legislative practices and adjudication process (requirement of the legislative process to adopt consistent and coherent legislation, duty of the Supreme Court to ensure the uniform application of the law).

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

The legislator, the executive power and the judiciary, all have a significant role in the development of law and ensuring its uniformity, coherence and overall integrity of the legal system. It is understood under the concept of the uniform application of the law that there is an interdependence between the legislation, executive power's practices and case law developed by courts. Formal legal sources have to be consistent and coherent as early as in the moment of their adoption into the legal system, and their main duty is to treat the legal addressees equally and in a predictable way. The duty of institutions of the executive power and finally the duty of courts is to strive for the equal and predictable application of formal legal sources in practice. Besides, the institutions that use formal legal sources in practice (including courts) should give feedback to the legislator once the law has come into force and practical experience has been obtained. Thus, constant interaction of all the three branches and other legal players is needed in order to establish the uniform application of the law.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale of the uniform application of the law is the consistency, predictability, uniformity and stability of law, and most of all, equality of all persons before the law. Every authority (legislative, executive and judicial branch) should strive for the aforementioned goals.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

There are safeguards aimed at ensuring the coherence of all legal acts adopted by the National Assembly. The ensuring of conformity of every draft law starts at the Government level (i.e. within the administration of the competent Ministry that is preparing the draft law, considering Ministries being the usual and the most important proposer of legislation). The Ministry responsible for preparing legislative proposals examines in advance the potential impacts of the proposals, also considering the compatibility and conformity of the draft legislation with the legal system as a whole.

According to Article 10 of the Rules of Procedure of the Government of the Republic of Slovenia proposed general acts must always first be coordinated with the Ministry of Finance and the Government Office for Legislation, which issues a written opinion regarding the draft law. One of the main tasks of the Government Office for Legislation is the examination of law proposals, submitted by the Government to the National Assembly, in terms of conformity with the Constitution, the national legal system and the EU law.

In the next step of the legislative procedure, the draft law is also reviewed by the Legislative and Legal Service of the National Assembly which issues opinions on the conformity of draft laws, other acts and amendments with the Constitution and the legal system.

2.2 Is there a hierarchy of laws?

The Constitution is the highest legal act in the hierarchy of legal acts in the Republic of Slovenia. All laws should be in conformity with the Constitution and with generally accepted principles of international law and valid treaties ratified by the National Assembly. There are no different types of laws, hierarchically no law is superior to other laws. In the event of a conflict between laws, the well established principles of legal interpretation should apply.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The Constitution provides (Article 3 a, paragraph 3) that legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights must be applied in Slovenia in accordance with the legal regulation of these organisations.

Regarding the EU legislation, it is directly applicable in the Republic of Slovenia, therefore no ratification or publication in the Official Gazette is necessary. Even though EU regulations are directly applicable legal sources, in certain areas further implementation, (which is left to national legislation, is required. Unfortunately, national legislation often stays either fragmented or even absent in this respect. The EU civil procedure regulations, where the lack of national legislation is a major obstacle for their effective application in Slovenia, are a good example of such kind. Regarding EU directives, which need to be implemented into Slovenia's legal system, it has to be stressed that this is often done uncritically and without taking into consideration the specifics of national legislation.

In the cases where national law contradicts EU law, national courts must follow EU law, without having to wait for the annulment of national law by the Constitutional court.

International treaties, of which the Republic of Slovenia is a signatory, enter into force once they have been ratified in a specific procedure by the National Assembly.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

The Constitutional Court decides on the conformity of laws with the Constitution. In cases of conflicts between national laws it is the task of the courts to determine (applying principles of interpretation that are generally accepted in legal theory and practice) which (national) law should be applied in a particular case. Nevertheless, the Constitutional Court has competence to assess conformity of conflicting laws if the constitutional principle of the rule of law is violated due to such laws.

The Constitutional Court also decides on the conformity of laws and other regulations with ratified treaties and general principles of international law.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Laws are adopted in the legislative procedure which consists of multiple stages (from discussing a draft law to tabling amendments (modifications and supplements), voting on the law, promulgating the law, or otherwise concluding the legislative procedure). The legislative procedure is governed by the Constitution and the Rules of Procedure of the National Assembly. The adoption of law can be proposed to the National Assembly by the government, individual deputies, by the National Council and by five thousand voters. The proposer of the law may propose that a preliminary reading be held within the competent working body. Following the preliminary reading, the working body adopts an opinion. The regular procedure in the National Assembly consists of three readings of the proposed law. The first reading is intended for the presentation of the draft law, the second reading of the draft law involves the debate and voting on individual articles or parts of the draft law within the working body or at a session of the National Assembly; it also includes modifications of and supplements to the draft law and the third reading involves the debate and voting on the draft law in its entirety. It is held at the session of the National Assembly. The discussion of draft laws by shortened or urgent procedure is only possible **under clearly defined conditions.** The National Council may veto an adopted law, and the National Assembly can override such a veto by a majority of all deputies.

The legislative power has a dominant role in this process, but in practice the executive power's role in the process is equally or even more important (since the government is the proposer of the law in the majority of cases)

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes, acts of the executive power are a source of (under-statutory) law in Slovenia. However if a judge considers an act of the executive power to be contrary to the Constitution or the law, he or she may refuse to apply such act and apply the law instead *(exceptio illegalis).*

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

As it can be seen from the number of amendments to laws and new laws adopted each year, the legislation in Slovenia are (too) frequently amended, sometimes (under the excuse of necessity) even unreasonably fast and reckless, which leads to non-transparency and induces a feeling of confusion among professional users and among general public.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Slovenia is an example of a continental law system in which the case law has traditionally not been recognized as a formal legal source. According to Article 125 of the Constitution, judges are independent in the performance of the judicial function and are bound only by the Constitution and laws, which means that the case law is not a binding (formal) legal source. The same follows from Article 11 of the Courts Act, which expressly states that "in applying the law the judge shall also be independent in relation to the court of higher instance, which has already expressed its legal opinion on the specific case".

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

In Slovenia case law does not have a binding legal effect, but in practice it functions as a source of law and it is of remarkable importance for judges (especially case law of courts of second instance and even more so the Supreme Court), on formal and informal level. It can be argued, that based on the constitutional requirement of equality before the law, the court case law is gaining a similar importance as pertains to formal legal sources.

The argumentative authority of courts of second instance and the Supreme Court is one of the reasons why judges of courts of first instance apply the settled case law in adjudicating cases, and usually follow the decisions of courts of second instance and the Supreme Court. The judges of the courts of first instance are motivated to closely monitor developments in the case law as this means that fewer of their judgements will be annulled or changed at the courts of higher instance.

There are features and evolutions in the Slovenian legislation, which reinforce the importance of case law, since the amendments of Administrative Dispute Act in 2007 and the reform of the civil procedure in 2008 have somehow introduced a kind of precedent character of Supreme Court decisions (see 3.8.).

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The Supreme Court, as the highest court in Slovenia, is responsible for ensuring the uniform case law in the country. It administers records (databases) on the case law of Slovenian courts and monitors the case law of international courts. It takes care for uniform case law and gives a final interpretation of the law as a guidance to lower courts.

The Supreme Court has a special Documentation Department, with the judge of the Supreme Court at the head of the department, which deals with general questions

concerning harmonisation of jurisprudence. Lower courts can address questions regarding new legislation to the Documentation Department and they can also express interest to prepare a special seminar on certain questions or to include such questions in regular training programmes. Additionally, the Documentation Department organizes regular meetings with the judges of lower courts, which focus on substantial issues of judicial work.

On the Supreme Court level, a special instrument that serves the purpose to unify the case law, are principled legal opinions (on issues important for the uniform application of the law), which are adopted by the Plenary Session of the Supreme Court. The principled legal opinions have the nature of a normative individual legal acts whose scope goes beyond a specific case. They are binding on all panels of the Supreme Court and, only by force of their reasoning, on lower courts. For lower courts is is constitutionally acceptable to deviate from the adopted principled legal opinion if such deviation is supported by reasoning.

On vertical level, the uniform application of law is achieved primarily through the case law of the Supreme Court. For example, the amendment of the Civil procedure Act in 2008 introduced a system of leave to file a revision, according to which a departure from a settled case law is one of the admissibility criteria for the extraordinary legal remedy (revision). In the event that a court of second instance departs from the case law of the Supreme Court, the last word concerning the disputable legal question is reserved to the Supreme Court.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgements of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are four specialized courts of first instance, competent to deal with individual and collective labour and social cases. Appeals against their decisions are heard by the High Labour and Social Court, which is a court of second instance. There is also the Administrative court which also has the position of court of second instance and deals with litigation concerning administrative matters.

Having said that, there is a single Supreme Court in Slovenia. It is possible to challenge final judgements of specialized courts before the Supreme Court. In most cases the grounds of appeal to the Supreme Court (defined as extraordinary legal remedies in our procedural laws) are limited to issues of substantive and procedural law. In administrative dispute, the Supreme Court also hears cases as the second instance when deciding on a complaint against a decision of first instance (first instance being the Administrative court which is competent for appellate procedure with regard to the administrative procedure before the administrative authority).

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The law, in particular the Courts Act, entrusts the Supreme Court (in Article 109) with the task of taking care of the uniform case law. The Courts Act (Article 108) also states that the Supreme Court manages records on the case law of courts in Republic of Slovenia and monitors the case law of international courts. Furthermore, it stipulates (Article 110) that the Plenary Session of the Supreme Court shall (among other matters) adopt principled legal opinions on issues important for a uniform application of law.

As already mentioned the uniform application of law is also achieved through the case law of the Supreme Court when deciding in a revision procedure, which is one of the extraordinary

legal remedies defined in Slovenian procedural laws (Civil Procedure Act, Administrative Disputes Act).

As to the constitutional dimension, see 3.7.

3.6 Are judgements of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

According to Article 110 of the Courts Act principled legal opinions of the Plenary Session of the Supreme Court are binding on all panels of the Supreme Court and may only be changed at a new Plenary Session. Although the principled legal opinions are legally binding only on panels of the Supreme Court, they also have a significant impact on lower courts, by force of their reasoning.

As already explained, the Supreme Court's judgements are not a binding (formal) source of law, and it is not obligatory for judges to follow them as the judges are (according to Article 11 of the Courts Act) independent in relation to the court of higher instance, which has already expressed its legal opinion on the specific case. Although no specific direct consequences affect judges if they do not follow the case law of the Supreme Court or courts of second instance, it should be noted that a large number of annulled or changed judgements of an individual judge, which deviates significantly from the average, may be one of the circumstances which may affect the assessment of work of the relavant judge.

3.7 If judgements of such courts are not obligatory, what kind of practical effect they may have?

As explained in question 3.2, the judges of courts of first instance usually follow the decisions of courts of second instance and the Supreme Court, which means that their judgements in practice function as a source of law.

It is also important to note that the settled case law also has a constitutional dimension since, according to the case law of the Constitutional Court, an arbitrary departure from a settled case law can be remedied through a constitutional complaint. There is however no absolute binding character of the case law and even the importance of legal precedent does not resolve a judge from his or her duty to always critically reconsider the settled case law and to strive for a correct interpretation and application of law.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

As already mentioned, the Plenary session of the Supreme Court adopts principled legal opinions on issues important for the uniform application of laws. This instrument is usually used to harmonize varying views of different departments of the Supreme Court or courts of second instance on different issues of law. These opinions are binding on all the panels of the Supreme Court and can only be changed at the new Plenary Session of the Supreme Court.

In the event of deviations from the settled case law the Supreme Court has a chance (and a duty) to unify the case law in the extraordinary legal remedies procedure.

According to the provisions of Civil Procedure Act, the Supreme Court grants permission to file a revision on points of law, if the case raises a question of law of fundamental significance, or if the development of law or the preservation or achievement of the uniformity of case law requires a decision by the Supreme Court, such as when it concerns a question of law in which the decision of the court of second instance departs from the case law of the Supreme Court or when it concerns a question of law where there is no case law of the Supreme Court and the case law of the courts of second instance is not uniform or when it concerns a question of law on which the case law of the Supreme Court is not uniform (Article 367 a of the Civil Procedure Act).

According to the Article 83 of the Administrative Dispute Act the revision is admissible, if the case raises a question of law of fundamental significance or when it concerns a question of law in which the decision of the court of first instance departs from the case law of the Supreme Court or when it concerns a question of law in which the case law of the court of first instance is not uniform and the Supreme Court has not yet decided on this point.

Preliminary rulings *in abstracto* are non existing in our legislation at the moment, but *de lege ferenda* a similar procedure is foreseen in draft amendments of the Civil Procedure Act in the form of advisory opinions of the Supreme Court to the courts of second instance.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

A departure from the settled case law is constitutionally acceptable only if it provides appropriate reasoning for such departure. Constitutional Court held that the court must not arbitrarily depart from an established case law, which can nevertheless be done if it provides appropriate legal reasons for such departure.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

As explained in question 3. 3., the Supreme Court as the highest court in the country is responsible for ensuring the uniform case law. The Plenary Session of the Supreme Court decides on principled legal opinions, which have a unifying function, although they are binding only on the panels of the Supreme Court.

Regarding the access to the Supreme Court, as a rule, the Supreme Court hears cases against rulings that become final at second instance courts. The grounds of appeal to the Supreme Court (defined as extraordinary legal remedies in our procedural laws) are limited to issues of substantive and procedural law. The exception is an appeal against a judgement of the court of second instance in criminal cases and against a judgement of the Administrative court. In administrative disputes, the Supreme Court also hears cases as the second instance when deciding on a complaint against a decision of first instance (first instance being the Administrative court which is competent for appellate procedure with regard to the administrative procedure before the administrative authority).

In general, the access is somehow limited in all types of cases, although in criminal cases a request for the protection of legality can be filed against every final judicial decision, but the applicant may only refer to grounds he was not able to state in his appeal against the first instance ruling or the court of second instance did not examine these complaints.

The extraordinary legal remedy in civil law (the revision) is now (after the 2008 reform) a remedy that depends mainly on the discretion of the Supreme Court. This is a “two step” procedure, since the question of whether a leave to file a revision should be granted is separated from the examination of the merits of the revision. Revision is admissible, if a leave has been granted by the Supreme Court. The Supreme Court is supposed to give such permission, if the case raises a question of law of fundamental significance or if the development of law or the preservation of uniformity of case law requires a decision by the Supreme Court. The law gives some examples when revision should be granted such as when it concerns a question of law in which the decision of the appellate court departs from the case law of the Supreme Court or when it concerns a question of law where there is no case law of the Supreme Court and the case law of the appellate courts is not uniform or when it concerns a question of law on which the case law of the Supreme Court is not uniform. (Article 367.a of Civil Procedure Act.).

It has to be noted here that the criterion of the disputed amount has been retained, but only partially. If the disputed amount does not exceed 2000 EUR or if it concerns a matter where revision is excluded by law then revision is inadmissible *per se* (Article 367, paragraph 3, of Civil Procedure Act.) On the other hand, if the amount in dispute exceeds 40.000 EUR (200.000 EUR in commercial disputes), then revision is admissible already by law and it is not necessary to obtain a leave from the Supreme Court. (Article 367, paragraph 2, of Civil Procedure Act.)

In the administrative dispute procedure the revision is admissible, if the case raises a question of law of fundamental significance or when it concerns a question of law in which the decision of the court of first instance departs from the case law of the Supreme Court or when it concerns a question of law in which the case law of the court of first instance is not uniform and the Supreme Court has not yet decided on this point. (Article 83 of the Administrative Dispute Act). In contrast to the revision in the civil procedure, a revision in the administrative dispute procedure is a “one step” procedure.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The Slovenian Constitutional Court closely monitors the European Court of Human Rights case law. In the argumentation of its decisions it often refers directly to the case law of the European Court of Human Rights.

In addition, according to the Criminal Procedure Act (Article 421, paragraph 4) if the European Court of Human Rights delivers a judgement where it finds that the final judicial decision is in violation of a human right and basic freedom, this is a reason to file a request for the protection of legality against the final judicial decision and also a reason to file request for the reopening of criminal proceedings (Article 416 of Criminal Procedure Act), both being extraordinary legal remedies in Slovenian criminal procedure. On the contrary, in civil procedure, where the European Court of Human Rights found a violation of the Convention on the Human Rights, this is not a reason to file any of the provided extraordinary legal remedies.

Regarding the application of EU law, national courts are not entirely free in their interpretation of EU law. If there is consistent case law of the ECJ, they have to follow it, if there is none and they are in doubt about the correct application of EU law, they can refer the question on the validity and interpretation of EU law to the ECJ. While courts of lower instances are not obliged to do so, courts adjudicating at last instance have a duty to seek a preliminary ruling. Referring preliminary questions to the ECJ has become a regular practice of Slovenian courts (currently, the number of preliminary questions referred by the Slovenian courts is 15).

The administrative department of the Supreme Court applies EU law the most frequently, as the provisions of EU law are mainly of vertical or administrative nature regulating the relations between the state and the individual, but also the civil, the commercial and the social and labour departments of the Supreme Court use EU law regularly. The criminal department is the least burdened with EU matters - the main legal source used remains the European arrest and surrender procedure warrant.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

All of the decisions of the Supreme Court, courts of second instance, the Higher Labour and Social Court and the Administrative Court along with the principled legal opinions of the Plenary Session of the Supreme Court are published on the judiciary website (https://www.sodnapraksa.si/) and are accessible by a free of charge search engine. The names of parties are not given, as the judgements are redacted before publication.

All published decisions of the Constitutional Court of the Republic of Slovenia are available on the Constitutional Court's website. The text of majority and separate (dissenting and concurring) opinions is given in full and free-of-charge.

3.13 Is the access to such database free of charge?

As explained in previous answer, such database is free of charge.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are several commercial and non-commercial providers of legal information in Slovenia, within the public and private sector, but they all get the information on case law from the Supreme Court's database through a right to access and re-use of the public information.

A few commercial providers have developed a quality payable portals, which are important tools for legal professionals and also general public. All judges are subscribed to one of such informational (payable - commercial) web portal offering inter-connected legal contents (legislation, jurisprudence, professional articles, collection of legal publication, news, etc.).

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern

society to use relatively broad definitions and legal concepts?

One of the future challenges is to make a clear distinction of competences between the Supreme Court as the highest court in Slovenia and the Constitutional Court as the highest body of the judicial power as far the protection of constitutionality, legality, human rights, and fundamental freedoms is concerned. This distinction is clearly stipulated in legislation, yet not always consistent in practice where the Constitutional Court sometimes tends to function as the court of fourth instance.

Regarding uniform application of law in a view of the settled case law, one can notice a significant progress. The Supreme Court has been putting efforts into building a stable case law to ensure predictability of judicial decisions. This goal has been largely accomplished in the field of civil law - the Supreme Court's decisions in the field of civil law are predominantly orientated to the public interest of ensuring the uniformity of case law and as such they have high level of predictability for the addressees of judicial decisions. On the other hand, challenges remain in the field of criminal law, where the Supreme Court's decisions still focus on the private interest of just and correct resolution of every individual case.

In summary, the role of the Supreme Court in unifying case law needs further to be strengthened. There are still certain fields of law where the law lacks consistency, mainly due to shortcomings of procedural legislation. Moreover, frequent changes of the legislation do not contribute to the unification of the case law and legal certainty.

3.16 Any other point you wish to raise.

Sweden / Suède

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The only formal provision in the Swedish Constitution which is relevant in this context states that courts and public authorities shall observe that everyone is equal before the law. This is further emphasized in the same provision when it is stated that courts and public authorities shall also act objectively and impartially.

Nevertheless, the uniform application of the law is commonly understood as a fundamental value to be respected by the legislator, public authorities and courts.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

There is a strive for consistency at the legislative level through, inter alia, the work of the Council on Legislation, which is an institution composed of three members, or former members, of respectively the Supreme Administrative Court and the Supreme Court. Most, if not all, Government bills are sent to the Council on Legislation for scrutiny before being presented to Parliament. In a public statement the Law Council will evaluate the proposed legislation from various aspects, such as constitutionality and consistency with the legal order in general.

Uniform practices by public authorities are intended to be secured by the possibility to appeal against administrative decisions before the administrative courts. This is also true with regard to some decisions by the law enforcement bodies. In cases when an appeal is not possible or useful – for example house searches and other immediate actions by the police – a complaint may be made to the Parliamentary Ombudsmen.

The uniformity of case law is ultimately secured by the supreme courts.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The uniform application of the law is intended to secure the equality before the law and the principle of legal certainty.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Before the Government takes position on the recommendations of a commission of inquiry, its report is referred for consideration to the relevant bodies. When the referral bodies have submitted their comments, the ministry responsible drafts the bill that will be submitted to the parliament (Riksdag). If the proposed law has important implications, the Government should first refer the proposal to the Council on Legislation. The examination of the Council on Legislation aims to examine the draft laws from a legal viewpoint. See also answer to question 1.2.

2.2 Is there a hierarchy of laws?

Yes, there is a hierarchy of laws. In Sweden, a constitutional act is higher ranked than ordinary acts, which are counted before Governments regulations and statutory instruments. Special law has in interpreting legislation precedence over a law which only governs general matters (the principle lex specialis derogate legi generali). A more recent law has precedence over an older regulating the same matter.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

In Sweden, transformation, i.e. convention rules revised to Swedish law, is the method that has so far dominated. Even incorporation of conventions, both in its entirety or in some special parts occurs. The European Convention for the Protection of Human Rights and Fundamental Freedoms is an example of a convention as a whole has been incorporated into Swedish law. EU law has a special status in Swedish law. Some EU law will, despite the fact that Sweden is a dualist state, be directly applicable in Sweden as soon as adopted in the EU.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Contradictions between national laws need to be addressed by the courts, in the final analysis by the supreme courts. The same is true with regard to contradictions between "ordinary" national law and treaty provisions having been incorporated into national law. Concerning non incorporated treaty provisions, Swedish courts are under an obligation to as far as possible interpret national law to bring it into conformity with our international obligations.

However, in the case of conflict between EU law and Swedish law, EU law should apply.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Most legislative proposals are initiated by the Government but bills can also be based on suggestion put forward by the Riksdag or by private citizens, interest groups or public authorities.

The matter is first analyzed and evaluated by a commission of inquiry or a one-man committee or by officials from the ministry. The reports and conclusions are published in the Swedish Government Official Reports series (SOU).

The report is then referred for consideration to relevant bodies (e. g. government agencies, special interest groups and local government authorities). After the referral process the responsible ministry drafts the bill. If the bill has important implications it is submitted to the Council on Legislation to ensure that it does not conflict with existing legislation, before it is submitted to the Riksdag who is responsible for approving all new or amended legislation. Before a bill is put forward to the plenary it is discussed in one of the standing parliamentary committees.

When a law has been passed by the Riksdag it is formally promulgated by the Government and published in the Swedish Code of Statutes (SFS).

Consequently, the executive normally possesses the power of initiative and of formulating the problem whereas the legislative power naturally has the final say. The power of each institution within the process of course also depends on whether it is a minority government or not.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Yes, the Government´s regulations are legally binding for the courts.
See also answer to question 2.2 for the hierarchy of laws. However, except for a very limited field of law, the Government must base its regulatory powers on provisions of law enacted by Parliament.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

The law making process is well established and well-functioning. It is difficult to say that laws are <u>too</u> often amended, since Government and Parliament in modern society are frequently faced with new developments and challenges.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The court case law in Sweden doesn´t have binding legal effect in the literal sense. It is an important source of law but not to the same extent as the national legislation. Decisions of the Supreme Court and the Supreme Administrative Court are viewed as precedents. Court of appeal judgements are not regarded as precedents, but are seen as important means to provide guidance for the inferior courts and to achieve uniform and consistent implementation of the law in the lower courts.

Thus you may say that the predominant legal position in Sweden is that precedents are not formally binding in the same sense as national legislation. Nevertheless, precedents handed down by the supreme courts are de facto treated as a source of law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

As follows by the answer to 3.1, precedents are not formally binding, but judges in the lower courts should and do accept guidance to develop a coherent body of judicial practice which can be observed by all courts and which can make it possible for parties to court proceedings to foresee the outcome.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

In a more general sense, every court has a role to unify case law. Courts of first instances are of course expected to treat equal cases equally and courts of appeal are expected to correct mistakes of this nature. Furthermore, the duty of the two supreme courts is fundamentally to adjudicate only those cases where the judgment may serve as a precedent. Therefore, there is a filtering system allowing the supreme courts to refuse to adjudicate cases that do not have this quality. Consequently, in most cases the courts of appeal are effectively courts of last instance and thus play an important role to ensure the uniform application of the law.

Within courts of appeal, there normally is a senior judge at each division who has a responsibility to discuss general legal issues with his or her colleagues from the other divisions in order to arrive at a common understanding within the court.

Once a year the Supreme Administrative Court brings together the presidents and senior judges from the administrative courts of appeal to hear their view on which legal issues need to be addressed by way of a precedent. This helps the Supreme Administrative Court to identify areas where there is a non-uniform application of the law by the lower courts.

Along the same line, the Supreme Court organizes meetings, at irregular intervals, with for example the Bar Association and the Prosecutor General´s Office.

The decisions of the Supreme Court are reported in part I of Nytt juridiskt arkiv (NJA) since 1874. Some decisions are reported in full, while less important ones are reported in an abbreviated form. Every full report starts with a headline describing the main point of the case. The method to report cases adjudged in the Supreme Administrative Court is basically the same. The Supreme Court´s precedents are also published on their websites. A small selection of the Court of appeal decisions is reported in Rättsfall från hovrätterna (RH) since 1980. It is each individual judge´s responsibility to keep updated on current case law.

Furthermore, it is common for the individual courts to have so called case law-meetings where the judges discuss how precedents and Court of appeal decisions should be interpreted and applied.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

Formally there are two specialized courts in Sweden.

1) ***The Labour Court*** *is a special court with the function of considering law disputes. Certain types of labour dispute may be brought directly before the Labour Court. In such cases the Labour Court has exclusive jurisdiction. In other types of dispute claims must be brought before the ordinary District Court. If any party is dissatisfied with the district court´s judgment they can lodge an appeal with the Labour Court. In either case the judgment of the Labour Court is the final judgment in the dispute since Labour Court judgments cannot be appealed.*

2) ***The Defense Intelligence Court*** *is a special court with the task of examining applications from SIGINT Agency (FRA) authorizing signals. The decisions of the court cannot be appealed.*

   In addition, there are specialized divisions, acting in their own name, within the general court system and within the administrative court system.

3) ***The Patent and Market Court*** *(which is a division of Stockholm District Court) and the* ***Patent and Market Court of appeal*** *(which is a division if Svea Court of Appeal) are specialized divisions of the general courts that deal with cases matters relating to intellectual property law, competition law and marketing law. Patent and Market Court judgments and decisions can be appealed to the Patent and Market Court of Appeal. Generally, decisions reached in the Patent and Market Court of Appeal cannot be appealed except for judgments and decisions reached in criminal cases. In certain instances, the court can grant leave for a judgment or decision to be appealed to the Supreme Court. If that were to happen, the Supreme Court would also need to grant leave to appeal before the case could be heard.*

4) ***The Land and Environment courts*** *and* ***the Land and Environment Court of appeal*** *are equally specialized divisions within the general court system.*

5) ***Migration Courts*** *are specialized divisions within the administrative court system for aliens and citizenship cases. These cases can be appealed to the* ***Migration Court of Appeal*** *who examines the Migration Court decisions. The Migration Court of Appeal is the final instance.*

6) ***Regional rent and tenancies tribunals****. The regional rent tribunal mediates in disputes relating to domestic premises and business premises. The regional rent tribunal also makes decisions on certain issues, for example, the right to sublet an apartment. Tenancy disputes that are not dealt with by the regional rent tribunal are considered by a general court. The decision of the Regional Rent Tribunal can be appealed against in writing to Svea Court of Appeal. A decision by Svea Court of Appeal in a case that has been appealed against from the Regional Rent Tribunal cannot be appealed against and thus represents a final determination of the dispute. Some of the decisions of the Regional Rent Tribunal cannot be appealed against. For instance, this applies to permissions for exchange of apartment and subletting of an apartment.*

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

See answer to question 3.3.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

The answer is no on all counts.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

See answer to question 3.1-2.

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Contradictions or deviations in case law are usually resolved by the Supreme Court or the Administrative Supreme Court giving leave to appeal to one or more cases to clarify the matter by precedence.

In civil cases, there is a possibility for a court of first instance to directly ask the Supreme Court for a preliminary judgment on a specific question of law.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

As mentioned above case law is not binding for the Swedish judges, but has great impact as guiding precedents.

A precedent can become obsolete by new legislation (on national or European level) or by the development of society and under such circumstances the courts can or should depart from existing case law.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Supreme Court and the Administrative Supreme Court are the main courts establishing precedents.

Leave to appeal to the Supreme Court is regulated in Chapter 54 Section 10 of the Swedish Code of Judicial Procedure and, to the Administrative Supreme Court in

Section 33 of the Administrative Court Procedure Act. Leave to appeal may be granted if two cases:

1. *If it is of importance for the guidance of the application of law or*
2. *If there are extraordinary reason for such a determination, such as that grounds exist for relief for substantive defects or that a grave procedural error has occurred or that the result in the court of appeal is obviously du to gross oversight or to gross mistake.*

See also answer to question 3.3.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The European Convention on Human Rights is since 1995 Swedish law and the case law of the European Court of Human Rights is, like case law from the Swedish supreme courts, guiding precedents. In the same manner the case law from the ECJ also form case law to be observed by Swedish courts. As mentioned in question 3.3 it is the task of each judge to be updated on relevant case law, national as well as international, and it is available in the databases used by the courts (se answer to question 3.12).

The Parliamentary Ombudsmen (JO) has a significant role in ensuring compliance with the fundamental rights outlined both in the Instrument of Government but also in the European Convention.

In short, it is the task of JO to ensure that public authorities and courts abide by the constitutional provisions of impartibility and objectivity and that public authorities and courts does not infringe on the basic freedoms and rights of the citizens. Thus, JO has a significant role in the unification of case law.

Case law of quasi-judicial bodies does not have precedent in Swedish courts and the influence of such case law is therefore limited. Of course it can serve as guidance in relevant matters.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

The two supreme courts and the appellate courts publish their cases in printed form as described in question 3.3.

Case law is also available online on the courts websites.

The website www.lagrummet.se is a portal for Swedish public administration legal information. On this website landmark cases from the supreme courts are published. It also links to various international sources of legal information (e.g. the ECHR, the ECJ, EUR-lex).

The government´s official website, www.regeringen.se, also contains legal information and links to the above mentioned lagrummet.se for information on case-law.

There is also a private, non-profit, website, www.lagen.nu, which provides access to legal information containing all statutes published in SFS as well as case law from the supreme courts and other courts.

All the above mentioned is available free of charge.

Judges and other legal professionals also use legal databases provided at a fee by independent publishing/information companies. These providers operate on commercial bases. These databases contain legal information such as case law but also doctrine and comments/analysis on law, government bills and other legislative history as well as case law.

3.13 Is the access to such database free of charge?

See answer to question 3.12.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

See answer to question 3.12.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The need to use relatively broad concepts or standards – such as "reasonable", "necessary" or "sufficient" – in modern legislation naturally leaves a considerable room for interpretation by the courts. Swedish courts normally takes what has been stated in the travaux préparatoires into consideration when interpreting the law and especially such more broad concepts. Nevertheless, it may lead to deviating interpretations and a need for unification, ultimately by the supreme courts.

3.16 Any other point you wish to raise.

Switzerland / Suisse

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

The concept of uniform application of the law is to be seen in correlation to the equality principle. As well as the legal norm itself, that is meant to impose the same duties on every person and confer the same rights to every one in the same position, the uniform application serves the equality of treatment by the law. The Federal Constitution of the Swiss Confederation states in art. 8 as a fundamental right, that every person is equal before the law. The concept of uniform application of the law is applied in practice through common understanding.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

There is a difference in theory between legislation – that should be consistent – and application of the law – that should be uniform. Legislation should be consistent and respect the hierarchy of norms, which roughly means: Constitution on top level (majority of people and Cantons) – then statutes (Federal Parliament, possibly referendum) – and then edicts (Government). Administrative authorities have to apply the law equally. They have to develop uniform practices and there is in general a possibility for persons concerned to appeal.
Uniform application of the law and the development of case law is a core mission of the judiciary.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

As above-mentioned, the uniform application of the law serves the equality of treatment before the law. As every person in the same situation is treated in the same way, the citizens should feel confident to respect the law.

2. Role of the legislative and executive powers in ensuring the uniform application of the law.

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The legislative process as such is in general statutory. If the intended norm is in conflict with higher legislation (e.g. Federal legislation is higher than cantonal and cantonal higher than communal) there is in general a legal remedy for citizens concerned to appeal to authorities (Government or Court).

2.2 Is there a hierarchy of laws?

Yes (s. 1.2).

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The Federal Parliament is made aware of international law in the legislative process by the Government, that has to deliver a report about international obligations when submitting the proposals for new legislation in the ordinary legislative process. International treaties that confer rights to citizens are directly applied.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Art. 190 of the Federal Constitution states that the Federal Supreme Court and the other judicial authorities apply the federal acts and international law. Traditionally treaties have been applied at the same level as national federal statutes and the international human rights acts at the same level as the Federal Constitution. There is a political controversy about the hierarchy at the moment.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The Parliament has in practice the dominant role. The Government is involved in the preparation and the people can often vote in a referendum (on request of a certain amount of citizens, less often mandatory).

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

They are source of law but not binding for the courts.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Every body complains about this.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

Case law has no formal binding legal effect. Formal source of law is (federal and cantonal) legislation. Case law may become a source of law when it is generally accepted by every body (consuetudinary law, droit coutumier).

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

It is generally accepted, that case law has to be complied with or else there has to be a convincing reasoning for not applying it.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

There are in principle different state levels (Federation, Cantons) and accordingly different bodies of law. So cantonal Courts – Cantonal Supreme Courts – are in charge to issue leading cases for their field of law, the Federal Supreme Court is in charge to ensure the uniform application of the Federal Law by issuing leading cases in application of the Federal Law.

Every Court or Panel has to ensure its responsibility for the decision of the case submitted to it. If it is not competent, it has to dismiss the case. There are exceptions, so that in doubtful situations the courts potentially responsible exchange opinions.

Within the Federal Supreme Court there exists a procedure of exchange opinions. If a section intends to change the case law established by another section, then an exchange opinions is mandatory. If there is a fundamental legal question to be answered that may concern other sections as well, an exchange opinion is possible. In any case the section responsible for the case that rises the controversial question of law submits this question and the answer to it by the majority of the judges is mandatory for the decision of the case.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There is a general structuring in administrative courts, correctional courts and private law courts. The federal Supreme Court is responsible for hearing cases of each branch, but has formed sections to deal with the cases of the respective fields.

Each Canton has its own court system. In principle appeals can be lodged with the Federal Supreme Court against decisions of the Supreme Cantonal Courts. Some Cantons have specialised (supreme cantonal) courts for instance in

labour or tenant law. Judgements issued by such specialised courts can be challenged before the Federal Supreme Court in the same way as decisions issued by other Cantonal Supreme Courts.
On federal level there are an administrative, a correctional and a patent Court of first instance. Their judgements can in general be appealed before the Federal Supreme Court.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

The unification of case law is indirectly determined by the respect of the equality before the law (Constitution) and the possibility to challenge decisions of administrative bodies and courts before the Federal Supreme Court. The responsibility of the Federal Supreme Court in the unification of case law is recognised by long lasting practice.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

  - **The judgement of the court when issued is binding for the court itself and the parties concerned cannot bring up the same issue again (res judicata). If the judgement cannot be appealed, it is binding for all courts and judges. If it is appealed, the appeal admitted and the case sent back, then the rationale of the court of appeals decision is binding for the new decision of the lower court.**

Judges are not held responsible personally, if they do not follow the case law of higher courts. If they give a good reasoning for not following, they may even contribute to the further development of case law.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

Appeals to higher court are in general admitted, when established case law is disregarded.

Contradictions in the case law between different sections of the Federal Supreme Court can lead to a procedure of exchange opinions (s. 3.3).

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be

regarded as permissible or maybe even necessary to depart from the case law?

If the facts have changed in a relevant way, exceptionally also, when strong reasons require a reconsideration.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

Establishing uniformity in the application of law is the mission of the Supreme Court.

Appeals can be lodged in potentially every branch of law against decisions of the Supreme Courts of the Cantons and of Federal Courts of first instance. As a rule there is no appeal against the establishment of the relevant facts, but the incorrect application of the law to the case can be censured.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

There are statutory norms in the statutes of procedures that allow a particular appeal so that the decision brought before the European court of Human Rights can in case of admission be decided anew.

There is widespread disappointment about the quality of decisions of the European Court of Human Rights, so that they are rather looked upon as decisions on a by-case basis and treated accordingly.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

All the judgements rendered by the Federal Supreme Court are published on internet and accessible via home page of the Court. They are accessible for the general public, including legal professionals.

For judges and law clerks there is an in-house database accessible through norms, key words etc.

3.13 Is the access to such database free of charge?

The access to the judgements of the Federal Supreme Court is free of charge. There is a charge for an access per thesaurus (more limited than the in-house database).

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?
There are periodicals and other providers on a commercial basis. They are independent.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The large amount of information and heavy workload leads to time-consuming research. Sometimes decisions that should have taken into account as precedents are ignored.

3.16 Any other point you wish to raise.

"The former Yugoslav Republic of Macedonia"/ « L'ex-République yougoslave de Macédoine »

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

According to the Constitution, judiciary power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution.The Supreme Court is the highest court, providing uniformity in the implementation of the laws by the courts. (art.98 and art. 101 of the Constitution). The uniformity of the implementation of the laws is not explicitly mentioned in the basic goals and functions of the judicial power in the Law on Courts, but, indirectly, through indicating the principle of legal certainty based on the rule of law. The role of the SC in unification of the laws is furthered developed through the provisions in the Law on courts and through the rules on legal remedies in the procedural laws. The SC, at a general session, among other competences, defines general views and legal opinions about issues of significance for provision of single application of the laws by the courts upon their own initiative, initiative of the session of judges or the session of the court divisions in the courts and shall publish them on the web site, give opinions upon draft laws and other regulations when they regulate matters of significance for the work of the courts, review issues concerning the work of the courts, the application of laws and the court practice. The decisions and the general views and legal opinions adopted on the general session are binding for all of the councils of the Supreme Court, but not for the lower courts. The SC can review issues concerning the work of the courts, the application of laws and the court practice. This court submits an annual report for the determined general views and legal opinions on issues of significance for provision of single application of the laws by the courts to the Judicial Council and shall publish it on the web site of the court.

Law on Courts regulates that the courts shall rule and establish their decisions on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution. The procedure before the court is regulated by law and is on the principles of legality and legitimacy, equality of parties, trial within a reasonable period of time, fairness, publicity and transparency, contradiction, two instance procedure, sitting in a panel, oral hearings, directness, the right to defence, that is, representation, free evaluation of evidence, and economy. As regards the source of law, it is stated that the courts shall rule and establish their decisions on the basis of the Constitution, laws and internationalagreements ratified in accordance with the Constitution. The goals and functions of the judicial power shall include: impartial application of law, regardless of the position and capacity of the parties, protection, respect and promotion of human rights and fundamental freedoms, provision of equity, equality, no discrimination on any ground, and provisions of legal certainty based on the rule of law.

As regard the role of the Judicial council towards uniform application of the laws and unified judicial practice, one of its competences is " to examine the annual report of the Supreme Court regarding the determined fundamental principles and fundamental legal opinions upon issues of importance for the purpose of securing unity in the application of the laws;", but it is not stipulated what consequences there will be for the Supreme court for not fulfilling this legal obligation neither it is foreseen what

are the steps undertaken by the Judicial Council for supervising the implementation of these legal opinions and stands.

As regard of the rights and obligations of each individual judge and presidents of the courts, in the Law on courts, there are not specific legal obligations for following the decisions of the higher courts, other then the ones foreseen in the particular procedural laws. Also, not fulfilling the directions given by the higher court upon an appeal, does not have a disciplinary consequence, but only as a result of determining the breach of disciplinary procedure (Unprofessional and neglectful exercise of the judicial office that includes insufficient professionalism or negligence of the judge that affect the work quality and efficiency : if during one calendar year, the Judicial Council establishes inefficient and unproductive conduct of the court procedure due to the judge's fault, if the judge, due to his/her fault, exceeds the legal deadlines for undertaking procedural activities, the legal deadlines for adoption, announcement or preparation of court decisions in more than five cases, or if during one calendar year, more than 20% of the total number of resolved cases are abolished or more than 30% of the total number of resolved cases are altered).

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- **uniform case law developed by courts.**

Please explain each point and indicate the relative importance of each point.

There are no provisions in the Constitution or in the Law on the parliament or the Law on Government that there should be consistent legislation or uniform practices by the executive branch, but informally the other two powers through the creation and implementation of the state politics and intergovernmental cooperation take into consideration the need for proposing and adopting consistent legislation.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

All general principles of a democratic state governed by the rule of law that are: legal certainty, foreseeability, predictability, equality before the law, prevention of corruption in the judiciary.

2. Role of the legislative and executive powers in ensuring the uniform application of the law. No

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process? No.

2.2 Is there a hierarchy of laws? The hierarchy is as following: The constitution, ratified international treaties, laws, bylaws. As regard the promoting the concept of case law as a source of law, there are few projects (mostly financed by common law states, UK mostly), trying to introduce the role of the case law, not as precedents, but in an argumentative aspect (using the judgements in a legal argumentation of the decisions), that is also very difficult to be accepted as a concept by judges deriving from a civil law system. One of the reasons for this trends and "new winds", were the recommendations given by the recent EC Progress reports on Macedonia. As it was noted in the 2014 and 2015 Reports: "…certain systemic improvements to the quality of justice are needed, especially in the sense of greater and more consistent use of superior court and ECHR case-law, in order to improve even more the level of predictability and legal certainty for individuals and businesses using the courts. The most common view expressed in the context of whether court practice is considered as a source of law, was that it does not constitute a source of law. This view among practitioners are based on Article 98 of the Constitution, according to which, the court practice cannot constitute a source of law. At the same time, although with some reticence, the national courts started to call upon and use the jurisprudence of the ECHR in the judgments of higher courts such as the Supreme and the Constitutional court.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

The conformity is used through the provision that the international treaties ratified by the Parliament are direct source of law. As regard conformity with national laws, it is foreseen that the court shall raise an initiative for conducting a procedure to assess the compliance of the law with the Constitution when the procedure questions its compliance with the Constitution, and shall inform the next higher court and the Supreme Court. If the court deems that the law to be applied in a particular case is not in compliance with the Constitution, and the constitutional provisions cannot apply directly, it shall suspend the procedure until the Constitutional Court adopts a decision. If the court deems that the application of the law in a particular case is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement, provided that they may be directly applied. In the particular cases, the court shall directly apply the final and enforceable decisions of the ECHR, the International Criminal Court, or another court, the jurisdiction of which is recognized by the Macedonia, should the decision be proper for enforcement.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

See in 2.2

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The Assembly adopts and changes the Constitution, adopts laws and gives the authentic interpretation of laws. The Assembly may work if its meeting is attended by a majority of the total number of Representatives. It makes decisions by a majority vote of the Representatives attending, but no less than one-third of the total number of Representatives, in so far as the Constitution does not provide for a qualified majority. The meetings of the Assembly are open to the public. The right to propose adoption of a law is given to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters. The initiative for adopting a law may be given to the authorized instances by any citizen, group of citizens, institutions or associations.

Laws are declared by promulgation, signed by the President of the Republic and the President of the Assembly. The President of the Republic may decide not to sign the promulgation declaring a law. The Assembly reconsiders the law and the President of the Republic is then obliged to sign the promulgation in so far as it is adopted by a majority vote of the total number of Representatives. The President is obliged to sign a promulgation if the law has been adopted by a two-thirds majority vote of the total number of Representatives in accordance with the Constitution.

In the reality, the Government as the dominant role. According to the legislation, it determines the policy of carrying out the laws and other regulations of the Assembly and is responsible for their execution, proposes laws, adopts bylaws and other acts for the execution of laws, lays down principles on the internal organization and work of the Ministries and other administrative bodies, directing and supervising their work, provides appraisals of drafts of laws and other acts submitted to the Assembly by other authorized bodies.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

There are decisions that are binding for the presidents of the courts and holders of other managerial tasks in the judiciary, but they do not affect the individual judges in solving individual cases. In a case of war or extraordinary situation for the state, the Government can adopt orders with legal force.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

The laws have been changed very frequently since Macedonia has gained a candidate status for entering in EU, since then, all current legislation has been constantly changing towards harmonization with the EU legislation, implementing the obligations from the EC, but as well, the obligations towards other international organizations and their monitoring mechanisms GRECO, MONYVAL, UNCAC, CPT ect. In addition to the very frequent amendments of the substantive and procedural laws (introducing a new adversarial concepts of the criminal and civil procedure,)another problem is that adequate financial, technical and material resources and transitional and final provisions are not ensured for the proper implementation of the new laws that has a result in legal uncertainty for the citizens, but as well for the institutions responsible for their implementation.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The national case law is not a source of law. The case law of the ECHR is directly applicable by the courts only in a case of application of the Law on civil liability for defamation and in application of the new legal remedy in front of the Supreme court for violation of fair trial in a reasonable time

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

As Macedonia belongs to the civil law countries, there has been a low degree of attention paid to the unified court practice as a binding consideration in the legal sphere.

Although the legal standings and the decisions of the SC are not binding for the lower courts, in reality, a judge would rarely go outside of the doctrine established by a particular legal standing. The fact is that one of the principle powers of the SC is to provide for unified application of laws, implies that the SC is responsible for following, summarizing and ultimately publishing its most leading cases, as well as issuing legal opinions and principal legal standings. It has appointed a court practice judge in order to manage this particular task. In the past, the publication of the judgments and legal opinions was done more frequently, while in the last couple of years this is not the case. The publication of the various decisions, principle standings and legal opinions of the SC is usually done with a financial help from international donors, that will be overcome with the launch of the new software system due to be completed soon.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are no specialized courts, but only departments. There is an Administrative court for whole territory of Macedonia and their decisions can be appealed in front of the Higher Administrative court, that publishes their decisions on the web site of the Higher Administrative court.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

3.6 Are judgments of such courts(mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts(appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

The Academy for judges and prosecutors organize, on regular basis, round tables for unifying court practice in all 4 appellate courts for civil and criminal law issues, and on request of the appellate courts. These courts raise the problematic issues related to not uniform application that are then distributed among all 4 Appellate courts and on the joint events, they come to conclusions on particular questions that are binding for them and for the lower courts under their jurisdiction.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The competences of the SC are to decide in second instance against the decisions of its councils, when determined by law; decide in third and last instance upon appeals against the decisions of the courts of appeal; decide upon extraordinary legal remedies against the legally valid decisions of the courts and the decisions of its councils, when determined by law; decide upon conflict of competences between the basic courts on the territory of different courts of appeal, conflict of competences between courts of appeal, conflict of competences between the Administrative Court and another court, conflict of competences between the Higher Administrative Court and another court, and to decide upon transfer of territorial competence among these courts; decide upon a request of the parties and the other participants in the procedure for violation of the right to trial within a reasonable period of time, in a procedure defined by law before the courts in accordance with the rules and principles determined by the ECHR and directed by the court practice of the ECHR, and other activities determined by law. (art.35 of Law on courts)

The Law on courts from 2006 introduced a new legal remedy towards uniform application of the laws and according to the ECHR decisions it is considered as an effective legal remedy. Namely, the party that considers that the competent court has violated its right to trial within a reasonable period of time, shall have the right to submit a request for protection of the right to trial within a reasonable period of time to the Supreme Court. If the Supreme Court establishes violation of the right to trial within a reasonable period of time, by a decision, it shall define a deadline for the court, in which the procedure is under way, to decide upon the right, obligation or criminal liability of the party submitting the request and shall rule fair compensation for the party submitting the request due to violation of its right to trial within a reasonable period of time.(art. 36).

As regard the legal remedies in competence of the Supreme Court in a criminal procedure there is one regular and two extraordinary legal remedies:

An appeal against the judgment of the second instance court with the court that adjudicates in third instance shall only be allowed if the second instance court passed a sentence of life imprisonment, or if it affirmed such a sentence passed by first instance court's judgment, if the second instance court passed a verdict on the basis of a hearing held and if the second instance court reversed the judgment of the first instance court whereby all charges have been dropped against the defendant and then passed a verdict declaring the defendant guilty.The third instance court shall rule on the appeal against the second instance judgment during a session of the chamber in accordance with the provisions that are applicable to the second instance procedure. There shall be no hearing before this court.

The Chief Public Prosecutor may file a motion for protection of legality against judicial verdicts that have entered into effect if there was a violation of the Constitution, the law or an international agreement that was ratified in accordance with the Constitution. The court shall deny the motion for protection of legality as ungrounded with a verdict, if it establishes that there is no violation of the law as referred by the public prosecutor in his or her motion. The Supreme Court shall rule on the motion at a session. If the court finds the motion for protection of legality to be grounded, it shall pass a verdict in accordance with the nature of the violation and it shall reverse the decision that entered into effect, or it shall completely or partially nullify the decisions of the first instance and the higher court, or the decision of the higher court only, and return the case to be adjudicated again or to be tried by the first instance or the higher court, or the court shall limit itself only to the establishment of any violations of the law. If the judgment that entered into effect has been nullified and the case returned to be tried again, the former indictment shall be taken as the basis, or one of its parts that refers to the part of the judgment that has been nullified. Before the first instance, i.e. second instance court the

parties may present new facts and tender new evidence and move for additional procedural actions in order for the issues identified by the SC in its decision to be clarified.

Any person validly convicted to an unconditional prison sentence or juvenile prison of at least one year and his or her defense counsel may put forward a motion for exceptional re-examination of the judgment that entered into effect, due to violations of the law in the situations as provided for in this Law, within 30 days from the day when the defendant received the final and enforceable judgment. Any convicted person who did not use a regular legal remedy against the judgment may not put forward a motion for exceptional re-examination of an enforceable judgment, except if the judgment of the second instance court, instead of acquittal, court reprimand, probation or a fine, provided for a prison sentence, i.e. juvenile prison instead of an educational measure. A motion for an exceptional re-examination of a final and enforceable decision may not be put forward against a judgment of the Supreme Court. The Supreme Court shall rule on any motions for exceptional re-examination of a final and enforceable judgment. This remedy can be put forward due to certain violations of the Criminal Code to the detriment of the convicted person, and of the CPC listed.

The parties can announce revision against the legally valid verdict adopted in second instance within a period of 30 days as of the day of serving the copy of the verdict, if the value of the subject of the case of the abnegated part of the verdict exceeds 1.000.000 Denars. As an exception regardless of the value of the dispute, the revision shall always be allowed in support disputes, in disputes on damage compensation for lost support due to death of the supporter, labour disputes, in disputes on royalty protection, except for monetary claims based thereon, in disputes referring to protection and use of findings and technical promotions, samples, models and seals and to the right of use of business name or title, as well as in disputes from disloyal competition and monopolistic behaviour, except for monetary claims based thereon and in disputes in which the court of second instance has altered the verdict of first instance upon an appeal. As an exception, revision shall be as well allowed against a verdict of second instance against which a revision cannot be announced, unless the court of second instance has approved so in the pronunciation of the verdict it has reached. The court of second instance can allow revision in defining the scope of the legal issue that would have been raised with the Supreme Court if it assesses that the decision in the dispute depends on deciding certain material or process legal issue important for ensuring single application of the law and harmonization of the court practice. In the explanation of the verdict, the court of second instance shall be obliged to state due to which legal issue it has approved the revision and shall the decisions pointing to uneven application of the law, as well as to explain the reasons why it considers ensuring a single application of the law and harmonization of the court practice is important. The Supreme Court of the Republic of Macedonia shall decide upon the revision.

It should also be noted that the general understanding of the legal community, particularly the lower courts, is that the previous decisions of the Supreme Court are of a persuasive nature, rather than a binding one. In connection with the issue of formulating special opinions by the Supreme Court, referred to as sentences, as part of the jurisprudence, i.e. selecting only certain elements of the decisions of the Supreme Court to be binding on the lower courts, overall, it does not appear to be a recommendable system. It is obvious that achieving a higher degree of unification of court practice would not be possible without an explicit reference to jurisprudence, which has been consulted and used as a tool of argumentation, within the judicial decisions. In this manner, an environment for unification of court practice will be created, which will provide for higher predictability and legal certainty.

THE ROLE OF THE NEW ESTABLISHED DEPARTMENT FOR AND EXPLANATIONS GIVEN BY THE SUPREME COURT

The process for unification of the jurisprudence is in good direction; however, it entails active participation of all concerned bodies and institutions. With the appropriate support, and especially with the increased number of professional associates and councillors who would be hired strictly for this area, as well as the latest technical equipment, such process would be conducted quite fast. Namely, the activation of the new Court portal is in progress, which would enable much easier search of all court decisions, and especially the ones adopted in the SCRM, as well the determined principal opinions, principal legal attitudes and sentences adopted on the department session, on the mutual sessions of departments or sessions of judges systematized per legal areas. This practically means that one of the primary tasks set before the SC court is resolving problems by interpreting the domestic legislation. All of the aforementioned, derives from the fact that the instruments in the judicial profession entrusted for protection of the human rights and freedoms, i.e. the Constitution, the law and the international contracts ratified in accordance with the Constitution gain their meaning via the court decisions concerning the "live" mater, and therefore such instruments should be used in compliance with the contemporary and dynamic life. This undoubtedly implies the need of comprehensive interpretation of the law which continues to evolve, whereby the meaning and purpose of the law in the course of the realization and protection of the human rights must be maintained. In the jurisprudence, one faces with numerous situation where the law does not contain decisive solution, i.e. oversights in the law can be detected, since the legislator cannot always foresee all possible situations related to the materialization of the law.

In the current condition, and in accordance with the legal regulations, all adopted court decisions are published on the website of every court; however, appropriate search is not possible (e.g.: by using a key word), which means that it takes a lot of time for every judge and all other users to search the needed court decision expressed via the court decisions.

One of the instruments for realization of the aforementioned constitutional task of the Supreme Court is contained in the Law on Courts, in the provisions regulating the competence of this court. Article 37 indent 1 foresees that on the general session SCRM establishes the principal opinions and principal legal attitudes with regards to questions of importance for ensuring unity in the application of the laws by the courts, at their own initiative or at the initiative of the sessions of the judges or the judicial departments, and published thereof on the website of the court. This legal decision which is in practice for many years is quite significant but is not sufficient to ensure more comprehensive and more qualitative unity in the application of the laws by the courts, especially the fact that paragraph 3 of the mentioned Article, prescribes that the principal opinions and principal legal attitudes determined by SCRM on the general session are mandatory for all councils of SCRM.

In the professional and wide public, even this wording of the law sometimes is differently interpreted, although the lower courts comply with the generally determined principal opinions and principal legal attitudes.

With reference to the meaning of the decisions of SCRM for the lower courts, they are not mandatory according to the process laws; however, they have reference meaning but are usually complied with in the practice. Furthermore, the Law on civil procedure contains the provision (Article 386) which foresees that the court where the case is returned for retrial is obligated to such case with the legal comprehension on which the decision of the review court is based, abolishing the repudiated second instance judgement, i.e. abolishing the second instance and first instance judgement.

The Law on criminal procedure, in the part titled “Rules of new procedure” in chapter EXTRAODRINARY LEGAL REMEDIES (Article 462 paragraph 2), foresees that the parties can present new facts and new evidence before the first instance, i.e. second instance court, and propose performance of the process actions for the purpose of clarifying the questions indicated by the Supreme Court of the Republic of Macedonia in its decision.

In each of the appellate courts on the territory of the Republic of Macedonia, there is a judge assigned with the work schedule, competent to act in order to harmonize the jurisprudence in that

particular court, although it would be more effective if department for such matter exists.

Considering the constitutional obligation of the SCRM determined with Article 101, indicated above in the text, in this court (SCRM) special Department of jurisprudence is established (hereinafter referred to as "Department"), wherein Work Plan and Programme are established, in accordance with the Rules of Procedure of the Court published in the "Official Gazette of RM" no. 66/2013 and no.114/2014. The following procedures are regulated in accordance with these acts: acting in accordance with the legal comprehensions and general standings for ensuring unity in the application of the law, analysis of the expressed opinions and attitudes in the submitted newsletters or particular court decisions, as well as the conclusions adopted on the general sessions of the appellate courts in Republic of Macedonia, regular attendance by the president of the Department on the general sessions of the appellate courts in Republic of Macedonia, maintenance of continuous communication of the president of the Department with the presidents of the departments of jurisprudence from other courts (i.e. with the judges competent to act in order to ensure unification of jurisprudence in that court).

With regards to the horizontal unification of the jurisprudence, it is implemented via review of the decision of the competent council for the purpose of checking whether the decision is in accordance with the legal comprehension expressed in other decision of the Supreme Court of the Republic of Macedonia. In cases when it is established that the adopted decision exceeds the practice of the court, the president of the Department, i.e. the Department of jurisprudence upon review of the disputed question on a session, informs the president of the council thereof in order to put such question once again in order to be reviewed and decided upon before the council. If the council does not change the decision upon the notification and indication, the case is addressed to the president of the respective department, for the purpose of action and review on a session of the department.

The remaining obligations of the Department of jurisprudence in SCRM contained in the Work Programme are as follows: preparation of draft legal comprehensions and other materials from the sessions of the judicial departments and the general session; records of the principal opinions and principal legal attitudes from the general session, legal opinions and conclusions from the session of the departments, mutual sessions of departments or session of judges, systematized per legal areas; publishing Newsletter containing the determined legal opinions and sentences with explanations prepared on the basis of the adopted important decisions in the SC, systematized per legal areas in the previous year. In addition, the Work Programme of the Department establishes the criteria for definition of the term "significant" (or reference) decisions.

In the appellate courts on the territory of RM, in case of legal questions, sessions of judges are being held in the department where the disputed question is established, and they act further thereupon in the manner descried in the answer of question no. 6. The adopted conclusions are not binding; however, one acts in compliance therewith for the purpose of improving the quality of the work of every judge.

In practice, it is quite rare for lower courts to refer to decisions of higher courts. The Law on Civil Procedure of 2005 ("Official Gazette of the Republic of Macedonia" No. 79/2005) provides a decision regarding the extraordinary legal remedy of repeating the procedure, therefore the provisions of Article 400 stipulate repeating of the procedure so that the European Court of Human Rights in Strasbourg reaches a final judgment. The legislator determined that in the process of repeating the procedure courts are obliged to respect the legal attitudes expressed in the final judgment of the ECHR, with which it was determined the violation of the fundamental human rights and freedoms.

In this regard, during joint meetings of judges of all instances, judges receive support in addressing the jurisprudence already expressed from the SCRM.

The procedure for overcoming the inconsistencies in the application of law in Courts of Appeal, as a rule, takes place as follows:

The judges from appellate courts previously review the disputed legal issues at a session of the department or a joint session of the judges. Conclusions are submitted to the SCRM, and are then forwarded to other Courts of Appeal. If in the process of deciding on specific legal issues differences

are noticed, those issues are discussed at a session of the judges of all Courts of Appeal, on which session joint conclusions are adopted. The Courts of Appeal submit the conclusions adopted at the session, together with the supporting materials (drafted papers and court decisions) to the Department of jurisprudence of the Supreme Court of the Republic of Macedonia. Conclusions submitted by Courts of Appeal are reviewed at a session of the department of a certain area (Department of civil works, or department of criminal offences). If the competent department of the Supreme Court of the Republic of Macedonia accepts the conclusions, it shall inform the Courts of Appeal and conclusions are published on the webpage of the SC. The submission is done electronically. If the SC does not accept the conclusions made by the Courts of Appeal, then at the proposal of the Department of jurisprudence of the SC, the disputed legal issue is reviewed at a session of the department of the relevant area in order to determine a legal opinion.

In this way, mainly the vertical uniformity of the jurisprudence takes place.

During their work, Courts of Appeal often refer to the SCRM in respect of certain legal issues for which it was established an uneven application of the law, especially when it comes to disputes in which, according to the law, a declaration of revision is not allowed as an extraordinary legal remedy on which SCRM decides (because of the value of the subject of the dispute or other legal constraints) and which affects the civil-legal area. However, in this (civil) matter where an uneven applying of the law is more often found, because of the numerous laws that are applied in this area and their frequent amendments, a special tool is established which is suitable for unifying the jurisprudence. Namely, the provision of Article 372 Paragraph 4 of the Law on Civil Procedure provides that a revision as an exception is allowed and against a second instance judgment against which a revision cannot be declared according to Paragraph 2 of this Article (?? Value of the subject of the dispute), if the second instance court allowed that in the pronouncement of the reached judgment. The second instance court may allow a revision with specification of the scope of the legal issue which would be brought before the Supreme Court of the Republic of Macedonia, if it assesses that the decision in the dispute depends on the resolution of a material-legal or procedural-legal issue important for securing a unified application of the law and uniformity of the jurisprudence. The second instance court is required to state in the explanation of the judgment for which legal issue the revision was allowed and to state the decisions that indicate an uneven application of the law, as well as to explain the reasons why it considers that this is important for securing a unified application of the law and uniformity of the jurisprudence.

In practice, unfortunately, this mechanism for unifying the application of the law is very rarely used, even though judges from appellate courts in joint meetings with the judges of the SCRM are encouraged to use it more frequently.

As for the adopted legal opinions and conclusions of the SCRM, they do not have a binding character for courts of lower instances, and there are no measures provided in case of breaching them. However, they are mainly applied in practice, because of the fact that, otherwise, there is a risk that the decision of the lower court is revoked or modified, which affects the evaluation of the quality of work of each judge conducted by the Judicial Council.

On the existing webpage of the SCRM there is a special section entitled “JURISPRUDENCE” in which decisions of the SCRM are entered, principal legal opinions and attitudes and sentences – sorted by areas.

Given the existing technical possibilities in the section “principal legal opinions and attitudes”, legal opinions and conclusions of the separate departments are also entered – 04.03.2016 inclusive.

These data and access to the internet page of the SCRM are available for all users from the professional and general public.

With the support of certain projects, this webpage has been replaced by the Judicial Portal and as predicted – the webpage will stay active, but no later than April 2017, when searches will be available exclusively through that judicial portal. The new portal (Judicial Portal of the RM) is already active and decisions of the courts can be searched through it, and introduction of publications is also predicted (professional works and presentations, newsletters, collections) for all courts in the country.

On the new portal of the webpage of SCRM, in the section “JURISPRUDENCE” it is predicted an introduction of: 1. Principal legal opinions; 2. Principal attitudes; (which are determined

at the general session of the SCRM); 3. Legal opinions and conclusions; 4. Sentences (adopted at the special Departments – Department of Civil Matters, Department of Criminal Offenses and Department for a trial within reasonable period) and 5. Decisions of the ECHR.

The predicted data are already entered in this section, or the principal legal opinions, principal attitudes, legal opinions and conclusions, as well as sentences and it is continuously complemented with the ones that are additionally determined, or adopted.

Only the "sentences" section of the new portal is connected to the pre-existing webpage, which is also updated. On a separate page of the portal, the decisions adopted by SCRM after April 2017 are entered, where an advanced search is also possible (by category, region, part of the text (keyword)). There is also an equal opportunity on the portal for other courts in the country.This portal is available for all users.

The project "IPA 2010" (financed by the European Union) has a particular significance in the progress in this area – Further support for an independent, responsible, professional and efficient judiciary and improvement of the Probationary Service and alternative measures, as well as the project which is implemented by the Centre for Legal research and analysis with the support of the Embassy of Great Britain.

One of the basic principles incorporated in the provision of Article 2 Paragraph 2 of the Law on courts is that judges protect the human rights and freedoms by applying the law. The violated right and/or freedom causes a disruption of the personal integrity of the person concerned, therefore his address to the court must be understood as an expression of confidence in the institutions from which a fair and legitimate outcome is expected. Such confidence must be respected and must not be betrayed by various judicial decisions made under the same or similar facts on which the request is grounded. This expectedly creates a doubt in the equal approach in the protection of the violated right. Hence, one of the main challenges for the development of the jurisprudence in the Republic of Macedonia is to ensure consistency, clarity and certainty to the administration of justice throughout the whole judicial system, which would also mean predictability in the decision-making in the same or similar factual and legal situation. With the achievement of this level of unified application of the law, it can justifiably be expected that it will particularly contribute to the development of the rule of law.
The rule of law is one of the fundamental values laid down in the Constitution of the Republic of Macedonia (Article 8, Paragraph 1, Indent 3), and a fundamental aspect of the rule of law is the principle of legal certainty. Opposite (different) decisions in similar cases made particularly by the same court on the territory of the state, require the need of creating a mechanism that ensures consistency, which is essential for building the public trust in the judiciary.

3.10. How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?-In the last years, there is a growing trend of integrating the ECHRand the jurisprudence of the ECHR in the text of the Macedonian laws. The Law on Civil Responsibility for Defamation and Insult adopted in 2012, provides basis to apply the stands of the ECHR, expressed in its decisions. In this regard, the Department of Civil Cases at the Supreme Court of the Republic of Macedonia, adopted a conclusion that Article 400 of the Law on Civil Procedure from 2005 provides that a case can be reopened if the ECHR rendered a final judgment finding a violation of the Convention. It should also be mentioned that the Academy for Judges and Prosecutors, with the support of various donors and project partners, has managed to publish a significant number of collections of different landmark cases of the ECHR and the CJEU. A certain number of these collections in hard copy are distributed among the courts, while their electronic versions are available on the Academy web site.
The level of the significance and the effect of the ECHR decisions could be easily seen in the provisions of the following procedural laws:

-The Criminal Procedure Code provides for a ground to initiate a repetition of a criminal proceedings, based on a final judgment of the ECHR, which establishes a violation of the human rights and liberties guaranteed by the Convention, during the procedure before the domestic courts;

-The Law on Civil Procedure, provides for a ground to initiate a repetition of the proceedings upon a final judgment of the ECHR. This provision goes even further and foresees that during the repeated proceedings, the courts are bound to respect the legal stands expressed by the ECHR in its final judgment, where violation of the rights and liberties protected by the Convention has been found.

The Supreme Court in Macedonia has been vested with the mandate to adjudicate in matters concerning the right to a trial within reasonable time, as guaranteed by Article 6 of the European Convention on Human Rights, at the request of the parties. As regards these cases, the Supreme Court is obliged to decide in accordance with the rules and principles set by the ECHRand the jurisprudence of the ECHR.

On the judgment in the case of Stoimenov, seeing that the amendments to the Law on criminal procedure are associated with long procedures, the Department of Criminal Offenses at the Supreme Court took a legal standing "for every freedom and right set out in the Convention and whose protection is provided before the ECHR, the courts in the Republic of Macedonia will directly apply judgments of the Court in accordance with the criminal procedure and the explanation of their decisions will invoke the judicial practice of the ECHR".

3.11 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

The importance of the role of the Ministry of Justice in connection with the court practice in the Macedonian legal system is important. All courts have information database services as separate units, which are managed by the President of the Court or a designated Judge. The Ministry of Justice provides the installation, maintenance and operation of IT systems on single methodological and technological basis. The Minister of Justice issues further regulations on the functioning of the system in the courts. The Law on Case Flow Management in the Courts is also relevant to the unification of the court practice. It regulates the publishing Court Decisions on the Court's Web-site that the authorized court employee shall be obliged to publish on the court's web-site the legally effective court decision, within two days from the day when s/he received it. But in practice there are some problems. Namely, even petty cases, such as payment orders or misdemeanors, get published and it results in overloading of the system, the search tools are not appropriate and effective enough, and there is no option to perform an in depth search by appropriate keywords, which will contribute to narrowing down further potential results. Regarding the area of search engine, the EU (IPA) financed project for designing the judiciary institutions, and that will introduce the Web Content Management System (WCMS) which will provide a web presentation to the Courts through a single portal, Automatic publication of judicial decisions, Indexing of judicial decisions for easier searching, Reviews for searches of Court decisions on various criteria, Collaboration module, Integration with existing ACCMIS System. IPA 2010 also introduced a segment of developing research and analysis capacities of Supreme Court and other tools for greater uniformity of practice" segment that aims to provide increasing of user- orientation and usability of Supreme Court and other courts' websites, electronic courts case-law databases and search engines trough giving recommendations for improvements to the courts websites and IS for the purpose of greater accessibility and search tools of case-law.

3.12 Is the access to such database free of charge?

3.13 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

3.14 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

3.15 Any other point you wish to raise.

Strategy for Reform of the Judicial system with an Action Plan (2016 - 2020) is prepared based on an assessment of the effectiveness of the justice system to support justice sector. One of the goals is development of research and analysis tools of courts to facilitate uniformity of practice. One of the goal is the research and analysis units at Supreme Court and appellate courts to be fully operational.

Among the strategic goals towards strengthening the unification of the court practice, detected in the aforementioned Strategy are: agreements for cooperative relationships between courts (research and analysis units), Academy for judges and public prosecutors, and higher educational institutions (HEIs) foreseeing initiatives facilitating exchange of research into jurisprudence, research and analysis papers to be produced regularly, identifying gaps between statute and practice. As regard IT tools, developing a user-friendly keyword-based search tools on court websites is foreseen, allowing to look for jurisprudence and legislation, with linkages to SC and other higher courts' practice under that legislation, regular publications of bulletins for the jurisprudenceby the SC, HEC and other higher courts and its publishing on the web site of courts and MOJ or in written form, regular use of online forum of judges and other online resources by judiciary, allowing to exchange views on case-law,application of law, information, and materials on trainings, conferences, seminars, persuasive nature of ECHR, SC and HAC case-law confirmed in decisions of lower courts in applying of legislation given by ECHR, SC, CC and HAC in previous cases (medium-term outcome) Increased number of cases by parties of their right to reopen case following ECHR judgment, increased practical and effective referral by Courts of Appeal to SC of all cases where clear divergences exist in interpretation of law among lower courts. In addition, information technologies are key tools available to improve both the access to justice and efficiency of the courts' case and performance management. Efforts in strengthening the e-justice capabilities of the courts will focus on the courts internal (case management systems) and external (websites) information systems (IS), including seeking greater interoperability of the courts IS with those of other justice sector actors. Increased use of e-justice will enable users to apply to a court, pay for the court services, participate in the proceedings and receive all the relevant documentation by electronic means. Judges, in turn, will be enabled in a practical and efficient manner to fully manage and track cases electronically, allowing them to more efficiently manage their resources and increase productivity.

Along with this, the British embassy has launched a project through a NGO Center for legal analysis from Skopje towards developing a guidelines for citation of the court practice of the Supreme Court, ECHR and to learn judges how to choice the decisions and parts of decisions to be cited and what to cite. Namely, it is stated there, taking into account the recommendations of the EU Report on the progress of the RM, while acting in accordance with the constitutional provisions to ensure the rule of law, Macedonia has undertaken numerous activities towards improving legal certainty and predictability by providing uniformity in the application of the laws. The main purpose of this Guide is to unify the manner of citation of the legal opinions of these courts and, in that way, contribute significantly to the unification of court practice in Macedonia. By undertaking this activity, the Republic of Macedonia aims to follow the trends of European countries in the direction of providing a growing and wider application of already established court practice as a means of legal argumentation, with the ultimate goal - to ensure legal certainty and legal predictability and full respect for the rule of law, as fundamental values guaranteed by the Constitution. Only a very small percentage of cases

come to the SC which affects negatively the unification of court practice. There needs to be a deeper communication between the courts, to exchange information about court practice, to assign judges in the Appellate courts, who will be fully in charge with following the court practice (in the moment there are few judges assigned but they are not relieved a least of a part of their daily workload), to ensure better access to information and improve the information management system. There is certainly a necessity for specialized trainings on court practice to be included within the curricula of the Academy, both for the initial and the continuous training program. Academy, has provided support for meetings of all four appellate court in order to work on the harmonization and unification of court practice. There is also, need for trainings in the areas of court practice management, and on how to use both domestic and ECHR court practice, how to select parts of judgments, how to index them, how to create taxonomy, as well as how to produce summaries, and training on information technology. The Supreme Court's jurisprudence is presently incapable of "unification" in the sense of consistency in application. Supreme Court's judgments are frequently so short or lacking in reasoning as to be of little use as a potential guide in other cases, so in this moment Macedonian judiciary is not prepared for using the national court practice even in argumentation aspect, due to the lack of this role of the SC.

Turkey / Turquie

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

It is stated that the Republic of Turkey is a "rule of law" in Article 2 of our Constitution, after reiterating ''equality before law" principle in article 10, "The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other agencies and individuals. Laws shall not be in conflict with the Constitution" is included in Article 11.

Besides, "The Council of Ministers may issue regulations governing the mode of implementation of laws or designating matters ordered by law, provided that they do not conflict with existing laws and are examined by the Council of State" in Article 115 of the Constitution, "The Prime Ministry, the ministries, and public corporate bodies may issue by laws in order to ensure the application of laws and regulations relating to their particular fields of operation, provided that they are not contrary to these laws and regulations" in paragraph 1 of Article 124, "Recourse to judicial review shall be open against all actions and acts of the administration" in Article 125 were included.

Besides legal administration principle and equality before law principle, by settling hierarchy of norms and including judicial review, the fact that the uniform application of the law in our country, being valid for each of three powers exercising sovereignty, was especially put forward for executive power as an obligation and judicial power was set as a control mechanism in this connection should be indicated.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

The concept of the uniform application of the Law in our country has importance in terms of its meaning given in three chapters below.

- consistent legislation to be adopted at legislative level;

  It should be pointed out that the legislative power before our Constitution, by means of making regulations to put equality before law and rule of law principles into practice, is responsible of constituting legal infrastructure to ensure the uniform application of the law.

- uniform practices by the executive institutions and law enforcement bodies;

  Besides actions and acts of the executive power, it is obligatory for the executive power to act in compliance with equality before law, legal

administration, hierarchy of norms principles to put the uniform application of the law into practice in its regulatory proceedings.

- uniform case law developed by courts.

  In relation to "Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution" provision in paragraph 4 of Article 138 of the Constitution, it should be included that judicial power acts as an inspection body with regard to the uniform application of the law. As it is stated, though all three points have indispensable importance in rule of law, it may be indicated that judicial power that its inspection aspect comes into prominence is relatively more important.

Please explain each point and indicate the relative importance of each point.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The uniform application of the law, by means of guaranteeing equality before law and legal certainty principles, results in guaranteeing security of the law and rule of law thus.
Application of rule of law has importance since it results in people being subjected to equal treatment before actions of the legislative, executive and judicial powers.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The principle of conformity with the Constitutional norms of the legislative power while issuing laws and inspection of whether or not this conformity is properly fulfilled by the Constitutional Court form legal conditions to ensure the uniformity in the legislative process.

2.2 Is there a hierarchy of laws?

There is. As given above, in Article 11, 115 and 124 of the Constitution, hierarchy of norms was set up between Constitution, Law, Regulation and by-laws.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

By including "International treaties duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these treaties, on the ground that they are unconstitutional. In the case of a conflict between international treaties in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail" provision in paragraph 5 of Article 90 of the Constitution, the conformity of national laws to treaties and international instruments was set up.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

According to the Constitution, international treaties carry the force of law. In the case of a conflict between international treaties in the area of fundamental rights and freedoms and the domestic laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

Authorized body for the legislative process is the Parliament. Council of Ministers and deputies are entitled to present a bill.
Importance of the executive body outweighs in the process of bill of law and enactment of the bill proposed. The executive body can strengthen its role in legislative arrangement by means of issuing decree law, regulation and by-laws.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Acts of the executive power are not source of law. Besides not being binding for courts, all kind of acts of the executive power are subjected to judicial review.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

In the areas that have not reached stability yet, laws can be relatively too often amended. This sometimes has negative effects on legal certainty.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

"Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution" provision is included in the last paragraph of Article 138 of the Constitution.

Additionally, "case law unifying decisions are binding for Plenary Sessions of the Court of Cassation, its chambers and courts of justice" provision in paragraph 5 of Article 45 of the Court of Cassation Law, "Chamber and sessions of the Council of State and administrative courts and administration shall abide by these decisions" provision in paragraph 4 of Article 40 of the Council of State Law are given.

Therefore, court decisions are binding. On the other hand, needs stemming from legal situations showed up by court decisions guide law-maker to enact and enactment is not rare by virtue of court case law.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Court decisions are binding for everyone.

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

To ensure uniformity in judicial decisions, case law unifying establishment is set up and this duty is under the authority of the Court of Cassation and the Council of State. Pursuant to the Court of Cassation and the Council of State Laws mentioned above, case law unifying decisions are also binding for courts.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

In our judicial system, there are specialised courts in terms of the field such as family, juvenile, labour, commercial, cadastral, tax courts, these courts are subjected to general appeal/objection procedures too.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Unification of court case laws is done by case law unifying decisions of the Supreme Courts mentioned above.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

Pursuant to Article 45/5 of the Court of Cassation and Article 40/4 of the Council of State given above, case law unifying decisions are binding for judiciary as courts of first instance and supreme courts.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

Contradictions or deviations between court decisions are resolved by Supreme Courts in court of appellate review.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

There is no application permitting departure from the case law. However, in changing conditions, courts can amend their case law.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

In our country, there is a two-level system of appeal. First level is court of appeals. While for most of the cases to be heard upon objection, these courts are the final decision maker, some of the decisions can be appealed to supreme courts, second level of the system (Court of Cassation, Council of State). The matter that which contradictions fall under the authority of court of appeals or supreme courts is set up by law, courts of first instance do not have determinative judicial discretion in this connection.

Duties of these courts are legality review in general.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

Decisions of the European Court of Human Rights are directly accessed via ECHR website (HUDOC) in English and in Turkish for some decisions. Besides, the Human Rights Department of the Ministry of Justice and Presidencies of the Court of Cassation and Council of State have ECHR decisions and case law guides translated in Turkish and publish them. While, free access is possible for some of these sources electronically, some are accessed in printed format for a nominal fee.

ECHR decisions concerning the interpretation/application of the European Convention of Human Rights carrying the force of law pursuant to paragraph 5 of Article 90 of the Constitution are binding in our domestic law as case law norm and it has many decisions of courts of first instance and supreme courts referring ECHR's decisions. By this means, it should be reiterated that the ECHR decisions have increasing impact on evolvement of the case law in our domestic law.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Court case law and mentioned international case laws are accessible for concerned ones via websites and periodical or non-periodical publications.

3.13 Is the access to such database free of charge?

The ECHR decisions are freely accessed through the websites of the Human Rights Department of the Ministry of Justice and Presidencies of the Court of Cassation and Council of State. Printed works (book, journal etc.) are accessed for nominal fee.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Courts are not the only source of information. It is possible to access information and case laws through electronic publishing and books of independent and commercial entities (publishing houses).

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The biggest difficulty for the unification of the case law is to reach consensus. It takes time to assemble different views and make them uniform.

3.16 Any other point you wish to raise.

Ukraine

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

There is the concept of the uniform application of the law in Ukraine, it is part of the constitutional principle of equality before the law and court enshrined in articles 24 and 129 of the Constitution of Ukraine.

Ukrainian legislation contains an official notion of uniform application of the law and it has its specific features of implementation by the judiciary and law enforcement agencies and other government bodies. As an example, according to Art. 36 of the Law "On judicial system and status of judges" the Supreme Court of Ukraine as the highest court in the judicial system of Ukraine ensures the uniform application of law by courts of various specializations in order and manner established by the procedural law. The Article 9 of the Law "On Prosecutor's Office" specifies the competence of Prosecutor General of Ukraine to approve general guidelines for prosecutors to ensure uniform application of the legislation of Ukraine in the exercise of prosecutors' functions. And the Article 2 of the Law "On the Central Election Commission" states that the Commission in accordance with its responsibilities ensures adherence to fundamentals and principles of election and referendum processes established by the Constitution and laws of Ukraine. The Commission ensures the implementation of electoral rights of citizens of Ukraine and the right to participate in the referendum, the uniform application of the law of Ukraine on elections and referendum throughout Ukraine, and so on.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

The definition of uniform application of the law is not formulated in Ukrainian legislation. However, in practice, by common understanding the concept appears as compliance of regulations issued by governmental bodies, enterprises, institutions,

organizations and officials with the Constitution of Ukraine and existing laws.

On the issue of sequential adoption of laws, it should be noted that political component in the activity of the Verkhovna Rada of Ukraine (hereafter – The Parliament of Ukraine) has always had a dominant role. And weak framework of the legislation (lack of science-based technology of the legislative process, opposition of political and intellectual components in the activity of the Parliament of Ukraine, etc.) results in instability of legislation and therefore, the Parliament of Ukraine resolves its 'mistakes', if and when they detect them, which is not a systematic and consistent process and mostly happens episodically.

For example, the process of adopting of any law includes a necessity to make legislative changes in those acts that does not conform to the new one. However, basically, current legislation shall be in force until it is brought in compliance with a new law, insofar as it does not compete with the new law.

In Ukraine, the unity of the practice of the executive and law enforcement is enshrined in legislation. In particular, the Article 9 of the Law "On Prosecutor's Office" states that the Prosecutor's General of Ukraine competence includes an approval of the general guidelines for prosecutors to ensure uniform application of the legislation of Ukraine in the prosecution. The Supreme Court of Ukraine as the highest court in the judicial system of Ukraine (according to the Article 36 of the Law "On judicial system and status of judges") ensures the uniform application of the law by courts of various specializations in order and manner established by procedural law.

Regarding the practice of uniform application of the law by courts, it should be noted that the fundamental principle of justice in Ukraine is equal rights for all participants of legal proceedings before the law and the court. It is stated by the Article 129 of the Constitution of Ukraine. Unequal application of the law by court in the decision-making process in the similar cases would imply breaching of constitutional principles. According to current procedural legislation and legislation on the judicial system the Supreme Court is responsible for ensuring uniform application of law by courts of general jurisdiction. It contributes to unity and uniformity of judicial practice. However, common judicial practice is not integrated and uniform. Its inconsistency does not contribute to the unity of legal consciousness in society. Therefore, distorts the legal awareness and legal culture of subjects of legal relations that definitely affects their legal behaviour. (Reasoning of this situation below)

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

Unjustified complexity of legislation appears in unreasonable sophistication of regulations and artificial complication of social relations by legal means. Good example of solving this negative trend may serve the judgement of the Constitutional Court of Ukraine. (case № 4-рп/2016) of 8 June, 2016 upon application of the Supreme Court of Ukraine ruled that on the constitutionality of the provisions of the third paragraph; first, second, fourth, sixth sub-paragraph of the five paragraph of Article 141 of the Law of Ukraine "On judicial system and status of judges" and the paragraph 5 of section III of Final provisions of the Law of Ukraine "On amendments to certain legislative acts of Ukraine on pension protection". The Court adopted a decision on this issue, and deemed provisions, limiting the maximum size of life maintenance retired judges

(judges' pensions) as failing the compliance with the Constitution of Ukraine. The Constitutional Court in its judgment quashed the legislation restricting these payments. In justifying its decision, the court stated that the limitation of judicial pensions are, in fact, reduced the guarantees of independence of judges and violates their constitutional status.

Moreover, the Decision of the Constitutional Court of Ukraine of 22 September 2005 (№ 5рп/2005) in the case of permanent use of land where the court indicated that constitutional principles of equality and justice generates the requirement of certainty, clarity and ambiguous of legal standards as otherwise it may not ensure its uniform application, it preclude freedom of interpretation in legal practice and inevitably leads to arbitrariness.

In view of the above, the fundamental principle of equality before the law and justice can be achieved only by the uniform interpretation and application of law by all state authorities. The opposite can lead to unlimited discretion and violating the principle of equality.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

Today, In Ukraine there is no single law, which regulates ensuring of uniformity in the legislative process.

Formal requirements to ensure uniformity in the legislative process are contained in the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine", as well as a number of other regulatory legal acts. However, there are certain problems associated with the regulation of certain internal legislative procedures.

In Ukraine, the Rules of Procedure of the Verkhovna Rada (art. 92) provides that a draft law introduced to parliament shall be registered by the Secretariat of Verkhovna Rada. There is only one day for the verification of its compliance with the requirements. Objectively, it is impossible to assess its compliance with all the requirements established by art. 90 and 91 of the Rules of Procedure for such a short time. So, usually all drafts that contain the necessary supporting documents are recorded without such verification.

Of particular importance in the rule-making process of executive and legislature bodies is its first formal stage – draft stage. This stage is characterized by relevant organizational and technological feature. With involvement of a range of relevant bodies established by the law which conduct its drafting activities in a way also prescribed by the law. This process consequentively results in the creation of the draft of the legal act. Lack or low level of legislative drafting leads to inefficient, irrelevant and faulty governance in the specific field of public relations and actually undermines and nullifies legal requirements of the state.

In recent years, attempts to addressing the issues of creating a system of coherent regulatory legal acts were made, but until now, the Law of Ukraine “On normative legal acts” has not been accepted yet. Normative activities in different departments are carried out at the level of subordinate regulatory acts. Thus, under these conditions, the

need for a comprehensive and systematic settlement of rule-making activity of executive authorities in Ukraine is urgent and actual.

Further work on regulation and normalization of public relations arising in the process of standard-setting executive and legislature logically has to be completed in a profile piece of legislation. This act would not only comprehensively govern and regulate the normative aspects of law-making, but would give a clear answer to procedural issues for this process, including urgent issues of law-making activity.

2.2 Is there a hierarchy of laws?

In terms of the place in the hierarchy of laws the following principles are consistently segregated:

1) **The rule of law**, which has the supreme juridical force compared to other legal acts established by the Constitution of Ukraine (Article 8 – In Ukraine, the principle of the rule of law is recognised and effective; Article 129 – In the administration of justice, judges are independent and shall be guided only by the law). Moreover, the rule of law prevails over the laws and legal acts.

2) Legal rules established by **the Constitution of Ukraine**. The Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it (Article 8).

3) The legal provisions norms established by **international treaties** ratified by the Ukrainian Parliament. The international legal rules' place in the hierarchy of law states by the Article 19 of the Law "On International Agreements of Ukraine"

4) The legal standards set by **laws**. Part 2 of Article 8 of the Constitution of Ukraine determines their place in the hierarchy.

5) Legal norms and individual legal requirements established by **decrees and directives of the President of Ukraine**. Their place in the hierarchy defined by Article 106 of the Constitution of Ukraine

6) Legal rules stated by the **resolutions and orders of the Cabinet of Ministers of Ukraine**. The Article 113 of the Constitution of Ukraine determines their place in the hierarchy.

7) Legal rules established by **legal acts of central bodies of executive power** indirectly recognized as normative regulators of public relations. According to part 3 of Article 117 of the Constitution of Ukraine, normative legal acts of the Cabinet of Ministers of Ukraine, ministries and other central bodies of executive power, are subject to registration through the procedure established by law.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

According to Article 9 of the Constitution of Ukraine international treaties agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. In Ukraine, international treaties apply according to the law "On International Agreements of Ukraine". If the international agreement of Ukraine, which has come into force under the set procedure, sets the rules other than those envisaged in the respective act of Ukrainian legislation, the rules of international agreement shall apply.

At the intra-state level conform of national legislation to international agreements and other international legal acts carried out by implementation (transformation) of international legal norms into national la legislation and regulations or changes to existing ones.

Methods of implementation (transformation) of individual rules and document as a whole, used in each particular case by authorized bodies of legislative, executive or judicial power. Public authorities act appropriately to implement the constitutional guarantees of implementation of international treaties and other international acts.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Some lack of harmonization is inherent to the current legislation, as to any of other system. One type of such incoherence is formal or internal inconsistencies - contradictions within the legal system.

As an example, we can consider the conflict between the general provisions of the Commercial Code of Ukraine on contracts, obligations and responsibilities on the one hand, and the Civil Code of Ukraine on certain types of agreements - on the other.

The main ways of bridging differences between national laws are rule-making process, interpretation and application of the law. They create conflict mechanism that should include all of the above methods and enable the case to reduce the harmful effects of errors and negligence of the legislator.

In addition, there is a way to overcome conflicts by choosing to use one of several regulations that are in conflict. Hierarchical, temporal and substantive principles should be applied in doing so.

Another way of overcoming the contradictions between national laws are judicial proceedings carried out by the Constitutional Court of Ukraine. The Constitutional Court of Ukraine, in particular, decides on issues of conformity of laws and other legal acts with the Constitution of Ukraine and provides the official interpretation of the Constitution of Ukraine and the laws of Ukraine (Article 147, 150 of the Constitution of Ukraine). Also, it could be carried out by the courts of general jurisdiction, which, particularly, has jurisdiction over cases on invalidating acts of secondary legislation and individual normative acts.

Regarding the conflict between national law and international agreements it should be taken into account that If the international agreement of Ukraine, which has come into force under the set procedure, sets the rules other than those envisaged in the respective act of Ukrainian legislation, the rules of international agreement shall apply.

Also, it should be noted that respect of court to international treaties does not mean that the court may apply the provisions of such documents that were not agreed to be binding by the Parliament of Ukraine. The court may not apply the provisions of such documents.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

The legislative process in Ukraine as a regulatory approval process of adoption of the law, consists of certain stages - independent, logically completed stages of

organizational and technical actions regarding the introduction, consideration, adoption (amending) laws and their publication.

In Ukraine, there are:

• the legislative process in respect of acts adopted by national referendum (regulated by the Constitution and the Law "On National Referendum");

• the legislative process concerning laws passed by Parliament. This legislative process is governed by the Constitution of Ukraine, the Budget Code, Sections IV-V of the Rules of Procedure of the Verkhovna Rada of Ukraine, Regulations on the Procedure of the Verkhovna Rada of the draft laws, decrees and other acts of Parliament, approved by the Head of the Verkhovna Rada amended; Regulations on the order of the documents in the Parliament of Ukraine approved by the Head of Verkhovna Rada of Ukraine on May 25, 2006 №448 amended.

Below we consider legislative process concerning laws passed by Parliament.

The legislative process in Parliament has several stages:

I. Pre phase (legislative initiative):

The legislative process can begin with submission of a legislative initiative to Parliament for the adoption of a new law relating to certain sphere of public relations and developments in this regard, the draft law.

II. The draft stage:

If the legislative initiative has been submitted to the Parliament:

1. It is decided to prepare the draft law, an initiative is rejected or included in Legislative Drafting Plan;

2. for the Government or permanent parliamentary commissions are entrusted to develop a draft; for this purpose special commissions, working groups composed of deputies, representatives of concerned public organizations, legal scholars and others can be created.

3. A draft working out his preliminary examination involving stakeholders, revision and editing project.

III. Phase of submission of a draft to the Parliament (legislative initiative):

The legislative initiatives a submission of the draft officially to the legislative body by certain authorities and individuals. According to the Constitution of Ukraine (Article 93), the right of legislative initiative belongs to the President of Ukraine, the MP’s of Ukraine and the Cabinet of Ministers of Ukraine.

Upon submission the Parliaments disposes it for consideration. After entering parliament approves the draft it into consideration.

IV. Consideration stage:

Discussion of the draft and its harmonization: expression of opinions of stakeholders about the project and obtaining their suggestions for improvement, completion of the project; adoption of a procedure of first, second, third reading; consideration of alternative projects. If necessary - making project: a) to discuss with wide range of qualified experts through parliamentary hearings, conferences and round tables, etc. .; b) for public discussion.

According to the Constitution of Ukraine draft laws defined by the President of Ukraine as not postponable, are considered by the Verkhovna Rada of Ukraine out of turn.

V. Stage of adoption of the draft:

This stage comprises of adoption of the draft through voting and of preparation of the relevant resolution of Parliament on the entering of the law into force. The texts of laws passed by Parliament, signed by the Chairperson of the Parliament of Ukraine should be forwarded without delay to the President of Ukraine for signature.

VI. Certification stage.

1. Within fifteen days of the receipt of a law, the President of Ukraine signs it (according to the Constitution).

2. President has the right to veto laws. President returns it to the Parliament of Ukraine with substantiated and formulated proposals for reconsideration.

3. In case the President of Ukraine has not returned a law for reconsideration within the established term, the law is deemed to be approved by the President of Ukraine and shall be signed and officially promulgated.

4. However, where a law, during its reconsideration, is again adopted by the Parliament of Ukraine by no less than two-thirds of its constitutional membership, the President of Ukraine is obliged to sign and to officially promulgate it within ten days. In case the President of Ukraine does not sign such a law, it shall be without delay promulgated officially by the Chairperson of the Parliament of Ukraine and published under his or her signature.

VII. Publication stage.

1. The law should be entered to the Uniform State Register of legal acts with assigning it a registration code.

2. Law publication is a process of printing the text of the law with all the details in official publications (edition “Gazette of Verkhovna Rada of Ukraine”, the newspaper "Holos Ukraiyny (The Voice of Ukraine").

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives which are mandatory for execution on the territory of Ukraine (Article 106 of the Constitution of Ukraine). Regarding Ukrainian courts, for example, the decree of President of Ukraine on appointment of judges on the basis of and within the proposal of the High Council of Justice is legally binding, without checking that established by this Law requirements for judicial candidates and procedure for the selection or evaluation of qualification candidates.

The Cabinet of Ministers of Ukraine as the highest body in the executive branch issues resolutions and orders which are binding. However, it should be noted, that within administration of justice, the courts are independent of any undue influence, and administer justice based on the Constitution and laws of Ukraine and on the basis of the rule of law. Neither the Constitution nor the laws of Ukraine provides rulings and orders of the Cabinet of Ministers of Ukraine which are legally binding for courts

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Over the years of independence, Ukrainian domestic legislation has been drastically updated, in particular, amended to introduce regulations of Soviet legislation, and in our opinion there is no problem. However, due to intense law-making legislation in Ukraine (according to the Uniform State Register of legal acts, the total number of existing normative acts is 86,627 acts) developed by its lack of processing, unnecessary complexity, significantly lowering the formal clarity and sharp increases contradictions between the legal acts. It is clear that such legislation is much more difficult to apply and interpret than formally determined, free of contradictions, well designed and clearly set out legislation that largely affects the legal certainty in the state.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

The definition of case law does not officially exist in Ukrainian legislation. However, judges making decisions on complex cases refer to previously adopted judgments of higher courts.

Despite the lack of official existence of case law, experts identify several modalities of precedent: so-called "quasi precedent", judgments of the European Court of Human Rights, which are a classic kind of international case law and judgments of the Constitutional Court of Ukraine, which are the interpretation of case law

Also, it is worth to noting, that today, de facto, the case law as a source of law in Ukraine has been in use already. Indeed, based on the provisions of procedural codes, the ground for appellate review of decision is unequal application of the same provision of law by courts. This confirms the existence of case law in Ukraine and reference to that. In addition, lawyers often use judicial precedent as proof of their right positions during consideration of the case, such as: clarification and resolution of the Plenum of the higher courts and even print judgments that have become available since the introduction of uniform system of judicial decisions.

In current circumstances, the main source of law in Ukraine is the legal act. It does not settle promptly dynamic public relations. In connection with this, court must determine legal policy based on the rule-making. The basis for entitling acts of judiciary with features of normativity is a need to ensure uniformity of judicial practice, the principle of legality in the administration of justice, rights and freedoms of individuals and citizens, implementation of the Constitution of Ukraine as directly applicable, overcoming conflicts and gaps that arise in the legal regulation of social relations.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

Judgments, which came into force, are binding for all state authorities, local government, their officials and officers, individuals and legal entities and their associations across Ukraine. Mandatory accounting (prejudicialness) of judgments to other courts is established by the legislation. Conclusions regarding the application of the law set out in the resolutions of the Supreme Court are binding for all power

entitites which apply the relevant provisions of the law . Conclusions of the Supreme Court of Ukraine on the application of the legal acts contained in its resolutions shall be taken into account during the application of the law by other courts (Article 13 of the Law "On judicial system and status of judges").

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

To address the problem of unequal application of the law courts in similar situations the legislation of Ukraine provides mechanisms which enable unified court practice. One of such mechanisms is to ensure uniform application of the law by the courts through performance of the Supreme Court. The Supreme Court formulates the legal positions in their decisions on the results of cassation against low-level court decisions.

The Supreme Court of Ukraine as the highest judicial body in the system of courts of general jurisdiction of Ukraine ensures the unity of court practice in order and manner established by procedural law (Paragraph 6 of article 36 of the Law “On judicial system and status of judges”).

The court shall be required to take account of the findings of the Supreme Court of Ukraine regarding the application of the law set down in its decisions. The court is entitled to waive legal opinion of the Supreme Court, only through the proving of its position.

It also provides the use of mechanisms to ensure the unity of court practice in Ukraine:

revision of the judgements:

- appeal and cassation review of judgments upon appeals of parties to proceedings (the Law "On judicial system and status of judges", procedural law);

official interpretation:

delivering the official interpretation of the Constitution of Ukraine and the laws of Ukraine by the Constitutional Court of Ukraine (the Constitution of Ukraine).

In the meantime, Ukraine is expected to adopt a new Law of Ukraine on the Constitutional Court which otherwise will give the definition of official interpretation of the Constitution and laws of Ukraine, and also introduce the institute of constitutional complaint.

A member of the CCJE from Ukraine will inform working group of appropriate changes immediately.

Also, there is a number of non-procedural ways of securing a unified court practice.

methodological assistance and case law analysis:

- the appeal court and the court of cassation are entrusted with issue of the case law analysis and reporting on its findings to the district courts and to the Supreme Court (Article 27 of the Law “On judicial system and status of judges”)

Furthermore, the Supreme Court examines court practice and makes case law analysis. Special mention should be made that the summarizing of court practice on the application of imperfect legislation by courts and adopting of the opinions and

recommendations by the highest courts establishes the universal approach to considering cases on the basis of such rules, provides a methodology to overcome the law-making errors.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

In June 2016 significant amendments were introduced to the Constitution of Ukraine.

Reform of the Constitution of Ukraine retained the building of the judicial system on the principle of specialization.

According to Article 18 of the Law of Ukraine "On judicial system and status of judges" Ukrainian courts of law are specializing in civil, criminal, commercial, administrative cases and cases of administrative offenses.

Courts of first instance are: district courts of general jurisdiction, district commercial courts and district administrative courts.

District courts of general jurisdiction consider civil, criminal, administrative cases and cases of administrative offenses in the circumstances and under the procedure established by law. District commercial courts consider cases arising from commercial relations as well as other cases ascribed to their jurisdiction. District administrative courts consider cases of administrative jurisdiction (administrative affairs).

There are courts of appeal with a view to reviewing judgements of district courts in Ukraine. Courts of appeal consider civil and criminal cases and cases on administrative offenses, commercial courts of appeal and administrative courts of appeal exist respectively.

District courts of general jurisdiction consider civil, criminal, administrative cases and cases of administrative offenses, in keeping with the principle of specialization of courts, could be reviewed only by courts of appeal solve civil, criminal cases and cases on administrative offenses. Decisions of district commercial courts are reviewed only by commercial courts of appeal. Decisions of district administrative courts can be viewed only administrative courts of appeal.

In Ukraine, according to the amendments to the Constitution of Ukraine and the Law of Ukraine "On judicial system and status of judges", the new Supreme Court is created. It consists of the Administrative Court of Cassation, Commercial Court of Cassation, Criminal Court of Cassation, Civil Court of Cassation and the Grand Chamber of the Supreme Court.

Decisions of district courts of general jurisdiction after its review at the court of appeal could be challenged in the Criminal Court of Cassation or Civil Court of Cassation.

Judgments of district commercial courts after its review at the court of appeal could be challenged in the Commercial Court of Cassation. And judgments of district administrative courts, as a consequence, can be appealed before Administrative Court of Cassation after its review in appeal proceedings.

The principle of specialization of courts in Ukraine has been implemented in such a way.

In addition, in accordance with Article 31 of the Law of Ukraine " On judicial system and status of judges" (but have not established yet) two high specialized courts shall be established: the High Court on Intellectual Property and the High Anti-Corruption Court, which act as courts of first instance on different categories of cases.

It is proposed that the High Anti-Corruption Court shall consider cases of corruption offenses which fall under jurisdiction of National Anti-Corruption Bureau of Ukraine, in particular cases on corruption allegations against judges, prosecutors, MP's, senior officials of the executive authorities. The High Court on Intellectual property cases should consider violations of intellectual property.

By this time in Ukraine there is no adopted legislation which regulated through which court by what procedure the decisions of the High Court on Intellectual property and the High Anti-Corruption Court will be challenged.

Besides, the Grand Chamber of the Supreme Court is a permanent collegial body of the Supreme Court, which in the cases determined by law acts as an appeal court to ensure uniform application of the law courts of cassation.

Legislation regulating procedural grounds and order of the Grand Chamber of the Supreme Court is not adopted yet.

CCJE representative shall immediately report to the CCJE ion this issue once the Parliament of Ukraine adopts legislation, which regulates this issue

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

As noted in response to question 3.1 there is no officially existing case law in Ukraine.

Ukrainian legislation uses definitions "uniform application of the law", "ensure uniform application of courts of cassation," "ensure the uniform application of the law courts of different specializations." Article 36 of the Law of Ukraine "On the Judicial System and Status of Judges" provides that the Supreme Court is the highest court in the judicial system of Ukraine, which ensures consistency and unity of court practice in the order and manner established by procedural law. A Grand Chamber of the Supreme Court in the cases determined by law acts as an appeal court to ensure uniform application of the law courts of cassation.

President of the Supreme Court of Ukraine assessing the validity of decisions of the Supreme Court of Ukraine notes that they contain legal conclusions that specify the rules of law, specifying their content, It is an example of how the courts and other public authorities have to apply a particular provision of lea.Therefore, only that court practices which contain mentioned features, in particular, legal conclusions and summary of court practice, should be in use. This is what can be called as unification of court practice of Ukraine. They should be obviously the rule and compared with other forms of practice.

The content of the legal conclusions of the Supreme Court based on the systematization of certain categories of cases and legal relations. Scope of court practice is the result of generalization and analysis of judicial statistics, identification of trends in its development, gaps in the legal regulation of the nature of miscarriage of justice and ways to avoid it .

The legislation of Ukraine does not provide hierarchical relationship (i.e. subordination) the legal conclusions of the Supreme Court and judicial practice.

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;

The court shall be required to take account of the findings of the Supreme Court of Ukraine regarding the application of the law set down in its decisions. The court is entitled to waive legal opinion of the Supreme Court, only through the proving of its position. (Paragraph 6 of article 13 of the Law “On judicial system and status of judges”).

- are there any consequences for judges if they do not follow case law of higher court?

Due to the fact that judgement which does not take into account a legal position of the Supreme Court on different issues, could be appealed. Regarding this fact, each judge, that knows such legal position can not to take it into account. However, it is possible that judge, for example, of the court of first instance, makes a judgement that is contradicting to the opinion of the Supreme Court, and risking this judgement to be cancelled. This situation does not contradict the current legislation.

The provisions of chapter 6 of article 13 of the Law of Ukraine "On the Judicial System and Status of Judges" can be interpreted only as a call for courts to consider the legal position of the Supreme Court and it is meant to motivate their rejection, and no more. This call is not supported by any measures of liability stated in the Article 106 of the Law. There is no specific kind of disciplinary offenses because of non-conformity the legal position of the Supreme Court. The Law provides for responsibility for unjustified judgment.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

We believe that judgements of the Supreme Court can provide equivalent of cogent precedents.

According to the President of the Supreme Court of Ukraine, Yaroslav Romaniuk, judgements of higher courts provide the legal conclusions which specify the rules of law, clarifying their content, And set an example of how courts and other public authorities should apply specific provisions of law "

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings in abstracto etc.)?

The case law analysis is applied for identifying contradictions and deviations in court practice in one court or the various courts in Ukrainian legislation.

The case law analysis means clarification of court practice of courts of general jurisdiction as a result of its study and analysis of court statistics, identifying trends in its development, gaps in the legal regulation of the nature of miscarriage of justice and ways to avoid it.

The cassation review of judgements by the Grand Chamber of the Supreme Court with the adoption of the position on the application of the law is the other procedure that is used to overcome the unequal application of law by courts for similar public relations.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

In some cases, judges are forced to deviate from the constant court practice, especially when it comes to protecting fundamental rights and freedoms in the political crisis (The Orange Revolution, Revolution of Dignity).

Moreover, in circumstances where the parliament, president, government attempt to abolish or restrict fundamental human rights or neglect fundamental constitutional principles in its activities, the Court must protect democracy , judicial activism in this sense on the extended (law-making) interpretation of constitutional provisions. Thus, goes beyond the literal understanding of the constitutional text is justified and necessary, because it can not be allowed to let democracy destroy itself.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

Today, the position of the Supreme Court of Ukraine, adopted as a result of considering applications for review of court decisions delivered by courts of cassation with ununiform application of same provisions, , shall be binding for all power entities which apply the relevant provision of the law in their processes, as well as for all courts in Ukraine. Courts are required to bring their judicial practice into line with the Supreme Court of Ukraine (paragraph 1, Article 458 of the Criminal Code of Ukraine).

The opinion set out in the judgments of the Supreme Court of Ukraine belongs to qualify as the application of the law, which is binding, but not creating new law as binding rules of conduct.

Regarding access to the Supreme Court.

It provides the right of direct appeal to the Supreme Court the complainant, after its review in cassation, at the moment. Current judicial legislation determines the composition and structure of the Supreme Court. Thus, the Supreme Court will cease to be uniform and will not be divided into the chambers, how it was before and exists today, but into separate courts. It will be only one chamber – the Grand Chamber of the Supreme Court. But other divisions of the Supreme Court become the Administrative Court of Cassation, Commercial Court of Cassation, Criminal Court of Cassation and

Civil Court of Cassation. According to the specialization of judges. Obviously, the Cassation Courts exercise the powers allocated today high specialized courts, and the Grand Chamber will carry out exclusive authority for all legal specializations.

However, before the adoption of appropriate amendments to the procedural legislation of Ukraine, the issue of discretionary powers of judges of the Supreme Court on the right to trial, and possible filter criteria of cases remain unresolved and not clear.

In addition, from 1 January 2017 legislator restricted the right to appeal in the interest of the person to the Supreme Court and courts of cassation, it will be access only for lawyers.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

European Convention on Human Rights (hereinafter - ECtHR or Convention) and its Protocols are part of the national legislation of Ukraine, according to Article 9 of the Constitution of Ukraine as an international treaty that is in force and agreed to be binding by the Parliament of Ukraine. Ratification of the Convention was held under the Law of Ukraine № 475/97-врR of July 17, 1997; The Convention came into force for Ukraine on September 11, 1997.

By ratifying the Convention and its Protocols, first of all the government committed to ensure to everyone within their jurisdiction the rights and freedoms defined in the Convention and these protocols. Paragraph 1 of the First part of the Law of Ukraine № 475/97-вр of July 17, 1997, which was the base of ratification of the Convention and separate Protocols, stated that "Ukraine fully recognizes on its territory [...] on the recognition of duty' compulsory and without special agreement the jurisdiction of the European court of human rights in all matters concerning the interpretation and application of the Convention".

Such legal recognition of the compulsory jurisdiction of the ECtHR in all matters concerning the interpretation and application of the Convention makes studying ECtHR case law and the application of national legislation based on the position of the ECtHR, because in the decisions of the ECtHR disclosed content of most provisions of the Convention.

In addition, Article 17 of the Law of Ukraine № 3477-IV «On enforcement and application of the European Court of Human Rights" (as subsequently amended) provides for the application of the Convention and the ECtHR as a source of law, and Article 18 of this Law determines the order of reference to the Convention and the practice of the Court. It should be noted that we are talking about the "case-law" within the meaning disclosed in Article 1 of this law, that practice ECtHR and the European Commission of Human Rights, not only of the decision on Ukraine. It is important to remember that the Law of Ukraine № 3477-IV no provisions that would prohibit the use ECHR decision or ruling rendered on other countries. So use this guide decisions regarding Ukraine caused solely by considerations of affordability and convenience is such decisions to readers, if necessary appeal to the full text (not just excerpts) cited decisions may experience difficulties because of insufficient knowledge of the official languages of the Council Europe. In the event that the Court finds a violation of the applicant's rights on the part of the respondent State, such a state must not only take

individual measures (for example, pay just satisfaction or to review the case in court), but in many cases, take action general nature.

According to Article 13 of the Law of Ukraine "On enforcement and application of the European Court of Human Rights," general measures taken to address specified in the judgment systemic problem and its root causes - the underlying systemic problems that underlie found by the Court violation, and also eliminating the reasons for submission to the Court applications against Ukraine caused a problem that has already been considered by the Court.

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General measures in particular are:

• Amendment of current legislation and practice;

• Amendment of administrative practices;

• legal review of draft and provide training on issues of the Convention and the Court practice for prosecutors, lawyers, police, immigration staff and other categories of staff whose professional activity is connected with law enforcement and restriction of person's liberty, and other events.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Texts of ECHR decisions are available in the database HUDOC, judgments concerning Ukraine also can be found on the official site of the Ministry of Justice of Ukraine. The decision in cases against Ukraine are published in the "Official Journal of Ukraine" and other official and unofficial publications.

The news about the decisions of the ECHR and educational materials can be found on the Ukrainian site of the European Programme for Human Rights Education for Legal Professionals.

In addition, on the web-site of the Supreme Court, in the section "Decisions of the European Court of Human Rights" and on the web-sites of most Ukrainian courts overview of recent decisions of the ECHR is accessible.

3.13 Is the access to such database free of charge?

Access to these databases is free.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

According to the Law of Ukraine "On access to court decisions" on December 22, 2005 everyone has the opportunity to get acquainted with the decisions (non-profit basis) through the Unified state register of court decisions on the Internet. The Register is the official web portal of the judiciary at: http: //reyestr.court.gov.ua

In addition, there are separate databases (commercial) of the document. For example: League: Law, NAU Judgments and NAU precedent, and so on. The database used in these software products is determined by the supply contract product.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The peculiarity of the Ukrainian judicial system is that the Supreme Court is entrusted not only to avoid miscarriage of justice. According to the President of the Supreme Court Y. Romaniuk Ukraine has no mechanisms of preventive character that would jurisprudence directed forward, removing any possible errors in the application of the law to prevent their unequal application.

The legislator has empowered the Supreme Court to hear cases due to uniform application of the same substantive law in cases with similar legal relationship. However, in practice, it is common problem of unequal application of the same substantive law, and is application in the same relationship of different substantive law. Formally, it is can not be the ground of appeal to the Supreme Court.

The demarcation of jurisdiction is the painful issue.

The importance of the unity of judicial practice could not be underestimating.

Consideration of such cases should happen the same way that, watching jurisprudence, a person could predict the outcome of his case. We believe there are several reasons for the importance of the unity of judicial practice. This ensures the equality of people and contributes to the stability of the judiciary. Stability means legal certainty for individuals seeking protection of their rights in court. Inconsistent jurisprudence destroys the credibility of the judiciary and does not contribute to public confidence in it. In addition, due to the consistent jurisprudence can reduce the load on judges. Citizens will observe how to solve certain categories of cases, and guided judicial practice, can decide not to go to court. Also, if citizen could predict what decision will make the higher court in certain circumstances, consistency of jurisprudence reduces will reduce the number of appeals.

In addition, one of the actual mechanisms of unification of judicial practice, discussing by judges and legislators in Ukraine, is the introduction of reference for a preliminary ruling by analogy to the Law of the European Union.

Introducing of the procedure of applying to the Supreme Court with the reference for a preliminary ruling for adoption opinion on certain legal questions, according to the judges, will respond to the situation in time, while the regulation is relevant and the problems it has generated. It also will ensure stability and prevent a judgment different understanding of the interpretation, application of the law. The issue of application of the law can be addressed by with the Institute of reference for

a preliminary ruling without the appeal to the Supreme Court on the local level of justice.

3.16 Any other point you wish to raise.

It is the issue of existing of the Institute of constitutional complaint as a means (mechanism) for ensuring the uniform application of the law.

United Kingdom / Royaume-Uni

1. Concept of the uniform application of the law

1.1 Is there in your country a concept of the uniform application of the law? Is it formal, established at the level of the Constitution and/or legislation, or rather informal, discussed and set at various level and applied in practice through common understanding? Is it a combination of both approaches, to various extents?

In the UK there is a variety of different legal systems. For most purposes England and Wales and Northern Ireland have the same legal system; but Scotland has its own. Within the different internal jurisdictions the concept of the uniform application of the law applies within each jurisdiction. The concept of the uniform application of the law is in part derived from legislation and is in part derived from the common law (i.e. customary law). At the same time (until Brexit) the United Kingdom as a whole is a single member state of the EU and also a single member of the Council if Europe. The application of the law of the EU and the principles developed by the ECtHR are uniformly applied across the UK. The uniform application across the UK of the law of the EU and the principles developed by the ECtHR are required by legislation.

1.2 What is understood in your country under the concept of the uniform application of the law? Is it understood in the form of:

- consistent legislation to be adopted at legislative level;
- uniform practices by the executive institutions and law enforcement bodies;
- uniform case law developed by courts.

Please explain each point and indicate the relative importance of each point.

There is no general principle that legislation must be consistent, except in cases involving EU law. There is a principle enshrined in legislation that laws should be interpreted, so far as possible, to be in conformity with the ECHR and, in the case of Scotland, a legal requirement in legislation to that effect.
There is no general principle that executive institutions should adopt uniform practices but executive institutions can only adopt practices that are authorised by whatever law sets u those institutions.
The UK has a strong tradition of the uniform application of case law. There is a hierarchy of courts and a decision on a question of law by a court at one level of the hierarchy binds a court at a lower level in the hierarchy.

1.3 What is the rationale of the uniform application of the law in your country and which kind of outcome for the population it is supposed to produce?

The rationale for the uniform application of the law is twofold. First, similar cases should be treated similarly. Second, everyone is equal before the law.
The outcomes that the uniform application is intended to produce is the public perception of fairness, the ability to predict the legal effect of acts or omissions (the principle of legal certainty), and confidence in the administration of justice.

2. Role of the legislative and executive powers in ensuring the uniform application of the law

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

The legislative process is governed by constitutional convention and the internal regulations of each of the two Houses of Parliament. However, the Scottish Parliament and the Welsh Assembly also have powers delegated to them by Act of Parliament and the Acts of Parliament which delegate those powers also set limits to them (but not to the process). If it is alleged that either the Scottish Parliament or the Welsh Assembly have exceeded their powers, the Supreme Court of the United Kingdom will give a ruling. Apart from that the UK does not have a constitutional court.

2.2 Is there a hierarchy of laws?

Yes. At the top of the hierarchy (until Brexit) is the law of the EU. Below that are laws made by Parliament in Westminster. Parliament in Westminster can also delegate law making powers to ministers, but any laws made by ministers are submitted to Parliament before they come into operation. In some cases laws made by ministers must be expressly approved by Parliament. In other cases the laws are valid unless Parliament objects. In addition in relation to laws made by ministers (whether or not Parliament has approved them) the courts may rule on whether the laws are within the limits of the delegated powers.
In addition Parliament sometimes delegated law making powers to local government. Local government may make laws within the limits of the delegated powers. But the court can rule on whether a local government has exceeded its delegated authority.
Finally, as explained the Scottish Parliament and the Welsh Assembly have limited legislative competence within the limits of the powers conferred on them.

2.3 How the conformity of national laws to treaties and other international instruments is ensured? How the latter are applied in your country: directly or through national implementing legislation?

A treaty is not directly applicable in the UK unless it is incorporated into domestic law by Act of Parliament. In the case of the EU treaties and certain articles of the ECHR this has been done generally. In other cases (e.g. conventions on jurisdiction or child abduction) this is done on an ad hoc basis. But even if a treaty has not been formally incorporated there is a general principle that, if possible, domestic law should be interpreted so as to conform with the UK's obligations in international law (including treaties).

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

If a treaty has not been incorporated into national law, and a discrepancy between national law and a treaty cannot be cured by interpretation, national law prevails.

2.5 How usually law making process is carried out in your country? Which of the powers of the state has in practice dominant role in this process?

In the UK the common law and legislation run side by side. Where there is legislation affecting a particular area of behaviour the legislation prevails; and in such a case it is Parliament which has the dominant role. The role of the courts in such cases is to

interpret the law rather than to make it. Where an area of activity or behaviour is not regulated by legislation the law is, in practice, made by the judges.
In cases where powers to legislate have been delegated to ministers, devolved administrations (i.e. Scotland and Wales), or local government, it is those institutions who make the law. However, as explained, the courts will rule on whether the law making powers have been exceeded and, in addition, the court will rule on disputed interpretations of the laws thus made.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

Acts of the executive power per se are not a source of law, with limited exceptions. The Immigration Rules are treated as being almost equivalent to law although technically they are no more than a statement of the policy of the Home Office. Extra-statutory concessions made publicly by the tax authorities can also give rise to binding legal effects. But in all these cases, the courts are the final judges of whether legally enforceable rights or obligations have been created.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

In some areas of the law, laws are far too frequently amended. The Immigration Rules are a notorious example in the UK, as are the laws relating to the sentencing of convicted criminals. Although the content of laws are publicly available, the piecemeal nature of amendment and the complexity of the laws (as amended) compromise the principle of legal certainty.

3. Role of courts in ensuring the uniform application of the law

3.1 Has the court case law in your country binding legal effect and is it a source of law? If yes, to what extent? To the same extent as the national legislation?

As explained there is a hierarchy of courts in the UK. In order of seniority they are (1) the Supreme Court (2) the Court of Appeal (in England and Wales) and the Inner House (in Scotland) (3) the High Court (in England and Wales) and the Outer House (in Scotland) (4) the county court (in England and Wales) and the sheriff court (in Scotland).
In parallel there is a series of independent tribunals staffed by specialist judges (and in some cases specialised lay people e.g. medical practitioners or real estate professionals). They are subordinate to the courts but have their own hierarchy (1) the Upper Tribunal and (2) the First Tier Tribunal.
A decision on a question of law by a senior court binds a junior court. Unless and until Parliament changes the law (or there is a contrary decision by an even more senior court) the decision of the court is a source of law with equal effect to legislation. Unlike the legal system in many countries, senior courts may lay down principles of law of general application.

3.2 If the court case law in your country does not have binding legal effect, to which extent it is recognised as important for judges, at formal or informal level?

See my answer to question 3.1

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or

between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

As explained in the hierarchy of courts in the UK a decision of a senior court binds a junior court. Where a court has decided a legal question another court of the same seniority faced with the same point will normally apply the decision of the first court. There are exceptions to this rule; but they are rare in practice. A more senior court is free to reach its own decision.

3.4 Are there specialised courts in your country? Is there a hierarchy of specialised courts if such system exists? Is it possible to challenge final judgments of specialised courts before superior judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There is a whole series of specialist tribunals, dealing with a large variety of different subject matter: intellectual property, social security benefits, taxation, immigration, landlord and tenant disputes and so on. These tribunals are all under the supervision of the courts in so far as they decide points of law.
Within the court system itself there are also some specialist courts. They deal with: commercial cases, insolvency (both personal and corporate), intellectual property and company matters.
It is always possible to challenge a decision of a specialist court or tribunal on a point of law. In some cases (but not many) it is also possible to challenge a decision on a point of fact.

3.5 Is the unification of case law (mentioned in the question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

Long-standing practice amounting to a fundamental principle of the common law (i.e. customary law).

3.6 Are judgments of such courts (mentioned in the question 3.3) obligatory to follow for:

- judges/panels of that court;
- all judges in the country;
- are there any consequences for judges if they do not follow case law of higher court?

See my answer to question 3.1

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

See my answer to question 3.1

3.8 What are the procedures, if any, applied when there are contradictions or deviations in the case law between different courts or different levels within the same court including superior courts (appealing, rendering legal opinions of court departments, preliminary rulings *in abstracto* etc.)?

If there are contradictions in the case law between different courts, the usual procedure is to appeal to a higher court. There are rare cases where, if decision of the same level of the same court conflict, another court is entitled to choose between the conflicting cases. In addition the Supreme Court may decide not to follow one of its previous

decisions, although this is rare. If there are contradictions between different levels in the same court, the senior court prevails.

3.9 Either in the case when the case law has binding legal effect, or in the case when it is not binding but otherwise has some impact, in which, if any, situations would it be regarded as permissible or maybe even necessary to depart from the case law?

Where a case has binding legal effect, only a senior court may depart from it. The exception to this rule is that the Supreme Court may depart from one of its own earlier decisions. If the case law is not binding, then any court may depart from it if good reasons are shown.

3.10 What is the role of the Supreme Court or any other highest court in your country in establishing uniformity of application of law? Please explain how it is possible to access the Supreme Court and are there any discretionary powers in granting right to hear the case, and what would be the criteria for such possibility (filtering criteria)?

The Supreme Court is the highest court in the UK. It will only hear a case if it considers that it raises an arguable point of general public importance. Even then permission to appeal is necessary. Once the Supreme Court has decided a case its decision binds all other courts in the UK.

3.11 How is the case law of the European Court of Human Rights and other supranational courts or quasi-judicial bodies ensured and applied at national level, and how such case law affects the unification of national case law in your country?

The courts of the UK must "have regard to" the case law of the ECtHR. This means that they must apply the principles laid down by consistent case law of the ECtHR. There have been cases in which the UK courts have taken the view that the ECtHR has misunderstood UK law or practice and in such cases the UK courts resolve the problem by dialogue with the ECtHR.
In the case of the CJEU (until Brexit) the jurisprudence of that court is directly applicable in the UK.
Decisions of other supra-national courts are generally of persuasive value only.

3.12 In which way the court case law, including above-mentioned international case law, is assembled, published and made otherwise accessible for:

- judges;
- other legal professionals;
- general public.

Judges have access to a large on-line data base as well as to published series of law reports. In addition there are legal textbooks for professionals. Access to these databases is available, on a subscription basis, to anyone who chooses to pay the subscription. In the case of judges, the subscription is paid by the Court Service. Members of the public have access to a number of databases on the internet. For the case law of UK courts the most popular database is the British and Irish Legal Information Institute (bailii.org). The ECtHR and the CJEU also maintain their own databases.

3.13 Is the access to such database free of charge?

Databases operated on a commercial basis are not free of charge. The British and Irish Legal Information Institute, HuDoc and Eurolex are free of charge.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

There are many providers of case law, both in hard copy published form and on line. These operate on a commercial basis, although they are not always profit making. They are independent entities.

3.15 What are the challenges for the unification of the case law in your country? Does the quality of national legislation pose a challenge – for example the need in modern society to use relatively broad definitions and legal concepts?

The UK tradition of legislative drafting aims at precise language which is nevertheless comprehensible by lay people. On the whole it achieves its objectives. There are of course areas where broad definitions are used in order to give flexibility in changing circumstances; and in those cases it is for the courts to interpret the legislation. The degree of precision also depends on the subject matter of the legislation. Tax legislation, for instance, is usually far more technical and detailed than consumer legislation.

There are some cases in which legislation tries to codify the effects of case law, but they are unusual. Where this happens, the courts will apply the code.

3.16 Any other point you wish to raise.