

Questionnaire on “The role of courts with respect to uniform application of the law”
CCJE 2017

Answers from Denmark

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 préparatoires” 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 extent 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).