

Questionnaire for the preparation of the CCJE Opinion No. 20 (2017):

“The role of courts with respect to uniform application of the law”

Republic of 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.