

Strasbourg, 12 January 2017

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

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

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

Please in your answers do not send extracts of your legislation but describe the situation in brief and concise manner.

Comments on what is also happening in practice, and not only on point of law, will be much appreciated.

Introduction

The first section deals with the concept of the uniform application of the law in the way, in which it possibly exists, is understood and is operated in different member states of the Council of Europe.

The second section proceeds to discuss the role of the legislative and executive powers in ensuring the uniform application of the law through adoption of consistent legislation and executive acts.

The third section highlights the role of courts in ensuring the uniform application of the law through consistent court case law. **This section, due to the mandate of the CCJE, is the key section of the Opinion.**

The Bureau and the Secretariat of the CCJE would like to strongly thank you for your cooperation and contributions.

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 informal 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 business 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.