

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?

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 advise 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? If yes, 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 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 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.