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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation ofthe 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?

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.