

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?

Yes. The concept of uniform application of law is established in the Constitution and laws. It is clearly defined and there aren't too many spaces for combination.

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.

Uniform application of the law as a concept is related to the implementation of the same law's and the same practices throughout the territory of a certain state.

Among the factors that affect mainly the uniform application of the law are consistent legislation and uniform case law.

Consistent legislation is one of the main factors which affect the unification of jurisprudence. Consistent legislation with few changes, affect the implementation of the same law throughout the country.

Uniform practices by the executive institutions may affect mainly on providing a fast service but not in terms of uniform application of the law.

The unification of judicial practice plays an important role in the uniform application of the legislation, and we can say a primary role. Through the unification of judicial practice becomes easier for the administration the implementation of the same practices in the same cases, establishing the same standards.

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 reason of the uniform application of the law or even the same practices mainly intended to avoid abuses and creating legal certainty, stability of juridical relations, for a quality and effective service.

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 concept of Uniformity of law enforcement is governed by the provisions of the Constitution, domestic laws and international law, and in these conditions during the legislative process is taking into account the principles set out in these acts.

2.2 Is there a hierarchy of laws?

Yes.

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?

Compliance is ensured through the adoption of treaties and harmonization of national legislation. There are cases that the treaties are directly applicable but in other cases are applied through adoption of new laws or adaptation of existing laws.

2.4 What are the arrangements in cases of contradictions between national laws, or between national law and treaty?

Through interpretative technique. Mainly the legislator has ensured that there are no contradictions in this section, at least in terms of uniform application of the legislation. As in the case of inconsistencies between treaties and national legislation it is anticipated that the provisions of treaties take precedence over domestic legislation.

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 need for modification may become apparent during the implementation of the existing law, or as a result of a public debate between interest groups and political institutions. In fact it is the duty of all ministries to follow closely the development of the legal system in their respective areas and provide, where appropriate, amendments as well as the repeal of legal norms that have lost relevance, or that effectively are replaced by subsequent legislation. Each project for drafting a law should be preceded by the evaluation and certification of the reasons why the law required, in particular his political justification and legal. It is the duty of law makers to determine what should be regulated by law, to who is the law, and under what conditions will legislation function. The main role in this process has Codification Department of the Ministry of Justice and 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 there are some acts that are source of law and also are binding for the courts.

2.7 In your opinion, are laws too often amended in your country and does it affect the legal certainty in the country?

Mainly the experience of recent years has shown that the legislation has been amended many times and such a fact certainly affects the creation of unstable or legal instability.

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?

No.

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?

Court decisions have no binding effect, except for the parties. However the court decisions are important for judges for terms and they serve for informal as a practical application of the same practice for the same cases.

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?

Yes. Unifying decisions of the Supreme Court taken by the joint chambers of the Supreme Court have a binding legal effect and the courts of lower instances are obliged to apply them. No there aren't special arrangements between Courts in horizontal or vertical level.

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.

Yes we have special courts. The adoption of the new Constitution has foreseen the creation of a special court for crimes such as corruption etc.

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?

Yes is determined by the constitution and others laws.

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. These decisions are binding for all judges and for the chambers of the Supreme Court.

3.7 If judgments of such courts are not obligatory, what kind of practical effect they may have?

Depending on the legal system that a state has adopted, High Court's decisions have the authority of a "precedent"

- 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.)?

Within this framework, the ordinary courts interpret the law relying in their exact meaning by referring to the interpretation rules, in order to fulfil the legal gap on the legal order, the resolution of contradictions, unclarities, ambiguities, in the content of the norms. A task that in a certain way implies a creative and active role of the court for the development of positive law.

- 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?

The courts need to form and encourage the development of law and to ensure uniformity of law and legal certainty by giving responses in a timely manner to important legal issues, the impact of which, on the domestic legal order, transcends the interests of the individual case.

- 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 Supreme Courts play by unification of the case-law and development of law, in those cases where case-law has shown that the lower courts have given different or contradictory solutions regarding the application or interpretation of certain legal norms, ensuring in this way the consistency of jurisprudence through the uniform interpretation of the law, standardization of rendering justice in the judicial system as observance of the principle of legal certainty.

- 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?

Another mechanism which serves to ensure the unification of the case-law are as well the judgments of the European Court of Human Rights. The referral to the jurisprudence of the ECtHR has established a valid and effective interdependence between the national courts and the case law of the ECtHR, considering that the national courts have been entrusted with the task of assuring directly the application of the judgments of the ECtHR.

- 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.

Access is guaranteed through its various means but mainly those mentioned in your question receive access through the official site of official publications center, courts website and other state bodies.

3.13 Is the access to such database free of charge?

Yes.

3.14 Are courts the only source of information or there are more providers (on a commercial basis or through free access)? If the latter is the case, are such providers independent entities, and are they operating on commercial or not commercial basis?

Courts are among the sources where you can get information but such information is not primarily used for commercial purposes and provided free of charge from courts and other operators.

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?

We cannot talk about real challenges in terms of practical unification because the unification is always carried out when the legislation is being implemented in different ways by different courts. Normally it would be better if the legislator would provide clear and explanatory concepts in order to better understanding and to be implemented the same by the courts.

3.16 Any other point you wish to raise.