

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”**

**There are the answers from Liechtenstein as follows:**

### **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 Constitution requires uniform application of the decisions of the courts and the administrative authorities (executive powers). If there is already a uniform judicial and administrative practice, in principle, the citizen must be able to rely on it. There must be good and compelling reasons for not observing (for departing from) uniform practice. The Constitutional Court reviews (examines) whether there is sufficient justification for doing so. A change in practice must be factually justified (be based on

factual reasons) and must not be a surprise without a legal hearing for the person concerned.

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 practices by the executive institutions and law enforcement bodies and uniform case law developed by courts.; see 1.1

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 Constitution requires that the laws be applied equally to all citizens. A different application presupposes that there is factual justification for this.

## **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 rules laid down in the constitution for the formation of a law (formal constitutional law) must be complied with.

2.2 Is there a hierarchy of laws?

There is a hierarchy in the legal norms. Constitutional law and international law are at the top level (rank on top level/ come first).

Below (then) there are the simple laws and the decrees (regulations) issued/adopted by the government.

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 applied directly in Liechtenstein, if they are suitably specific. If they are only framework contracts, appropriate laws and regulations for implementation must be enacted by the Parliament.

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

In case of contradiction between national law and international law, the international treaties are more important than national law. This means that the authorities and courts must directly apply the provisions of the international treaties.

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?

Parliament and prince have the dominant role. Firstly, a law has to be passed by Parliament (at the request of the government or a legislative initiative by citizens). On request of a corresponding (certain) number of citizens a referendum against a law of the Parliament may be raised. There must then be a popular vote. Ultimately, however, the prince must give his consent to a law.

2.6 Are acts of the executive power source of law in your country and in that respect are they legally binding for the courts?

The government may issue decrees/regulations if authorized by a law. Such regulations are binding ; if they contradict the law, the Constitutional Court will declare them not valid on application by any other Court..

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

In certain fields amendments/changes are often made after a short time. That can lead to problems.

### **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 decisions of the courts basically only apply to the specific case. If, however, there is a permanent (an established, a settled) case-law(jurisdiction) of the Supreme Court, a lower court must have good reasons for deviating from permanent case law. Courts do not have the role of a legislator. If a law is unclear or has gaps, the courts can interpret the law (by means of interpretation).

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 already mentioned, a settled case-law of the Supreme Court has a de facto binding effect for the same case. Every judge can, however, deviate from (leave this) this, but he has to justify this well. There must be convincing and better reasons for a departure from the established case law (for not following/observing the established case law).

3.3 In either case, have the courts a role to unify in any way the case law, and if yes, which courts and in which way? Are there special arrangements within each court – or between different courts at horizontal or vertical level within the hierarchy of courts – to ensure uniformity?

The courts that rule/decide in the last instance (final authority) ensure legal certainty (legality). The President of the Supreme Court has the mission/task to aim at a uniform jurisdiction through discussion. The judges, however, are independent and free in their decision.

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 courts for civil and criminal law as well as an administrative court and a constitutional court. Decisions of the Supreme Court (for civil and criminal law) as well as of the Administrative Court can still be challenged before the Constitutional Court for alleged unconstitutionality.

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?

There is a long lasting practice. But there is also the principle in the Constitution that every citizen has to be treated equally. A decision of the **Court of First Instance** (a lower court) and the Constitutional Court may therefore be challenged if, in a similar case, the same court has decided differently.

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?

There is no obligation (to follow case law of higher court). If judges refuse constantly a settled case law without justification, this can lead to consequences (law of employment/labor law).

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

By way of appeal, decisions are cancelled/annulled by the upper body/instance if there are no good reasons.

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 Constitutional Court may give its legal opinion to the other courts. The legal opinion of the Constitutional Court of Justice must be followed. The legislator can also clarify an unclear legal situation by making amendments.

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?

If the previous case law in a specific case would lead to a completely unsound/non factual result. If the social situation had changed. If criticism by the legal doctrine is convincing. New international treaties require a new interpretation.

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 Court and the State Court of Justice have established with their case law a uniform interpretation for the lower courts. In principle, the Supreme Court can be appealed to in case of divergent decisions by lower courts. The Constitutional Court can always be appealed to as an extraordinary court in cases of infringement of fundamental rights.

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?

The Constitutional Court also decides on the basis of the European Convention on Human Rights (ECHR) . In the interpretation of the ECHR the Constitutional Court takes due account of the decisions of the Court of Human Rights. The Constitutional Court can, however, also refer to the EFTA Court for the interpretation of provisions of EEA 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.

On the Internet decisions are accessible to all. There are journals and legal collections.

3.13 Is the access to such database free of charge?

There are both free legal databases as well as those where a charge has to be paid.

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 several providers. The government publishes anonymous decisions of the Supreme Court(s). That's for free. There are also providers that publish decisions on a commercial basis.

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 quality of the laws is important. Legal databases are also important. Coordination is also important as far as superior judicial bodies (Supreme Court) are concerned.

3.16 Any other point you wish to raise.