

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

ESTONIA

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?

This question has not been regulated at the level of the constitution or legislation. The main influencer for uniform application of the law is the Supreme Court. Although interpretations of Supreme Court are not universally obligatory (they are obligatory only in the same case), they are the main source and influence for the uniform application of the law. The principle is that it is highly likely that the Supreme Court will interpret the law the same as it has before (there are exceptions occasionally).

Another influence is explanatory memorandum of the bill or draft resolution. It is used to understand the purpose of a new or revised legal act or subsection.

Opinions of renowned specialists of law also somewhat influence the uniform application of the law, but these opinions are not usually cited in court rulings (unlike Supreme Court rulings and explanatory memorandums).

The Supreme Court also arranges trainings for judges and publishes case law analyzes (it means studying cases and drawing essential conclusions on how courts apply certain norms and how they interpret them and results in an analysis document that generalises case law and highlights its trends and problems).

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 understood in all of the mentioned forms.

Although adopting consistent legislation is ideal in theory, it does not happen in real life. Life situations are constantly changing so legislation has to change accordingly. Those changes sometimes are not consistent with parts of legislation that are not changed. With legislation there is also another problem – it cannot regulate every possible situation. This is why legislation has to be rather flexible and that brings forth different interpretations.

Uniform practices are good for uniform application of the law ensure that people are treated equally.

Uniform case law developed by courts is important to judges and other practitioners of law (lawyers for instance), but people who do not have knowledge of law don't usually have knowledge of court cases either.

The concept of the uniform application of the law cannot be reduced to one form; neither can we say that one form is more important than the other. Consistent legislation is the basis of the uniform application of the law, although legislation is never ideal for everyone; uniform practices are needed to ensure that people are treated equally; court cases help judges make fair rulings and lawyers (for instance) predict their cases' chance of success. All forms are therefore important for different reasons and impacts.

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 rationale of the uniform application of the law is to ensure equal treatment of people, who are in similar legal situation.

2.1 Are there in your country formal or informal requirements for ensuring the uniformity in the legislative process?

No. However, judges are expected to know the Supreme Court's decisions.

2.2 Is there a hierarchy of laws?

Yes.

The foundation of the legislative system is the Constitution. Provisions of the Constitution have a superior legal force compared to other legal provisions.

Next, there are constitutional laws, laws (the difference between constitutional laws and other laws in that the first can be adopted and amended only by majority vote of the composition of the parliament and cannot be amended by the President with his or her decrees) and decrees (the President can issue decrees that have the force of a law, in the case when there is urgent national need and the parliament is unable to convene).

Then, there are regulations - issued by the Government and ministers on the basis of and for the compliance with the law.

All of the above are rules of conduct of general nature. There is also legislation of specific application (decisions, orders) and this kind of legislation is meant for regulating specific cases.

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?

Treaties and other international instruments are mostly implemented or at least cited in national law.

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

In national level, *lex specialis derogat legi generali*. If provisions contradict the Constitution, then the provisions are interpreted in accordance with the Constitution or are not applied (similar corresponding provisions are applied, if possible).

Treaties are higher in hierarchy and in case of contradictions, treaties are applied over national laws.

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?

Acts can be initiated by a member, a faction or a committee of the Parliament and the Government.

The Parliament and the Government work together in law-making process. A large percentage of bills is initiated by the Government, who thus also takes part in their proceeding. The opinion of the Government must be asked on bills initiated by the members, factions or committees of the Parliament.

First, the concept and the structure of the bill are worked out, its **scope** is determined, the used terms are defined and the initial version of the text is drawn up. In the explanatory memorandum accompanying each bill, its authors explain the purpose of the new act. It is important to involve the interest groups who are the most directly impacted by the future act into the creation of the act. Increasingly, the Government informs the interests groups about its legislative intention in order to collect their first input.

Passing of an act requires three readings. Only in certain cases, such as the ratification of foreign treaties, two readings are sufficient. Between the readings, the bill is deliberated by the leading committee. General principles of the bill are discussed at the first reading. A decision is made whether to continue the proceeding of the bill in the Parliament or not. At the second reading, the provisions of the bill are discussed and motions to amend are put to the vote. The second reading can be suspended and additional motions to amend the bill can be presented. If the reading is not suspended, the second reading is considered to be complete and the bill is sent to the third reading. The passing of the bill is decided at the third reading.

Before a law enters into force, it must be announced by the President. When the President announces the law, it is published in the official website of legal acts - Riigi Teataja (there are no official paper publication any more in Estonia). The President can refrain from announcing a law that has been approved by the Parliament, sending it back to the Parliament for new discussion and deciding. If the Parliament approves again the law sent back by the President without making any amendments to it, then the President shall announce the law or apply to the Supreme Court for determining the conformance of the law to the Constitution. If the Supreme Court satisfies the application of the President, then the law will not enter into force. If the Supreme Court does not satisfy the application, then the President must announce the law.

The law will enter into force on the tenth day after having been published in the Riigi Teataja, unless a different deadline is stated in the 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?

Government issues regulations and orders. A regulation is a legislative act and it is obligatory since publishing. Regulations are law and legally binding for the courts. Order is a legislation of specific application that is obligatory to the addressee of the order.

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

Most changes in legislation affect legal certainty and laws are amended often.

On January 1st 2017 there were 375 laws (not including Government or Ministers regulations) and 88 of them were either mended or came into force on January 1st 2017, so roughly a third of all laws. By February 10th 2017, 34 laws out of 375 have been amended (or came into force). By the end of this year another 21 changes (known at this point) are coming in these laws. And some laws are amended several times a year.

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 has no binding legal effect. Opinions of higher courts are not mandatory in general. The positions set out in a judgment of a higher court on the interpretation and application of a provision of law are only mandatory for the court conducting a new hearing of the same matter.

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?

Interpretations of provisions of law are commonly used by judges and they are important for uniform application of the 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 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 positions set out in a judgment of a higher court on the interpretation and application of a provision of law are mandatory for the court conducting a new hearing of the same matter.

Otherwise there are no arrangements between courts to ensure uniformity. It's just probable that higher courts will have same opinions about interpretation and application of law in future cases, so that way it indirectly influences case law.

3.4 Are there specialized courts in your country? Is there hierarchy of specialised courts if such system exists? Is it possible to challenge final judgements of specialised courts before judicial body (Supreme Court or court with a similar role). If yes, please explain in short.

There are no specialised courts.

The judicial system in Estonia has three instances:

- first instance courts are county courts (hear all civil and criminal matters) and administrative courts (deals with complaints about the activities or inactivity of officials of the Estonian government and local governments, as well as other public disputes);
- second instance courts are district courts (hear appeals and review the decisions of county and administrative courts);
- third instance is The Supreme Court.

3.5 Is there unification of case law (mentioned in question 3.3) determined by the Constitution, laws, by-laws or by long lasting practice?

No.

3.6 Are judgements of such courts (mentioned in 3.3) obligatory to follow:

- **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?**

The positions set out in a judgment of a higher court on the interpretation and application of a provision of law are mandatory for the court conducting a new hearing of the same matter.

For judges, there are no consequences if they don't follow case law of higher court.

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

They indirectly influence case law, because they probably keep their opinions they have formed previously.

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.)?

Participants in proceeding can appeal decisions of first instance courts and can justify their appeals with case law that is not in accordance with courts decision. That, however, does not mean that court decision is automatically annulled.

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?

It is permissible to depart from the case law (opinions of higher courts). A judge is independent from fellow judges and judges of higher court instances in rendering judgements, except when the opinion of a higher court concerning interpretation of law is obligatory for the court re-examining a 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 Court is the highest court in Estonia and reviews court judgements in cassation proceedings. The Supreme Court is also the court of constitutional review.

The Supreme Court is competent to:

- review appeals in cassation and protests;
- hear petitions for review filed against court judgments;
- hear petitions for constitutional review;
- resolve certain matters pertaining to court administration.

In civil, criminal and administrative cases an appeal in cassation, an appeal against a court ruling or a petition for the review of a court decision can be filed with the Supreme Court. The Supreme Court does not accept all filed appeals. The Supreme Court shall accept a matter for proceedings if:

- the circuit court has evidently applied a provision of substantive law incorrectly in its judgment or has materially violated a provision of procedural law in making the judgment and this could have resulted in an incorrect judgment;
- the adjudication of the appeal in cassation has fundamental importance with respect to guaranteeing legal certainty and developing a uniform judicial practice.

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?

Judges are continuously informed about the decisions of the European Court of Human Rights by e-mail newsletter.

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.**

Judges can use Courts Information System to access case law. Other legal professionals and general public can use two different websites for that. First, there is a webpage of the Supreme Court, where all Supreme Court decisions can be found. There are also case law analyzes, annotations of second instance court decisions, references to other webpages for different courts or international case law. Secondly there is a webpage of Riigi Teataja where legislation and all of courts (all instances) decisions are published, also annotations of decisions of European Court of Human Rights.

3.13 Is the access to such database free of charge?

Yes, all of the above-mentioned are free of charge.

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?

No more providers.

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?

One of the problems are constant amendments in legislation, which makes it harder to keep track of the changes.

The fact that legislation is mostly not very concrete, makes it possible to interpret legislation in different ways, but on the other aspect, it is necessary for legislation to be applicable to different life situations. If laws would be more concrete, there would probably be more laws and also more frequent changes.

3.16 Any other point you wish to raise.