

# INSTRUMENTS FOR UNIFYING JUDICIAL PRACTICE IN THE EUROPEAN UNION

DOI:10.47743/rdc-2023-1-0003

*Drd. Manuela Maria NECHITA (cas. PUȘCĂ)\**

## Abstract

*The concern to ensure uniform judicial practice is a priority for most EU Member States and is reflected in the regulation in national law of numerous and varied mechanisms for unifying case law, some formal or informal, others involving an administrative or contentious procedure.*

*The present research proposes to identify the mechanisms of unification of judicial practice existing at the level of the European Union States and an analysis of them in relation to the institution of the appeal in the interest of the law regulated by the criminal procedural legislation of our country.*

*At the same time, we consider the following methodological means: literature review, comparative and epistemological method.*

**Keywords:** *unification of judicial practice, mechanisms, appeal in the interest of the law.*

## I. Preliminary remarks

Differences in case law are not, by their mere occurrence and by themselves, a fundamental and insurmountable shortcoming of a judicial system, but are, by their very nature, the inherent consequence of every judicial system based on a set of courts with jurisdiction over territorial districts. However, profound differences in case law, which persist over time and concern areas of high social interest, are likely to produce a permanent state of uncertainty and undermine public confidence in the judicial system, which is one of the components of the rule of law<sup>1</sup>.

The mechanisms for unifying judicial practice regulated by the legislation of the European countries can be divided into the following categories:

- The classic instruments: appeal and cassation, important mechanisms in the process of unification of judicial practice, because they provide the possibility for supreme courts to rectify the illegalities of judicial decisions.

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\* Assistant Magistrate at the Criminal Division of the High Court of Cassation and Justice, Dr. Faculty of Law, Alexandru Ioan Cuza University of Iași; manuela.pusca@gmail.com.

<sup>1</sup> European Court of Human Rights, Judgment of 6 December 2017 in *Beian v. Romania*, published in the Official Gazette, Part I, No 616 of 21 August 2008; Judgment of 21 February 2008 in *Driha v. Romania*; Judgment of 27 January 2009 in *Ștefan and Ștef v. Romania*, available at [www.sintact.ro](http://www.sintact.ro).

- Research and analysis carried out by the legislation and statistics departments of the courts of appeal and supreme courts to identify non-uniform judicial practice. The aim of the research and analysis is to support the Supreme Courts in their role as unifiers of judicial practice.
- Discussions within the chambers of the supreme court and between them and the judges of the lower courts, held in annual or half-yearly meetings.
- Publication of important decisions of the Supreme Court for consultation by judges or legal professionals. In general, all European Union countries have a website on which such decisions are published and access to it is free of charge for both professionals and litigants, with the exception of the Czech Republic.
- Application of decisions of higher courts in identical cases, without however restricting the principle of the independence of the judge, in the sense that previous rulings are not binding, but only indicative, and if the judge in charge of a case does not agree with the interpretation given to a legal rule by the highest court, he or she has the possibility of interpreting and applying the law differently, depending on the specifics of the case.
- Judicial precedent, applicable in countries where the legal system is common law.

The formal mechanisms for unifying judicial practice, which involve a contentious procedure, are the exclusive competence of the supreme court and the rulings given are binding on the lower courts.

Institutions similar to the appeal in the interest of the law regulated by Romanian criminal procedural law, either in terms of the binding nature of decisions rendered in the procedure for unification of judicial practice or in terms of the conditions of admissibility, are found in Austria (decisions rendered by the consolidated Senate), Bulgaria (interpretative decisions and appeal in cassation), Poland (preliminary questions or prejudicial questions), Hungary (decisions of uniformity), France (advisory opinion) and the Netherlands (guidelines called decisions of investigation).

## **II. Mechanisms for the unification of judicial practice in the Member States of the European Union**

The European Union Member States views on the mechanisms for unifying judicial practice are extremely varied, which makes it impossible to classify them according to a single criterion or in a single category, but which demonstrates the variety of ways in which the rules of law are implemented in each individual State, i.e. the impact of national identities and the different legislative influences felt by them.

### ***II.1. States in which decisions handed down in the unification of judicial practice are binding (Austria, Bulgaria, Poland, Hungary and Romania)***

In **Austria**, the Austrian Code of Criminal Procedure regulates two instruments for the unification of practice, namely the "appeal in the interest of the law" (Nichtigkeitsbeschwerde zur Wahrung des Gesetzes), the decision adopted by the "consolidated senate" (verstärkter Senat) of the Supreme Court.

As regards the first mechanism for unification of practice, it is provided for in Section 3 of the Austrian Code of Criminal Procedure and must meet the following conditions: it must be brought by the public prosecutor, it must concern a judgment given by an Austrian court in a criminal matter in which the law has been infringed and there is no other way of correcting it.

In such a case, the Supreme Court will decide whether the law has been infringed, but the decision, rendered in principle, has no effect. However, if the infringement has caused damage to an individual, usually to the defendant, the Supreme Court may set aside or amend the judgment<sup>2</sup>.

The second instrument of unification of practice is achieved by the decision adopted by the "consolidated senate" (verstärkter Senat) of the Supreme Court: 6 more members are added to the members of a section, according to Section 8 of the Supreme Court Act. This system of unification of practice is used when different panels of the Austrian Supreme Court have given conflicting rulings on questions of law or fundamental interest, or when the Supreme Court intends to deviate from existing case law or from a previous decision of the consolidated senate.

In **Bulgaria**, uniform application of the law is ensured through the following mechanisms: issuing interpretative decisions, binding case law, allowing appeals and reversal of decisions with referral for retrial.

An interpretative decision is adopted where there is contradictory or erroneous case law or application of the law. They are adopted, depending on the subject matter, by the General Assembly of the Criminal, Civil or Commercial Colleges of the High Court; the Civil or Commercial Colleges of the High Court; the Supreme Administrative Court Colleges; the Supreme Court of Justice Colleges; and the Supreme Administrative Court Colleges.

The adoption of an interpretative decision may be requested by the President of the High Court of Cassation, the President of the Supreme Administrative Court, the Public Prosecutor, the Minister of Justice, the President of the Supreme Bar Council. A committee of the Supreme Court of Cassation may also propose an interpretative decision when the issues have been addressed in a contradictory manner by the Supreme

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<sup>2</sup> <https://www.justiz.gv.at/gerichte/oberlandesgerichtssprengel-linz> accessed 20 January 2023.

Court of Cassation committees. Interpretative decisions contain the interpretation of the law, are binding on all courts and must be followed *ex tunc*<sup>3</sup>.

An approach to an issue in a decision of a court of appeal that contradicts the binding practice of the Supreme Court of Cassation is a ground for appeal in cassation. In such cases, if the appeal is allowed, the Supreme Court of Cassation, following a hearing, delivers a judgment which always contains two parts: the first part is the interpretative part, which contains binding practice and which will be followed by the lower courts in the future, and the second part is the part relating to the merits of the case, in which the court resolves the dispute according to the circumstances of the case on the basis of the interpretation in the first part of the judgment.

The Supreme Court of Cassation as well as the Supreme Administrative Court issue interpretative decisions unifying conflicting case law on certain issues.

They are binding on all courts/executive bodies, governing bodies and all bodies issuing administrative acts, and issues interpreted within them will be resolved in accordance with this interpretation in all subsequent cases. The approach to an issue in a judgment of a court of appeal, contradictory to the binding practice of the Supreme Court of Cassation, addressed by the court in a contradictory manner or relevant for the correct application of the law as well as for the development of the law, constitutes a ground for the admission of cassation, retrial of the case and a judgment containing *inter alia* an interpretative part<sup>4</sup>.

Interpretative decisions and judgments containing an interpretative part, which form the binding practice of the supreme court, are binding on the lower courts, but do not constitute a source of law such as national law.

The mechanism of "interpretative decisions" regulated by Bulgarian law is the mechanism which comes closest to the institution of appeal in the interest of the law, provided for in Article 474 of the Romanian Code of Criminal Procedure, both in terms of the conditions of admissibility and, above all, in terms of the binding nature of the decisions handed down in this procedure.

In **Poland**, there is a concept of unification of the application of the law by the courts, both formal (established at the level of ordinary legislation – some legislative acts) and informal (applied in practice by ordinary courts, the Supreme Court and the High Administrative Court).

In criminal cases, in the course of examining an appeal, if a legal question requiring a substantive interpretation of the law comes to light, the appeal court may suspend the case and refer it to the Supreme Court. It may refer the resolution of such a legal

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<sup>3</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 15 December 2022.

<sup>4</sup> <https://www.vks.bg/consultat> la data de 15 decembrie 2022.

question to an enlarged panel of that court. The resolution of the Supreme Court is binding in respect of a particular matter.

This is the institution of so-called "legal questions" or "prejudicial questions" referred to the Supreme Court or the High Administrative Court, both supreme courts are cassation courts – the Supreme Court for civil, criminal and labour cases and the High Administrative Court for administrative cases<sup>5</sup>.

The mechanism of unification of judicial practice in Polish law called "legal questions" or "prejudicial questions" has similarities with the institution regulated by Article 475 of the Romanian Code of Criminal Procedure, i.e. the preliminary ruling, which is invoked in the course of the processing of a criminal case, unlike the appeal in the interest of the law which concerns the divergent practice found after the final settlement of court decisions.

In **Hungary**, the concept of uniform application of the law is laid down in the Constitution in Article 25, according to which the Court, the highest judicial authority in Hungary, guarantees the uniform application of the law and its decisions on uniformity are binding on all courts.

Uniformity decisions are not decisions in individual cases, but contain abstract rulings on the correct interpretation of the law and explanatory notes (the arguments underlying the rulings). Only these decisions are binding on all courts.

The Court also publishes decisions of principle of the Court, which are binding only on the Court and are decisions handed down in individual cases<sup>6</sup>.

If a judicial panel of the Court intends to depart from a particular point of law established by a previous decision of the Court, a uniform decision must be adopted in order to annul the previous decision of principle.

The procedure for uniformity decisions is applicable when:

1. where a new uniformising decision or amendment or withdrawal of a previous uniformising decision on a question of principle is necessary to improve the case law or to ensure uniform application of the law;
2. where a panel of the Court intends to depart on a question of law from a previous decision of another panel published as a decision of principle of the Court or from a decision of principle of a court. In such a case, the panel which intends to depart from a decision of principle of the Court or a decision of principle of the court) initiates a uniformity procedure and suspends the procedure until the adoption of the uniformity decision.

In order to unify judicial practice, there are also working groups which analyse case law and prepare non-binding opinions on the outcome of their investigation<sup>7</sup>.

<sup>5</sup> <https://trybunal.gov.pl/en/> consultat la data de 5 martie 2023.

<sup>6</sup> Iosif Ionescu, "Hungarian Criminal Procedure Code", in *Criminal Law Review*, Year VII no.4, October-December, Ed. Bucharest, 2000, p. 137-138.

<sup>7</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accesed 10 December 2022.

## ***II.2 States in which decisions in the unification of judicial practice are of a recommendatory nature***

In the European countries in this category, although there are mechanisms for unification of judicial practice, similar to the appeal in the interest of the law in terms of admissibility conditions, the decisions handed down in such a procedure are not binding on the courts, but only of a recommendatory nature, guidelines which generally leave room for individual assessment, precisely in order to balance the principles of equality and independence of each individual judge.

In **Belgium** there are no rules requiring uniform application of the law, it is the courts that interpret and apply the law under the control of the Court of Cassation. The decisions of the Supreme Court are not binding on the lower courts, so each judge can give his or her own interpretation of the law, regardless of the case law of the Supreme Court, and this is inherent in their independence, although his or her decision can be overturned by a ruling of the Court of Cassation.

The concept of unification of judicial practice is achieved through a system based on dialogue between judges, which allows the Court of Cassation to take into account the case law of the lower courts, on the one hand, and, on the other, the lower courts to agree with the case law of the Supreme Court, which can maintain or modify its practice.

Uniform application of the law is not provided for by law, as each judge remains independent in the exercise of his or her profession, either in the actual application of the law or in its interpretation. However, the mechanism of dialogue between judges and mutual control between the judge of cassation and the ordinary judges leads in practice to a unity of jurisprudence.

The judicial dialogue system therefore gives all courts a unique role in unifying judicial practice<sup>8</sup>.

In **France**, "regulatory judgments" are prohibited in the Court of Cassation, as in all other French courts, by Article 5 of the Civil Code, according to which "courts are prohibited from giving a regulatory judgment; the court determines the law, adapting it to developments in society, whether political, social, economic, international, technical or technological.

The mechanism for unifying judicial practice under French law is the advisory opinion<sup>9</sup> procedure strictly regulated in Article 706 of the Code of Criminal Procedure. Thus, a request for an opinion must be made by a court in the national judicial system

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<sup>8</sup> [https://justitie.belgium.be/nl/rechterlijke\\_orde/hoven\\_en\\_rechtbanken/hof\\_van\\_cassatie](https://justitie.belgium.be/nl/rechterlijke_orde/hoven_en_rechtbanken/hof_van_cassatie) accessed 5 March 2023.

<sup>9</sup> [https://www.courdecassation.fr/jurisprudence\\_2/avis\\_15/presentation\\_saisine\\_avis\\_8018/textes\\_applicables\\_240/64\\_706\\_7238.html](https://www.courdecassation.fr/jurisprudence_2/avis_15/presentation_saisine_avis_8018/textes_applicables_240/64_706_7238.html).

which decides to ask the Court of Cassation for an opinion on a question raised in ongoing proceedings, the question must concern a question of a legal nature and be a new question which has not previously been decided, the question to be decided must present a certain degree of difficulty and give rise to numerous controversies and the question raised must not already be the subject of a previous appeal, the rationale of this last condition being that it should not influence the judge who is entrusted with the resolution of the case.

Article L. 441-1 of the Law on the organisation of the judiciary also provides that, before ruling on a new question of law presenting a certain degree of difficulty, the courts may, by a decision which cannot be appealed, request the opinion of the Court of Cassation. The opinion issued is not binding on the court that made the request (Article L. 441-3)<sup>10</sup>.

The advisory opinion procedure under French law, in terms of the conditions of admissibility, is similar to the procedure governed by Articles 475-4771 of the Romanian Code of Criminal Procedure, i.e. referral to the High Court of Cassation and Justice for a preliminary ruling on points of law, and not to the procedure for an appeal in the interest of the law. The main difference between the opinion of the French Supreme Court and the two instruments unifying judicial practice in Romania is the advisory nature of the advisory opinion for the referring court.

In the **Netherlands**, from a constitutional point of view, the hierarchy of laws established in the Dutch Constitution, as in most other Western democracies, implies the concept of uniform application of the law, a concept which is relevant to all three branches of government: legislative, executive and judicial.

Although in the Netherlands there is no formal binding effect of case law, especially of the supreme courts, judges tend on the one hand to follow established case law and on the other hand to establish a consensus on several points of procedural and substantive law when practice shows divergent case law, this results in guidelines, which generally leave room for individual assessments in order to balance the principles of equality and independence of each individual judge. This is also reflected in the Code of Ethics of the Dutch Magistrates' Association (para. 2.2): 'the development of the law is important and, by extension, so is the uniform application of the law and for this reason individual judges can be expected to cooperate in developing substantive collaboration with their colleagues. Uniform application of the law has two aspects: on the one hand, it leads to a limitation of the judge's autonomy, while, on the other, it represents an important facet of the quality of the legal system. The judge takes into account the importance of promoting uniform application of the

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<sup>10</sup> Milica Vesovic, "Comparative study (analysis) of mechanisms for case law harmonisation in selected member states of the Council of Europe", p. 18-26, accessed <http://horizontal-facility-eu.coe.int>, 10 December 2022.

law when applying the law and, in principle, follows the recommendations supported by his fellow judges (...). Any departure from this type of recommendation will require the judge to give reasons for his or her decision to do so"<sup>11</sup>.

As the supreme court in the field of civil, criminal and tax law in the Netherlands, the Supreme Court is responsible for hearing appeals in cassation. The purpose of the appeal in cassation is to promote legal uniformity and the development of the law. On a regular basis, the Supreme Court gives guidance in the form of so-called 'inquiry judgments', in which all aspects of a particular issue are summarised. An Attorney General's office is attached to the Supreme Court, whose main task is to provide the Supreme Court with independent advice, known as an 'advisory opinion', on how to decide a case. However, the Supreme Court may decide that the cassation application is dismissed without giving extended reasons if the case does not give rise to questions of law of importance to the unity or development of the law<sup>12</sup>.

In **Estonia**, the concept of unification of judicial practice is neither constitutionally nor legislatively regulated, the main influencing factor for the uniform application of the law being decisions rendered by the Supreme Court. Although the interpretations of the Supreme Court are not generally binding (only for the case in which they were invoked), they are the main source for unification of practice<sup>13</sup>.

Supreme Court case law does not have binding legal effects, the rulings laid down in a higher court's judgment on the interpretation and application of a legal provision are binding only on the court to which the case has been referred.

Thus, in Estonia deviation from case law (opinions of higher courts) is allowed, a judge is independent from his fellow judges and judges of higher courts in delivering judgments and there are no consequences if he does not follow the case law.

Unlike Estonia, in Finland the concept of unification of judicial practice is provided for in the Constitution, in section 6 which states that "All are equal before the law". Decisions handed down by the Supreme Court and the Supreme Administrative Court are normally respected by lower courts dealing with similar cases. Decisions and practice established at lower court level can also have a considerable influence on the process of interpretation and application of the law.

The President of the Supreme Court may order that a particular case be submitted for debate to the plenary session (all members) or to the 11-member Grand Chamber if the Supreme Court seeks to depart from a previous judicial precedent.

However, it cannot be said that judges are obliged in their work to follow the practice of the Supreme Court, only that the Supreme Court may depart from its own

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<sup>11</sup> <https://www.rechtspraak.nl/> accessed 5 March 2023.

<sup>12</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2022.

<sup>13</sup> *Idem*.



case law only when the question of law has been referred to the plenary session or the Grand Chamber.

In **Germany** there is no general formal concept of uniform application of the law, this takes place within the courts applying the law in individual cases. A uniform application of the law is mainly achieved by the Federal Courts, by the procedure of passing through different courts and by certain legal obligations to present a case if it is relevant for a uniform jurisprudence.

Jurisdiction for interpreting the law and reviewing its application in individual cases lies with the courts, which are mainly responsible for ensuring uniform application of the law, the so-called principle of uniform jurisdiction. However, there is one situation where the binding effect of a decision of the higher courts is accepted, namely when the case is sent back to the lower court for a final decision<sup>14</sup>.

In the federal courts (courts of last instance), a chamber is obliged to submit a proposal to the common chamber if it wishes to depart from the known case law in a particular matter.

In conclusion, Germany has few mechanisms to ensure uniform case law. A uniform application of the law is mainly achieved by the Federal Courts, by the procedure of going through different courts and by certain legal obligations to present a case if it is relevant for a uniform jurisprudence.

For the Federal Court of Civil and Criminal Justice, the relevant rules in this respect are contained in paragraph 132 of the Law on the Organisation of the Courts. According to this law, a chamber which intends to depart from a decision of another chamber must ask whether the latter still upholds the opinion.

In this situation, the case must be referred to a joint chamber of judges to resolve the differences of opinion and to ensure a common position.

The joint chamber of judges is made up of the president and one judge from each chamber of the court. This procedure is called 'dissenting submission'.

In addition, a chamber may request a decision of the Joint Chamber of Judges if a uniform decision is needed on a matter of importance for the development of legal principles or for ensuring uniform jurisprudence.

The common chamber of judges is not bound by the conclusions of the deciding chamber, but the deciding chamber is bound by the decisions of the common chamber.

In **Italy**, the task of ensuring compliance with the law and its uniform interpretation is assigned to the Supreme Court of Cassation by Article 65 of the Italian Law on the Judiciary<sup>15</sup>.

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<sup>14</sup> <https://www.bverwg.de/en> accessed 5 March 2023.

<sup>15</sup> <http://www.cortedicassazione.it/> accessed 5 March 2023.

Although the Supreme Court's rulings are convincing by force of reasoning, they are not binding, as there is no rule of *stare decisis* in Italy.

An important role in ensuring uniformity is played by the Supreme Court's Documentation Service, i.e. the sector of the Court made up of judges who select decisions to be indexed and who alert when contradictory interpretations arise. The database of decisions prepared by this service is widely used by judges and practitioners. The service also produces annual publications<sup>16</sup>.

In **Lithuania**, the Constitution does not provide for the uniform application of the law, Article 109 of the Constitution refers to the provision that judges, when examining cases, must obey only the law.

According to the doctrine of the Constitutional Court, precedents are considered to be sources of law, and recourse to precedents is a condition for the uniform, coherent and consistent application of case law, together with the principle laid down in the Constitution. A uniform jurisprudence is formed by courts of general jurisdiction as well as specialised courts<sup>17</sup>.

The Law on the Courts establishes that courts, while making decisions in different cases, are obliged to respect their own rules on the interpretation of the law, which have been formulated in analogous or practically similar cases, the precedent may be applied only in cases whose factual circumstances are identical to the case before the court. In accordance with the provisions of the above-mentioned law, the Supreme Court of Lithuania forms a uniform jurisprudence of courts with general jurisdiction in the interpretation and application of laws and other normative acts<sup>18</sup>.

As regards the procedure, in case of contradictions or deviations from the case law, the higher court makes a decision and corrects deviations from the case law of lower courts. At the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania, the three-judge chambers hear cases. If deviations from case law are observed, the case may be transferred to be heard by the enlarged chamber of judges, which determines judicial practice<sup>19</sup>.

In **Portugal**, the unification of case law can only take place in the Supreme Court by means of an extraordinary appeal for unification or an enlarged appeal (with all chambers) to settle the case.

Supreme Court judgments, when handed down by the plenum of chambers (civil or criminal), are binding in the case that has been tried and within the limits of the

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<sup>16</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2022.

<sup>17</sup> <https://lrkt.lt/lt> accessed 20 March 2023.

<sup>18</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2022.

<sup>19</sup> [https://e-justice.europa.eu/19/RO/national\\_specialised\\_courts?LITHUANIA](https://e-justice.europa.eu/19/RO/national_specialised_courts?LITHUANIA) accessed 20 March 2023.

judgment. Beyond the trial in question, the uniform interpretation of a legal rule must also apply in other similar cases, unless the courts have new arguments that were not discussed in the uniform interpretation. The Supreme Court may change, in another case, the position taken by a new interpretation.

Access to the Supreme Court may exist on the basis of conflicting decisions at the level of the courts of appeal or even by contradictory decisions at the level of the Supreme Court<sup>20</sup>.

### ***II.3. States where the mechanism for unification of judicial practice involves an administrative procedure***

The mechanism of unification of judicial practice based on an administrative procedure concerns, on the one hand, meetings held annually or quarterly between supreme court judges or between them and judges of lower courts and, on the other hand, the publication of important decisions of the supreme courts on websites freely accessible to legal practitioners or litigants.

In **Croatia**, issues of interest for the work of the departments, in particular the uniformity of court practice and issues relevant to the application of the relations in certain legal areas, are discussed in sessions of the courts and the Supreme Court (Article 20 of the Courts Act).

Article 40 of the Law on Courts contains a provision that the conclusions of the Assembly of Judges on certain legal issues are binding for all court panels (courts of appeal and Supreme Court). There is no such provision for the courts of first instance.

In order to standardise court practice, the Supreme Court holds a joint meeting with the presidents of the court departments of all lower courts every six months or, when necessary, to discuss contentious legal issues relating to the proceedings of the lower courts. The conclusions of the meeting are published on the website of the Supreme Court (Article 40 of the Law on Courts)<sup>21</sup>.

The interpretation adopted at the meetings of all judges of the Supreme Court or of a division is not formally binding on the lower courts (only by force of argument), but in practice the lower courts will follow the jurisprudence of the higher courts, otherwise their decisions will be reviewed.

Also, one of the tools to avoid non-uniform jurisprudence in the Supreme Court is a system where all judgments, before being sent, are checked by the "jurisprudence department" to determine whether it is in harmony with the jurisprudence existing up to that point. If a particular judgment deviates from established case law, this is

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<sup>20</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2022.

<sup>21</sup> Milica Vesovic, op.cit, p. 14-18, accessed <http://horizontal-facility-eu.coe.int>.

indicated to the judge/committee, and if he/she maintains his/her opinion, then the decision department assembly or assembly of judges takes place)<sup>22</sup>.

In **Denmark**, the question of uniformity of judicial practice can be discussed between judges in plenary sessions. Horizontally, there is an annual meeting between the judges of two courts of appeal. The judges of each of these two courts meet annually with the judges of the courts of first instance in their district. During these meetings, issues of uniform application of case law may be discussed<sup>23</sup>.

In **Slovenia** there is a special instrument for the unification of judicial practice, i.e. the supreme court maintains registers (databases) on the case law of Slovenian courts and monitors the case law of international courts; it has a special documentation department, which deals with general issues of case law harmonisation, and higher courts can address questions on new legislation to the documentation department and express their interest in preparing a special seminar on certain issues or including such questions in regular training programmes. In addition, the documentation department organises regular meetings with lower court judges, which focus on substantive aspects of judicial work<sup>24</sup>.

Also, a mechanism that serves the purpose of unifying jurisprudence is the "legal opinions of principle" on issues of importance for the uniform application of the law, adopted by the Plenary of the Supreme Court. Legal opinions of principle are in the nature of an individual normative legal act whose scope goes beyond a specific case. They are binding on all chambers of the Supreme Court and, by force of reasoning alone, on the lower courts, but they may depart from the legal opinion of principle if this departure is supported by reasoning.

In **Sweden**, within the courts of appeal, there is normally a senior judge in each division who is responsible for discussing general legal issues with colleagues in the other divisions in order to reach a common understanding within the court.

Once a year, the Supreme Administrative Court brings together the presidents and senior judges of the administrative courts of appeal to hear their views on the legal issues to be addressed by way of precedent. This helps the Supreme Administrative Court to identify areas where there is uneven application of the law by lower courts.

The Supreme Court also organises meetings at irregular intervals with the Bar Association and the Public Prosecutor's Office.

In addition, individual courts organise case law meetings, where judges discuss how precedents and decisions of the courts of appeal should be interpreted and applied.

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<sup>22</sup> <https://www.domstol.dk/om-os/english/> accessed 5 March 2023.

<sup>23</sup> <https://www.domstol.dk/om-os/english/> accessed 5 March 2023.

<sup>24</sup> <https://www.us-rs.si/?lang=en> accessed 20 March 2023.

Contradictions or deviations from case law are resolved by the Supreme Court or the Supreme Administrative Court allowing one or more cases to be appealed to clarify the issue through precedent.

In civil cases, it is possible for a court of first instance to apply directly to the Supreme Court for a preliminary ruling on a particular point of law<sup>25</sup>.

#### ***II.4. States where Supreme Court case law or judicial precedent has a unifying role in judicial practice***

In the **Czech Republic**, the case law of the Supreme Court and the Constitutional Court is binding, and the judgments of these two courts are a source of law. If a court delivers an important judgment on the interpretation of a particular question of law, it may be referred to the Supreme Court and, after debate, it may be published in the Collection of Judgments, an official printed publication of the Supreme Court to ensure the uniformity of judgments.

Differences between the judgments of the ordinary courts may be settled by the Supreme Court Tribunal, differences between the judgments of the Supreme Court Tribunals must be settled by the Grand Tribunal of the Supreme Court, which consists of all the members of the Supreme Court<sup>26</sup>.

The case law of the Supreme Court and international case law is published in Official Collections of Laws published by the Government and Collections of Judgments created by the Supreme Court, but access to this database is not free of charge<sup>27</sup>.

In **Cyprus**, a common law country, the courts follow the principle of stare decisis, i.e. precedent established by case law. Judicial precedent is followed by all courts, with lower courts being obliged to respect the decisions of higher courts, which in turn follow their own decisions systematically.

The case law of the courts is a source of law and has binding legal effect; it has a legal effect parallel to that of national law.

Where it is necessary to review existing or conflicting case law, the Supreme Court, in a bench of 13 judges, may decide not to follow its previous decisions or rulings in a particular matter if it is shown that the previous decision was manifestly wrong because it was made on the basis of a wrong legal principle or circumstances have changed significantly in the meantime.

Supreme Court judgments are binding and fully applicable and should be followed by all judges. There are no immediate consequences for judges who, for some reason,

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<sup>25</sup> <https://www.domstol.se/en/supreme-court/> accessed 20 March 2023.

<sup>26</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2023.

<sup>27</sup> [https://e-justice.europa.eu/16/RO/national\\_justice\\_systems?CZECH\\_REPUBLIC](https://e-justice.europa.eu/16/RO/national_justice_systems?CZECH_REPUBLIC) accessed 20 March 2023.

do not follow a clear precedent, but decisions can always be appealed by the parties to the dispute, and if they are overturned for such a reason and it is shown that a particular judge does not respect the principle of stare decisis, this would have a negative effect on his or her position as a judge<sup>28</sup>.

Also, in **Ireland**, a common law country, decisions of the Supreme Court are binding on all courts in the country. A final court decision is the law of the land until it is amended by Parliament. In some cases, what is at issue is a question of constitutional interpretation, and the decision can only be overturned by a vote of the people in a referendum<sup>29</sup>.

### ***II.5. States where there are no mechanisms to unify judicial practice***

In countries, such as **Luxembourg or Malta**, where there is no formal concept of uniform application of the law, judges are free to decide according to the facts and in accordance with the law as they interpret it, without being bound by a decision of the higher court.

The courts have a role in unifying judicial practice, in that the judge decides taking into account previous decisions and trying to integrate his decision in line with case law.

## **Conclusions**

The concept of uniform application of the law in the European states cannot be reduced to a single form, nor can it be said that one form is more important or has more advantages than another, but only that whatever the system of law applicable to a state, the basis for uniform application of the law should be clear, unequivocal, without loopholes, coherent, consistent and non-contradictory legislation.

Although each mechanism has certain advantages for unifying judicial practice, none of them is ideal: in states where decisions rendered by the supreme court in the procedure of unification of case law are binding on lower courts, the principle of independence of judges in applying and interpreting the law is violated; in states where these unification decisions are only of a recommendatory, guiding nature, the principle of the security of legal relations and the citizen's confidence in justice is violated, and the system of judicial precedent can be criticised for the very large number of decisions to which the judge hearing a case must refer and also for the fact that it can be successfully applied in repetitive cases, but in criminal law each case has

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<sup>28</sup> <https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law> accessed 10 December 2023.

<sup>29</sup> Seamus Henchy, Precedent in the Irish Supreme Court, accessed at 20 January 2023 on <https://onlinelibrary.wiley.com>.

its own special features, and identical situations are rarely encountered which allow identical solutions to be applied.

In our opinion, the institution of an appeal in the interest of the law remains the most effective instrument for maintaining the unity of case-law and intervening when there are deviations from a correct interpretation of the legal rules, as long as this approach ensures, on the one hand, the real imperative of unifying case-law and, on the other, the fundamental principle of the independence of the judge and his or her submission to the law alone. In order to ensure the unified nature of judicial practice, it would be appropriate for the decisions handed down by the supreme courts in such proceedings to have only a recommendatory character, with a purely indicative value, but which should be imposed by the force of the arguments on which they are based.

Equality, uniform interpretation and application of the law are fundamental values in the rule of law, but these values should not lead to rigidity and obstacles to the development of the law. The binding nature of decisions handed down in a procedure aimed at the uniform application of the law, although intended to guide the practice of the courts in the same direction in resolving questions of law, may nevertheless sometimes undermine the principle of the judge's independence and his or her sole obedience to the law, with the result that the judge becomes an 'enforcer' of the law and of a predetermined judicial practice.