

Pologne
Cour administrative suprême

Poland
Supreme administrative Court

The hierarchy of norms in the Republic of Poland

I. Introduction.

The Polish Constitution was adopted by the National Assembly on the 2nd of April 1997. It occupies the highest position in the hierarchy of sources of law in Poland. All other normative acts must be consistent with the Constitution. The sources of universally binding law and their position in the hierarchy of law are regulated by Articles 87-94 of the Constitution.

The following are the sources of universally binding law in Poland:

- 1) the Constitution
- 2) statutes
- 3) ratified international agreements
- 4) regulations
- 5) enactments of local law (subject to the proviso that they are binding only within the jurisdiction of the body which issues them and within the limits of the powers laid down by law).

A specific source of universally binding law is constituted by the legislation of international organisations. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it is applied directly and have precedence in the event of the conflict of laws. This Article concerns EU secondary legislation.

II. EU Law

EU primary legislation in the form of international agreements is directly applicable. It takes precedence over the statutes. EU secondary legislation is directly applicable and takes precedence in the event of a conflict with the statutes.

Case law of the Constitutional Tribunal :

- case K 18/04 (the Accession Treaty Case), judgment of 11 May 2005; the Constitutional Tribunal emphasized the position of the Polish Constitution as the “supreme law of the State” and noticed, that the principle of interpreting domestic law in a manner “sympathetic to European law,” as formulated within the Constitutional Tribunal’s jurisprudence, had its limits. Although the European Union law is supposed to have primacy in cases of conflict with domestic law, the Tribunal found that membership to the EU does not undermine the supremacy of the Constitution. National constitutions that have individual rights provisions enshrined within, often indicate a minimum threshold of treatment and basic rights that cannot be violated, even by EU law
- case SK 45/09, judgment of 16 November 2011; the Constitutional Tribunal had to determine the admissibility of reviewing the conformity of the acts of EU secondary legislation [*the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1)*] to the Constitution. According to the Tribunal, EU regulations are normative acts and their position in the Polish constitutional system has been determined in Article 91(3) of the Constitution. The Constitution retains its

superiority and primacy over all legal acts which are in force in the Polish constitutional order, including the acts of EU law. The lower level of protection of the individual's rights that arises from the EU law, in comparison with the level of protection guaranteed by the Constitution, would be unconstitutional. The constitutional norms from the realm of the rights and freedoms of the individual set a threshold which may not be lowered or challenged as a result of the introduction of EU regulation.

The above mentioned judgments are available in English at <http://www.trybunal.gov.pl/eng/>

III. International agreements

International agreements are ratified by the President of the Republic. The Constitution requires prior consent of the Parliament for the specific international agreements what effects their position in the hierarchy of sources of law. Prior consent of the Parliament is required (granted by statute), if such an agreement concerns: (1) peace, alliances, political or military treaties; (2) freedoms, rights or obligations of citizens, as specified in the Constitution; (3) the Republic of Poland's membership in an international organization; (4) considerable financial responsibilities imposed on the State; (5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute. An international agreement ratified upon prior consent granted by statute has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

After promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement constitutes a part of the domestic legal order and is applied directly, unless its application depends on the enactment of a statute.

IV. Statutes

Statutes are subordinate to the Constitution and to international agreements ratified with prior consent enshrined in an Act of the Parliament, but rank higher than regulations. The most important issues can only be regulated by a statute (e.g. legislation defining the legal status of citizens, the rules governing local government systems and their mandate).

V. Regulations

Regulations are issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization specifies the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act. An organ authorized to issue a regulation is not allowed to delegate its competence to another organ. The purpose of a regulation is to implement a statute and as such, it cannot be either incompatible with the statute or go beyond the scope of the delegated powers. Non-conformity of regulation to the statute is tantamount to an infringement of the Constitution. It must be remembered that the Constitutional Tribunal's jurisdiction is not exclusive in this area, as common and administrative courts may also examine substatory acts and refuse to apply them, if they deem them to be in non-conformity to the statute, international agreement or the Constitution

VI. Local law

On the basis of and within limits specified by statute, organs of local government and territorial organs of government administration enact local legal enactments applicable to their territorially defined areas of operation. These enactments are binding only within the jurisdiction of the bodies which issue them but, in view of their universally binding nature, they may be addressed to all entities and establish their rights and obligations.

VII. Internal law

Internal law solely concern the legal situation of entities within the organisational structure of the body issuing such enactments. These are: resolutions of the Council of Ministers, ordinances of the Prime Minister, ordinances of the Ministers. Enactments of internal law are internal in nature and may be addressed exclusively to the organizational units subordinate to the organ which issued such acts. Ordinances may be issued only on the basis of a statute. They cannot form the basis of a decision concerning citizens, legal persons or other entities.

VIII. Case law

Case-law does not constitute a source of law in Poland. Under Article 178(1) of the Constitution, judges in Poland, within the exercise of their office, shall be independent and subject only to the Constitution and statutes. Pursuant to Article 193 of the Constitution, judges may address a legal question to the Constitutional Court regarding the compatibility of a given normative act with the Constitution, ratified international agreements or statutes if the outcome of a case pending before the courts hangs on the answer to that legal question.

There are also special types of the court decisions adopted by an enlarged bench of the Court (7 judges, Chamber or a full composition of the Court) - resolutions of the Supreme Administrative Court (SAC). They play a special role in making case law consistent. The SAC may adopt two types of resolutions:

- 1) resolutions in order to explain legal provisions whose application has caused differences in jurisprudence of administrative courts;
- 2) resolution containing solution of legal issues raising considerable doubts in respect of a particular administrative court matter.

The position on the legal issue taken in the resolution is binding on all administrative courts and so long as there is no change of the resolution, all panels of the administrative courts must respect it. If any panel of the administrative court does not share the position taken in the resolution, it should submit this issue for a new resolution by an appropriate panel of the SAC.