

**Autriche**  
**Cour administrative**

*Austria*  
*Administrative Court*

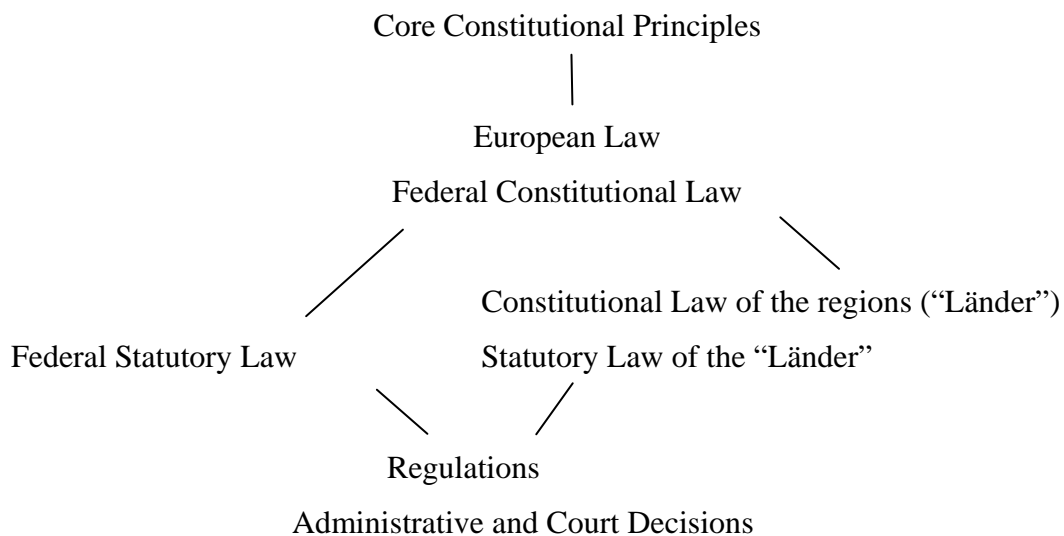
**ACA-Europe Seminar**  
**“Soft Law, Legal Norms and Sources of Law”**  
**18<sup>th</sup> December 2013**

**Hierarchy of Norms in Austrian Law**

**A. Hierarchy of Norms**

Austrian Law distinguishes principally between constitutional law and ordinary statutes. Customary law is not recognised as a source of law by the Constitution. Judge-made law is not recognised as formal precedent.

The “hierarchy of norms” in Austrian law is as follows:



*International Law:*

The status of customary international law within federal law depends on the content of that customary international law (either federal constitutional law or federal statutory law). International Agreements may have the rank of a federal statutory law or a regulation. This depends on whether the agreement has been concluded with or without the approval of the Federal Parliament. Some international treaties also enjoy constitutional status<sup>1</sup>.

The consequences of the hierarchy of norms:

- A legal norm may be abrogated only by norms of equal or higher rank in this hierarchy.

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<sup>1</sup> Due to an amendment to the Federal Constitution Act in 2008, it is no longer possible to conclude international agreements on a constitutional level. Instead, a specific constitutional law has to be enacted. This provides that the specific agreement shall have the status of constitutional law.

- A lower norm which contradicts a higher norm will generally be applied nevertheless until it is nullified by the Constitutional Court. There is no institution formally controlling the compliance of a statutory law or one of its provisions with the Constitution prior to its enactment.
- As far as norms of the same level are concerned, a more recent norm overrides an existing norm and a special provision abrogates the general one.

## **B. Sources of Law**

### 1. Core Constitutional principles

Within constitutional law there exists a higher layer of certain leading principles that have been identified by the Constitutional Court. They comprise the democratic, the republican, the federal, the separation of powers, the liberal and the rule of law principle.

Essential changes affecting one of these principles would be considered as a “total revision” of the Constitution and could only be effected by a constitutional amendment passed in Parliament and a subsequent popular referendum (this was the case with Austria’s accession to the EU in 1995).

### 2. European Union Law

According to the jurisprudence of the European Court of Justice, EU law, as being supranational in character, takes precedence over the Law of its Member States, which in Austria's case includes its Constitutional Law. However, Austrian Courts do not generally recognise this precedence with regard to the core constitutional principles.

### 3. Constitutional Law

The Austrian Constitution can easily be amended because constitutional provisions need not be incorporated into the text of the constitution (Federal Constitution Act of 1920) itself.<sup>2</sup> Thus, aside from about 100 amendments of the (original) constitutional document of 1920, further separate constitutional laws and hundreds of individual constitutional provisions exist in “ordinary” statutory laws. An international treaty incorporated into the national law can also enjoy constitutional rank (as does the European Convention of Human Rights).

### 4. Statutory law and regulations

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<sup>2</sup> The adoption of a constitutional law requires a higher quorum in the National Council than what is required for a statutory law (one-half of the deputies present, two-thirds of them voting in favour, instead of one-third of the deputies present and half of them voting in favour) and the express designation as “constitutional law” or “constitutional provision”.

The Austrian Constitution establishes statutes passed by the democratically elected legislature as the primary source of law. The other branches of government, executive and judiciary, exercise the subordinate functions of the implementation. In many important areas, statutory law has been codified. However, ancillary laws are increasing in number. The rank of a regulation, which may be issued by any administrative authority within its jurisdiction, is lower than that of a statute. It may not contradict a statute nor may it be enacted without a statutory base. Its function is to specify a particular law.

#### 5. Administrative rulings and Court judgments

Judicial decisions are principally limited to individual cases. However, deviation from a firm line of decisions must be underpinned with good reason and requires the formation of an enlarged panel of judges at the Supreme Court and the Supreme Administrative Court. Only when the Constitutional Court annuls a law declaring it unconstitutional or when the Court, at the request of the Federal or a Regional government, passes a decision concerning their respective legislative or executive powers, its decision has formal legal force beyond the case at hand.

#### 6. International Law

Customary international law is automatically incorporated into Austrian federal law according to Art. 9 (1) of the Federal Constitution Act. General principles of law also form part of Austrian Federal law, as this Article is meant to cover unwritten sources of law. Thus, other sources, such as decisions of international tribunals, international organisations or declarative texts are not covered. International treaties, according to the prevailing view, can become part of domestic law upon publication in the Federal Law Gazette and do not necessarily require implementing legislation.<sup>3</sup>

### **C. The Role of the Supreme Courts**

Courts of lower instance and administrative authorities frequently refer to their jurisprudence, especially where consistent jurisprudence to a specific matter exists. There is no hierarchy between the three supreme courts.

#### a. The Constitutional Court

It is authorised to check the compliance of all statutory laws with the Constitution and of all regulations with statutory law.

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<sup>3</sup> International Treaties that are political in nature, which modify or supplement existing law or modify the treaty foundations of the EU require the approval of the National Council. Moreover, the National Council may, upon the approval of a treaty, decide that it requires implementing legislation or regulations. If the international agreement should have constitutional quality, a special constitutional law will have to be enacted.

By virtue of Art. 140a of the Federal Constitution Act, the Constitutional Court may also scrutinise whether an international agreement violates domestic law of a higher normative rank.

An individual claiming that an individual administrative decision or act has infringed his constitutional rights or claiming that his constitutional rights have been violated due to the application of an unconstitutional law or regulation can file a complaint with the Constitutional Court.

b. The Supreme Administrative Court

Its core competence is to decide in last instance over individual complaints regarding the violation of an “ordinary” law rule, i.e. of non-constitutional character, emanating from an individual administrative decision or act. The allegedly violated right can also be enshrined in an international agreement (as long as this agreement does not have constitutional status).

c. The Supreme Court

The Austrian Supreme Court is the last instance competent to decide in civil and criminal matters.