

Croatie

Cour administrative

Croatia

High administrative Court

The hierarchy of norms in Croatian law

The sources of law in the Republic of Croatia are as follows:

Primary sources of law

The Constitution

International treaties

European Union law

Acts:

- Constitutional acts
- organic laws
- ordinary laws

Secondary sources of law

(Statutory instruments and by-laws adopted by the president, ministries, and lower-level bodies with public authorities):

- regulations
- ordinances
- decisions
- instructions

The Constitution

The highest source of law in Croatia is the Constitution, which is followed in the hierarchy by international treaties, European Union law and acts.

The hierarchy of legal acts in the Republic of Croatia is determined by Article 5 Paragraph 1 of the Constitution. That provision reads as follows:

“Article 5

In the Republic of Croatia, laws shall comply with the Constitution. Other regulations shall comply with the Constitution and law.”

The above provision of the Constitution contains the principle of constitutionality (i.e. the supremacy of the Constitution over all other regulations) and legality.

International and European law

International treaties which have been concluded and ratified in accordance with the Constitution, published, and which have entered into force are a component of the domestic legal order of the Republic of Croatia and they have primacy over domestic law. Their

provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law.

Case-law:

U-I-2057/2009, 30 March 2011 (Official Gazette no. 42/11)

U-I-6738/2010, 11 June 2013 (www.usud.hr)

The position of European Union law in Croatian constitutional order is defined by Article 145 of the Constitution.

All the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia in accordance with the European Union *acquis communautaire*.

Croatian courts protect subjective rights based on the European Union *acquis communautaire*.

Acts adopted by the Croatian Parliament

Organic laws

Pursuant to Article 83 of the Constitution, organic laws regulate the rights of national minorities. The Croatian Parliament adopts these laws by a two-thirds majority vote of all deputies.

The Croatian Parliament adopts the organic laws which elaborate constitutionally established human rights and fundamental freedoms, the electoral system, the organization, remit and operation of governmental agencies and the civil service and the organization and purview of local and regional self-government by a majority vote of all deputies.

Ordinary laws

The general rule is that the Croatian Parliament adopts laws by a majority of votes.

Review of the constitutionality of laws

The Constitutional Court of the Republic of Croatia is competent to review the conformity of laws with the Constitution.

If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, is not in accordance with the Constitution, it shall stop the proceedings and present a request with the Constitutional Court to review the constitutionality of the law, or some of its provisions.

Decrees with the force of law

During a state of war, the President of the Republic may issue decrees with the force of law on the basis and within the limits of the powers conferred thereto by the Croatian Parliament.

In the event of a clear and present danger to the independence, integrity and existence of the state, or when government bodies are prevented from performing their constitutional duties, the President of the Republic may, at the proposal of the Prime Minister and subject to his/her countersignature, issue decrees with the force of law.

Decrees based on statutory authority

The Croatian Parliament may, for a maximum period of one year, authorize the Government of the Republic of Croatia to regulate by decree individual issues falling within the purview of the Parliament, save for those pertaining to the elaboration of constitutionally established human rights and fundamental freedoms, national rights, the electoral system, and the organization, remit and operation of governmental bodies and local-self government.

Other regulations

Since an act is a primary source of law, all other regulations (decrees, ordinances, decisions, instructions etc.) have to be in compliance with the law. This means that, in practice, an act will be applied in a situation when a bylaw regulating the legal issue is not in compliance with the respective legal provision.

Review of the constitutionality and legality of other regulations

The Constitutional Court of the Republic of Croatia decides on the conformity of other regulations with the Constitution and law.

If the court of justice in its proceedings determines that another regulation to be applied, or some of its provisions, are not in accordance with the Constitution and the law, it shall directly apply the law to that specific case and shall present a request with the Constitutional Court to review the constitutionality and legality of the disputed regulation or some of its provisions.

Case-law:

U-II-2688/2008, 21 April 2009 (Official Gazette no. 54/09)

U-II-2821/2006, 10 February 2009 (Official Gazette no. 28/09)

Review of the legality of general acts of the units of local and regional self-government, legal persons vested with public power and legal persons performing public services

With the entry into force of the Administrative Disputes Act (1 January 2012), the High Administrative Court was given the competence to review the legality of general acts of the units of local and regional self-government, legal persons vested with public power and legal persons performing public services.

The High Administrative Court shall repeal a general act or some of its provisions with a judgment if it establishes that it is not in conformity with law or the statute of the body of public law.

Case-law

Case law does not constitute an official source of law in the Republic of Croatia. Pursuant to the Constitution of the Republic of Croatia, courts adjudicate cases on the basis of the Constitution, acts, international treaties and other valid sources of law.

However, case law and, in particular, decisions of the Supreme Court of the Republic of Croatia are of significant importance in the interpretation of regulations on the part of courts.

SUMMARY

In the Republic of Croatia the Constitution is the supreme law, and then follow: the Constitutional Act on the Constitutional Court of the Republic of Croatia, ratified international agreements, European Union law, organic laws, ordinary laws, other regulations with the force of law, and finally by-laws adopted by the ministries and lower-level bodies with public authorities.