

Lituanie

Cour administrative suprême

Lithuania

Supreme administrative Court



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Hierarchy of norms in Lithuanian law

The principle of a state under the rule of law entrenched in the Constitution implies the hierarchy of legal acts. The central role in that hierarchy belongs to the Constitution and its principles. Therefore, the discretion of all the law-making entities is limited by the supreme law – the Constitution. As stated by the Constitutional Court, all the legal acts, decisions of all the state and municipal institutions and officials must be in compliance with and not contradicting to the Constitution (Constitutional Court ruling of 29 June 2010).

I. Norms comprising the Lithuanian legal system (by decreasing order of authority)

1. The Constitution of the Republic of Lithuania

The Constitution is defined as the basic law which has the supreme legal power in the hierarchical system of laws. Respective fundamental norms of the Constitution establish the principle of the supremacy of the Constitution in the system of legal acts. Article 6(1) of the Constitution provides that the Constitution is an integral and directly applicable act. In addition to this, Article 7(1) of the Constitution states that any law or other act, which is contrary to the Constitution, shall be invalid.

Case-law: The principle of the supremacy of the Constitution, which is enshrined in the Constitution, is inseparably linked with the constitutional principle of a state under the rule of law, which is a universal constitutional principle upon which the entire Lithuanian legal system and the Constitution itself are based (Constitutional Court ruling of 24 December 2002).

The principle of the supremacy of the Constitution means that the Constitution rests in the exceptional, highest, place in the hierarchy of legal acts; no legal act may be in conflict with the Constitution; no one is permitted to violate the Constitution; the constitutional order must be protected (Constitutional Court rulings of 24 December 2002, 29 October 2003, 5 March 2004, 20 March 2007, decision of 20 November 2009).

2. International treaties ratified by the Parliament and European Union law

Pursuant to Article 138(2) of the Constitution, international treaties ratified by the Parliament are a constituent part of the legal system of the Republic of Lithuania. This means that the international treaties ratified by the Parliament acquire the power of the law (Constitutional Court conclusion of 24 January 1995). In cases when a national legal act (it goes without saying, except the Constitution itself) establishes the legal regulation which competes with that established in an international treaty, then the international treaty is to be applied (Constitutional Court rulings of 14 March 2006 and 21 December 2006).

While taking account of the fact that, as mentioned, the legal system of Lithuania is grounded upon the principle of superiority of the Constitution, the adoption of the corresponding amendment(s) to the Constitution is the only way to remove any incompatibility of the provisions of international treaties with the Constitution.

One should also note that pursuant to Article 2 of the Constitutional Act of the Republic of Lithuania on the Membership of the Republic of Lithuania in the European Union, the European Union law is a

constituent part of the Lithuanian legal system and where it concerns the founding Treaties of the European Union, the norms of the European Union law shall be applied directly, while in the event of collision of legal norms, they shall have supremacy over the national laws and other legal acts.

Case-law: in cases when the legal regulation entrenched in an international treaty ratified by the Parliament competes with the one established in the Constitution, the provisions of such an international treaty do not have priority with regard to their application (Ruling of Constitutional Court, 5 September 2012).

3. Laws:

a. Constitutional laws:

The constitutional laws take up a special place in the system of legal acts. Constitutional laws may not be amended or abolished by ordinary laws. Thus, the greater stability and consistency of certain social relations are ensured. The constitutional laws may not conflict with the Constitution.

Relevant case-law: In the hierarchy of legal acts the constitutional laws have lower power than the Constitution itself. The constitutional law may not restrict the power of the Constitution or its certain provisions, such a law may not establish *inter alia* the legal regulation which would restrict or deny an opportunity to directly apply the Constitution (Constitutional Court ruling of 24 December 2002).

b. Ordinary laws:

A law is an original and the main legal act adopted in the procedure prescribed by the Constitution and the Statute of the Parliament which expresses the legislator's will. While implementing the constitutional power to enact laws (Article 67(2) of the Constitution), the legislator shall heed the norms and principles of the Constitution. It should be noted that the legal regulation concerning the human rights and freedoms, their restrictions and implementation may be established only by the means of a law. Ordinary laws may not conflict with the Constitution and the constitutional laws. Meanwhile, all other legal acts must be adopted in conformity with the Constitution and the provisions set in the laws.

The law can be amended or its validity can be nullified only upon the adoption of another law or the recognition of it as contradictory to the Constitution by the Constitutional Court.

c. Case-law:

Pursuant to Article 72(2) of the Law on Constitutional Court, rulings passed by the Constitutional Court shall have the power of law and shall be binding to all State institutions, courts, all enterprises, establishments, and organisations as well as officials and citizens. As stated by the Constitutional Court, the provisions of the Constitution (its norms and principles) are construed in acts of the Constitutional Court. The official constitutional doctrine is created and developed in such acts. Therefore, while adopting new, amending and supplementing already adopted laws and other legal acts, the state institutions that pass them are bound by the concept of the provisions of the Constitution and other legal arguments presented in the ruling (Constitutional Court ruling of 30 May 2003 and 19 January 2005).

Similarly, in applying and interpreting respective provisions of the laws, the courts of general jurisdiction and specialised courts adopt the decisions which by their power are closely related to the one conferred to the legal regulation itself. This is especially evident when one confronts legal lacunas in substantive law. In addition to this, one should note that the jurisprudence formulated by the courts, including courts of general jurisdiction and specialised courts, are binding on the law-making institutions and officials as well as on those subjects that apply the laws in a way that was prescribed by the courts while interpreting legal norms in the respective area of law.

4. Sub-statutory legal acts:

a. Resolutions adopted by the Government, Parliament and President

Legal acts, falling into this category, are designated to implement the laws (Resolutions of the Government, Resolutions of the Parliament, Decrees issued by the President of the Republic). Sub-statutory legal acts are passed in pursuance of valid laws and may not contradict them. Acts adopted by

the Parliament shall be in compliance with the Constitution. Meanwhile, the acts passed by the Government and the President shall not contradict the Constitution and the laws. Moreover, these acts may not replace the law itself and create new legal rules of general nature that in their power would compete with the norms of laws.

Pursuant to Article 102(1) of the Constitution, it is the Constitutional Court to decide whether other legal acts (besides the laws) of the Parliament are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws.

b. Regulatory legal acts adopted by the central state authorities

Legal acts adopted by the ministers of the Government and central state authorities are also directed at the implementation of the laws and in certain cases legal acts adopted by the Government. In this regard, the regulatory administrative acts shall comply with the Constitution, the laws and any other legal acts of state institution having the superior power.

According to Article 20 of the Law on Administrative Proceedings of the Republic of Lithuania, the Supreme Administrative Court of Lithuania decides the cases concerning the legality of the aforementioned regulatory administrative acts. In this regard the competence of administrative court resembles that exercised by the Constitutional Court.

c. Regulatory legal acts adopted by the local authorities (municipalities)

Regulatory acts passed by local authorities are meant to implement the functions conferred to them by the Constitution and respective laws. Therefore, they should comply with the Constitution, the laws, the resolutions of the Government and other legal acts of superior power.

d. Other acts of regulatory nature

One should not that respective subjects (public organisations, communities, political parties, political organisations or associations) are entitled to adopt acts having regulatory impact on the individuals or certain groups of individuals concerned. These acts shall comply with all norms set in the Constitution, laws and other legal regulation of superior power. The Supreme Administrative Court acts as the single and last instance for the cases relating to the lawfulness of the acts of general character passed by the aforementioned entities.

Case-law: The rule of law does not permit that sub-statutory legal acts establish any such legal regulation which would compete with that established in the law; sub-statutory legal acts may not be in conflict with laws, constitutional laws and the Constitution; sub-statutory legal acts must be adopted on the basis of laws; a sub-statutory legal act is an act of application of norms of the law, irrespective of whether the act is of one-time (*ad hoc*) application or of permanent validity (*inter alia* the Constitutional Court's rulings of 6 September 2007, 9 March 2010, 18 April 2012, and 20 February 2013).

5. Individual administrative decisions, administrative and other agreements

Individual acts and agreements are binding to the individuals and entities concerned. These acts shall comply with the Constitution, laws and other regulatory legal acts.

II. Hierarchy of norms in Lithuania

From the constitutional principle of a state under the rule of law and other constitutional imperatives a requirement stems to the legislator and other entities of law-making to pay heed to the hierarchy of legal acts which arises from the Constitution. This requirement *inter alia* means that it is impermissible to regulate, by means of legal acts of lower power, the social relations which can be regulated only by legal acts of superior power, also that it is impermissible to establish the legal regulation in legal acts of lower power which would compete with that established in legal acts of superior power (Constitutional Court ruling of 20 September 2005).