

Obligation of the court to apply foreign law ex officio

When concluding contracts with a contractor registered in another EU or a foreign country, and in other cases where the application of foreign law may arise, it is important to consider that additional evidentiary steps may be required in the event of a dispute in court.



According to a ruling from the Supreme Court of Lithuania published on 3 March 2021, in the event of a court dispute, foreign law shall be applied to the established legal relations when it is determined by: (i) International agreements of the Republic of Lithuania; (ii) agreements between the parties; (iii) Laws of the Republic of Lithuania.

In cases established by international agreements or laws of the Republic of Lithuania, a court shall apply, interpret, and determine foreign law content ex officio. In such cases, the question of the content of foreign law is to be regarded as a matter of law and not of fact, and it is for the court to interpret it in accordance with the principle of *iura novit curia*. In this case, the court may invite the parties to submit, in their opinion, evidence relevant to the dispute concerning the content of foreign law, their explanations and objections on the interpretation and application of foreign law, and the parties have full rights to do so.

If the application of foreign law is determined by agreement of the parties, the question of the content of the foreign law shall be considered a question of fact. All evidence relating to the content of the applicable foreign law shall be submitted by a party who relies on the foreign law, taking into account the official interpretation of that law, its application practice and doctrine in the foreign state concerned. At the request of a party to the dispute, the court may assist it in gathering information on the applicable foreign law.

When concluding an agreement with a foreign contractor and establishing a provision on the application of foreign law, it is important to assess that the burden of proving the content of foreign law lies with the parties. The party will have to provide evidence of the content of the applicable law, both specific legislation and case law, as well as legal doctrine.