

Opinion



Vatican Swiss Guards line up prior to welcome German President Frank-Walter Steinmeier for a private meeting with Pope Francis, at the Vatican, yesterday. Photo: AP

Poland has no intention of leaving the European Union



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Some people claim that the Polish Constitutional Tribunal ruling of 7 October 2021 challenging the supremacy of EU legislation is a first step to a 'Polexit'. It's a harmful myth.

For Poland, European integration is a civilizational and strategic choice. Leaving the EU would be against what the Polish authorities as well as the huge majority of Poles believe and want. It is enough to look at public opinion surveys which say that over 80% of the Polish society supports Poland's membership in the EU. Any government in Poland which would decide to leave the EU would commit a suicide.

Let's go through what the Polish Constitutional Tribunal ruling is all about and what the Tribunal really stated on the matter. In a few words, the Tribunal challenged the interpretation stemming from the EU Court of Justice's recent rulings, which aim to acknowledge that in case of a conflict between the provisions of the Constitution and the EU legislation, Polish courts should apply the European law, even at the cost of violating their own Constitution.

Such an interpretation would lead to a situation where Polish judges would be forced by the EU law to disregard the provisions of the Polish Constitution. This would not be reconciled with fundamental principles of the Republic of Poland. Moreover, such an interpretation would establish a lower standard of judicial protection for Polish citizens than they are entitled to under the Pol-

ish Constitution. Hence, this could not be recognized by the Constitutional Tribunal as compliant with the Constitution.

In accordance with the Polish Constitution, judges appointed by the President of the Republic of Poland are irremovable, independent, and within the exercise of their office, they are subject only to the Constitution and statutes. The interpretation of EU law resulting from the CJEU rulings and challenged by the Constitutional Tribunal was intended to undermine this principle, allowing the validity of judicial sentences to be questioned and in fact depriving judges of their judicial power. As a consequence, it would also deprive the citizens of legal certainty and trust in the judiciary. The systemic impact of such interpretation would be the challenging of several millions of court rulings and an unprecedented legal chaos in Poland.

In its ruling, the Tribunal did not question the provisions of the Treaty on European Union per se. It only stated that certain interpretation of some of the provisions of the EU Treaty in a way that leads to the primacy of international law over the Constitution – Poland's supreme law – violates the Constitution. The Tribunal reaffirmed the hierarchy of the sources of law binding in Poland and in the European Union, stressing that the first place in this hierarchy is always reserved

for national constitutions of EU member states.

Basically, in its ruling of 7 October 2021 the Tribunal stated what it has repeatedly stated since 2005. And that is that the Polish Constitution is Poland's supreme law, that it overrides other sources of law and that the primacy of constitutional law derives directly from the Constitution. Rulings confirming this principle were issued with various compositions of the Tribunal whose members were elected in all political configurations since Poland's accession to the EU.

According to the Polish Constitution, ratified international agreements prevail over acts. This means that EU Treaties are fully binding in the territory of the Republic of Poland and, in the event of a conflict with domestic law of a statutory rank, they take precedence over these norms. However, the principle of the primacy of EU law does not apply (and never did) to constitutional norms. No Polish court, no Polish parliament, and no Polish government may depart from this rule.

It is important to remind that the EU is based on the principle of conferral (Articles 4 and 5 of the Treaty on European Union). Under this principle, EU institutions act only within the limits of the competences directly conferred upon them by member states in the Treaties. Otherwise competences rest with the EU

member states which remain 'masters of the treaties'. It should be stressed that the ruling by the Polish Constitutional Tribunal does not affect any areas in which the EU has competence explicitly and literally conferred by the EU Treaties.

The primacy of the constitution of a member state and the failure of the CJEU to respect the extent of the competence conferred on the EU by the member states have for years been examined by constitutional courts. It is not only the Polish Constitutional Tribunal, but also the German Federal Constitutional Court, the Italian Constitutional Court, the Czech Constitutional Court, and the Danish Supreme Court that take the view that EU law and the activities of the CJEU are subject to review from the perspective of constitutional norms, including those which define the limits of the competence transferred to the EU by a given state.

In light of all this, a question arises - why is there so much outrage triggered by the Polish Constitutional Tribunal ruling of 7 October 2021 while it is in line with the case-law to date of the Tribunal and other constitutional courts and tribunals across Europe. Examining the conformity of EU law with national constitutions is a normal practice in Europe and as such does not mark the beginning of the road to leave the EU.