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Selected aspects of the independence of the National Bank of Poland in the context of Polish political practice

Abstract: Central bank – the fourth estate – is the decisive entity for the issue of money and the obligation to protect its value, provided, however, that at the same time it retains independence in three main areas: personal, financial and functional. The political system and legal solutions adopted in Poland provide the National Bank of Poland with a high position in the structure of state bodies and a large degree of independence. Unsuccessful attempts to deprive the autonomy of National Bank of Poland showed that Poland is a country of law and confirmed the independence of the Polish National Bank, and its right to carry out an autonomous monetary policy free from political influence, which is a guarantee of the value of the Polish zloty.

Key words: central bank, National Bank of Poland, independence

Central bank independence is a complex and multifaceted notion. Its basic premise is to oversee the value of modern currency, and is based on the assumption that an independent bank is more resistant to the effects of politicians who want to pursue a policy of ‘easy’ money. Focusing on the issue of currency and its spending in one centre of power, whose composition varies as a result of the electoral cycle, does not guarantee substantial, long-term activities in monetary policy. It is in this light, too, that Polish constitutional solutions that meet the basic premises relating to the functioning of the central bank in democratic countries with a market economy should be seen (Zubik, 2001, p 40). It is precisely in relation to independent central banks in particular that the term ‘fourth estate’ has begun to be applied doctrinally. The fourth estate – monetary authority – is the decisive entity for the issue of money and the obligation to protect its value, provided, however, that at the same time it retains independence in three main areas: personal, financial and functional (Góral, Karlikowska, Koperkiewicz-Mordel, 2003, p. 13).

Legal basis of the personal, financial and functional independence of the NBP

The Polish Constitution of 2 April 1997 and the Act on the National Bank of Poland of August 29, 1997 equipped the Polish central bank with powers which place it among the most independent central banks in the world. In pursuing the primary objective of its activities, looking after the value of the Polish currency, the NBP has significant scope for

personal independence. The government has no formal influence on staffing the authorities of the bank. At the same time, the term of the NBP Presidency and members of the Council for Monetary Policy (6 years) is longer than the term of the government (article 227 of the Constitution), and the significant limitations on reducing this term (articles 9 and 13 of the Act on the NBP) guarantee that the central bank authorities enjoy the stability necessary for the long-term goals of monetary policy (Góral, Karlikowska, Koperkiewicz-Mordel, 2003, pp. 40–41).

Another aspect of central bank independence requires statutory limitation on the scope of central bank financing of budget expenditures. The constitution prohibits direct central bank financing of budget deficits (article 220 of the Constitution). This provision changes the relationship between the Government and Minister of Finance and the National Bank of Poland. Earlier, prior to this provision, these authorities tried to put pressure on the central bank to finance the budget deficit (Kraś, 2006, p. 219). It is worth mentioning, however, that in accordance with the Act on the NBP, the central bank does perform certain activities that have a bearing on the theoretical possibility of weakening the ban on lending to the government. These include providing banking services to the state budget and its accounts, managing the accounts of the Bank Guarantee Fund (BFG), organising trading in Treasury securities, the ability to support state loans taken out by way of issue of securities and the ability to act as the government's financial agent with respect to the conclusion and execution of loan agreements and the country's foreign debt, although the NBP is not responsible for the Treasury's liability in this regard (Huterski, 2000, pp. 197–198).

The last of the dimensions of independence – functional – requires guaranteeing the central bank the right to shape and implement monetary policy. This is guaranteed by the concentration in the NBP of tasks associated with the creation of, and execution and accountability in the conduct of monetary policy (article 227 sec. 1 of the Constitution). According to current law, these tasks are based on the annual resolution of the Council for Monetary Policy (article 227 sec. 6 of the Constitution). It is worth emphasising the fact that the Council has to decide each time on the content of this resolution. The Sejm is 'only' informed. In accordance with art. 227 sec. 1 of the Constitution and art. 3 of the Act on the NBP, the NBP's main task is to fight inflation, and only in second place, if it does not conflict with the primary objective, to support the economic policy of the government (Frankowski, 2001, p. 3).

Around the Act on the NBP – attempts to limit the autonomy of the central bank in selected draft laws by political parties

The current legislation on the central bank's position in the country has been, and still is, the subject of lively political discussion. Prior to the enactment of the current Act on the NBP, the then ruling coalition of the Democratic Left Alliance (SLD) and the Polish People's Party (PSL) (of August 1995) and the Freedom Union (UW) (of June 1996), representing the opposition, announced two different projects for this act. The proposals very differently formulated the optimum positions, organisation and powers of the central bank. The SLD–PSL proposal repeated the provision of the previous Act on the paired

activities of the NBP, i.e. strengthening the national currency and cooperating in the implementation of national economic policy. The obligation to cooperate with other agencies of the state was repeated in the chapter on the NBP and the government. The UW proposal defined the strengthening of the Polish currency as the only goal of the NBP, although it also includes the central bank's duty to cooperate with government agencies in the implementation of the government's economic policy. Both proposals stated that the NBP would be forced to fund the budget deficit up to a certain level. The SLD-PSL proposal allowed the National Bank of Poland to purchase government securities from the Treasury during a single financial year to a total amount not exceeding 5% of the estimated budgeted revenue for the year. UW wanted the creation of a State Treasury, separate from the Ministry of Finance, from which the NBP could buy bonds to a total value (excluding interest) not exceeding 2% of the planned budget revenue for a given year. From the point of view of central bank independence, the crucial difference between the two proposals related to the regulation of the structure of the bank's management bodies and the appointment of their members. The UW project maintained the leading role of the President of the NBP, but introduced a new body responsible for monetary decisions – the Council for Monetary Policy. The SLD-PSL variant transferred management competencies to a specially created NBP Council, which was also to co-ordinate monetary policy, leaving the President of the NBP only limited executive power. The Draft Act on the NBP submitted by the Freedom Union was largely used in the current law: introducing the Council for Monetary Policy (CMP) as the body responsible exclusively for monetary decisions while maintaining the President's crucial role both in policy issues and management of the National Bank of Poland (Huterski, 2000, pp. 189–194).

Significantly, political groups hostile to an independent central bank were not passive in their efforts to change the status of the Polish National Bank. As early as February 2001 the Polish People's Party brought a draft amendment to the Act on the NBP. The solutions it proposed included introducing Council for Monetary Policy responsibility for placing the results of its policies before Parliament, and added a requirement that the central bank and the Council for Monetary Policy support the government's economic policy (*Draft bill amending the Law on the National Bank and the Polish Banking Law of 13 February 2001*). These amendments were rejected in the first reading by a majority of just 25 votes (*The vote on the motion to reject...*). Later that year, in December, with a refreshed Sejm composition, another parliamentary draft amendment to the Act on the NBP was introduced (*Draft bill amending the Law on the National Bank and the Polish Banking Law of 20 December 2001*, print no. 449). It contained amendments obliging the NBP to support the government's economic policies and promote the reduction of unemployment. The number of members of the Council for Monetary Policy was also increased from 9 to 15. In his speech during the parliamentary debate, Professor Leszek Balcerowicz argued against the changes proposed in this draft amendment as follows:

“The proposal included, which adds supporting the development of business and promoting the reduction of unemployment to the central bank's activities is contrary to the Constitution, which in art. 227 makes the National Bank of Poland responsible for the value of the Polish currency. The attention to the value of the currency, although it is one of the foundations of rapid, long-term development, may be in conflict with short-term stimulation of the economy, which often ends in a further collapse. [...] Additional objec-

tives for the NBP in accordance with the Constitution must be subordinated to the basic purpose – the focus on the value of the Polish currency. The proposed provision is also a retreat from adjusting Polish law to EU standards. [...] As for the other suggestion, let me just quote the opinion of eminent constitutionalist Professor Piotr Winczorek. Although the Constitution does not say how many members should sit on the Council in total, the political intention of the draft amendment to the Act on the NBP is unmistakable. The authors' concept is that the Council in its new, extended form would be more willing than currently to adapt its decisions to the expectations of today's parliamentary majority. You cannot rely on interpretation of the law, in particular the Constitution, based only on the literal wording of the provisions. The rationale should also be remembered – the objectives and intentions of the legislature. These are clear. Therefore, if no other reason than a desire to subject the Polish National Bank to enhanced external control is apparent, the project fails to fulfil the assumptions of the Constitution. Will the arrival of a different parliamentary majority, and I'm still quoting here, mean that what awaits us is an increase or decrease in the size of the Council to make it more pliable with regard to Parliament." (Balcerowicz, 2002).

Another attempt to weaken the central bank in Poland was brought by Self-Defence (Samoobrona) at the end of 2005, in an amendment to the Act on the NBP. The draft, alongside adding to the bank's core objectives the obligation to support the government's economic policy in terms of economic growth and fighting unemployment, introduced a clause making possible the dismissal of the President of the NBP. The President of Poland could request the dismissal of the President of the NBP from his post before the end of his term in the event of non-acceptance by Parliament of the Council's report on the implementation of monetary policy. The proposal also provided for a weakening of the CMP, by reducing its members from 9 to 6, the possibility of dismissing them before the expiration of their term for the same reason as the President, and participation in Council meetings by members of the government, who would have the right to present their own conclusions (*Draft bill amending the Law on the National Bank of 2 December 2005*). The Self-Defence project collapsed when the Parliamentary Legislative Committee found it legally prohibited in a vote on January 11, 2007, therefore closing further proceedings. For non-admission there were 13 members, 4 against and 1 abstention (Bulletin no. 1492/V).

Banking Commission of Inquiry – trying to broaden the scope of control over the NBP

Despite the central bank's high degree of independence in the Polish system of state authorities, it is not completely without supervision in its activities. This supervision is two-fold: specific activities under laws and the public accountability of the bank. The latter can be achieved through the mass media, which inform the public about the bank's activities, or through the bank itself which, by publishing information on its operations cyclically, subjects itself to oversight by society (Paluszak, 1998, pp. 19–20).

Polish law refers to a number of entities that carry out audits and a review of the activities of the central bank. Firstly, assessment is conducted by the Sejm through a system of

different reports submitted to it by the NBP. The most important of these is the report on the implementation of monetary policy which the Council for Monetary Policy is required to file within five months of the end of the financial year (article 227 sec. 6 of the Constitution and art. 12 sec. 1 of the Act on the NBP) and the annual activity report of the NBP (art. 70 of the Act on the NBP). It is important that these reports are not subject to approval by Parliament. In accordance with art. 124 and 169 of the existing Rules of the Procedure of the Polish Sejm, the Chamber examines the content of these reports, and in addition they can be discussed. Another body that is involved in the supervision of the NBP is the Council of Ministers. It is to the Council, in accordance with art. 69 pt. 3 of the Act on the NBP, that the President of the NBP submits the annual financial report. Note, however, that the audit of the annual accounts of the NBP is conducted by a statutory auditor selected by the Council for Monetary Policy (art. 69 sec. 1 of the Act on the NBP), and so the role of the Council of Ministers is limited to approval of this document. The original version of the act indicated a committee appointed by the Council of Ministers at the request of the Minister of Finance as the conductor of the research and evaluation of the report. Another body authorised to audit the activities of the NBP is the Supreme Audit Office (NIK), which – according to article 203 of the Constitution and article 2 of the Act on the Supreme Audit Office – supervises the activity of the central bank in terms of legality, economic prudence, efficacy and diligence (Kosikowski, 2004, pp. 257–259).

On 24 March, 2006, the Polish Parliament adopted a resolution¹ on the appointment of a Commission of Inquiry to investigate decisions concerning capital and ownership in the banking sector and the activities of supervisors in the period from 4 June 1989 to 19 March, 2006. Its main task was to investigate the activity of the NBP, banking supervision, and the privatisation of the financial sector after 1990. Even at the stage of the draft resolution there were negative reviews. Professor Wiktor Osiatyński, a constitutional lawyer, said that there were indications that the project to set up a committee of inquiry to investigate the accuracy and efficiency of the President of the NBP² could be regarded as incompatible with the rule of law and the Constitution of the Republic of Poland. His argument rested on the fact that the Constitution guarantees the independence of the National Bank of Poland. To examine the accuracy and efficiency of the President of the NBP and the Commission for Banking Supervision over 17 years did not fall within the

¹ 419 MPs voted on the motion. 251 voted for the resolution, 168 against. In favour of the establishment of the committee were 148 members of the Law and Justice party, 50 Self-Defence, 29 League of Polish Families, 22 Polish People's Party, and 2 non-aligned. Against voted 118 MPs Civic Platform, 47 Democratic Left Alliance, the 1 League of Polish Families, and 2 non-aligned, <http://orka.sejm.gov.pl/SQL.nsf/glosowania?OpenAgent&5&14&40>, 3.07.2013.

² At the preparation stage, there were two proposals on the appointment of two commissions of inquiry – the first dated 12.03.2006 – to verify the accuracy and efficiency of the President of the NBP and the Committee on Banking Supervision, as well as the banking regulator and the General Inspectorate of Banking Supervision in the years 1989–2006, and the NBP Management Board and President of the Office of Competition and Consumer Protection, and the responsibility of individuals within those entities for the current structure of the banking system, and – the second dated March 13, 2006 – to investigate ministers responsible for decisions on privatisation and acquisitions in the banking sector and the activities of the NBP and the BSC in issuing permits for conversion of capital in the banking sector in the period 1989–2006.

scope of “a particular case” as set out in art. 111 of the Constitution, which states that “The Sejm may appoint a committee of inquiry to examine a particular case.” According to the constitutionalist, the proper body for investigation of such matters is the Supreme Audit Office, which (according to art. 203 of the Constitution) supervises the activities of the NBP “regarding the legality, economic prudence, efficacy and diligence” and the results of operations of the Council for Monetary Policy may be evaluated by Parliament on the occasion of the annual report on the implementation of monetary policy (Osiatyński, 2006). In a similar vein was the opinion of another constitutionalist – Paweł Sarnecki. He pointed to the absence of Parliamentary powers to set up a commission of inquiry within the meaning of art. 111 of the Constitution whose task would be to examine the activities of the National Bank of Poland and its bodies. He based his assessment on the Constitution of the Republic of Poland’s separation of the legislative branch from the Polish National Bank, in order to demarcate public action (and supervision) based on the magnitude of money issue and monetary policy (art. 227 sec. 1 and 6 of the Constitution) from other public activities (and supervision) in the conduct of the internal and foreign policy of the Republic of Poland (art. 146 sec. 1 of the Constitution). He also stressed that Parliament could have only such powers of supervision as are clearly defined in the Constitution and statutes. He pointed out that “the title of the resolution (researching the accuracy and especially efficiency) suggests that what is meant here is the exercise of political supervision; these are the criteria which characterise parliament’s supervision of the government, which ends in political accountability, which, after all, the President of the NBP does not bear before Parliament. It is not possible to adopt a motion of censure and he cannot himself ask Parliament to propose a vote of confidence in him” (Sarnecki, 2006, pp. 102–106).

The draft resolutions also met with a positive assessment from lawyers. Marek Zubik was of the opinion that it was not possible to raise a general allegation of exceeding the subjective and objective scope for a parliamentary committee of inquiry. In his argument, Zubik called for a broad recognition of entities subject to “parliamentary inquiry”, meaning that it extends to include the NBP as a body whose remit is, in itself, part of the executive. Functionally, however, he drew attention to the need to change certain points of the resolution such as the President of the NBP’s conflict of interest in his powers as Chairman of the CMP and the Commission for Banking Supervision, as this would be an assessment of the purpose and rationality of legal solutions, which is not within the scope of activity of an inquiry (Zubik, 2006, pp. 91–96). Mirosław Granat, in turn, pointed out that the Sejm (or one of its bodies), being entitled to commission the Supreme Audit Office to audit the NBP (art. 6 of the Act on the NIK) may conduct this audit itself through its bodies, such as a parliamentary commission of inquiry. Moreover, since the commission of inquiry has the right to a preliminary request to hold the President of the NBP to the constitutional responsibility to the Tribunal of State (art. 6 of the Act on the Tribunal of State), it also has the right to audit that state authority (Granat, 2006, pp. 96–101).

Constitutional law experts’ views on the constitutionality of the final Sejm resolution of 24 March, 2006, were unanimous and clear. They pointed to the conflict with the provisions of the Constitution, particularly in the violation of the constitutional order of specificity of the case, which would be investigated by a commission of inquiry. The

constitutional requirement to substantiate the commission of inquiry's action, which must clearly be "a specific matter", and the requirement of an investigation of one case by a commission of inquiry had not been met. The Parliamentary Resolution of 24 March, 2006 violated the provisions of art. 111 of the Constitution because it did not point to one matter to be subject to an inquiry by committee, but rather a number of matters, which included such separate issues as an analysis of the banking system in Poland in comparison with other countries, research on the granting of various permits or determination of whether there was any unauthorised influence by private individuals or companies on ministers' and other senior staff's implementation of state decisions on matters relating to capital and ownership in the banking sector. The advice also found that the scope of matters for which a commission of inquiry could be set up is beyond the scope of the audit function referred to in art. 95 sec. 2 of the Constitution. The commission was intended to examine the NBP and banking supervisors, who are not a part of the government (Szmyt, Skotnicki, Czarny, Granat, Sarnecki, 2006, pp. 113–145).

On 22 September, 2006 the Constitutional Tribunal ruled in the case of non-compliance with the Constitution of the Sejm's resolution to appoint a banking commission of inquiry. This resolution was challenged by a group of MPs from Civic Platform (PO), who gave as a reason the imprecise regulations defining the commission's focus, the threat to the independence of the National Bank of Poland which flowed from the establishment of the commission, and the danger of invasion by such a commission into the independence of the judiciary. The Tribunal ruled as unlawful the tasks assigned to the banking commission of inquiry, finding that MPs had no right to audit the NBP President or conduct any investigation. The judges concluded that almost all points of the resolution stating the matters with which the commission had to deal were contrary to the Constitution. The Tribunal ruled that the commission did not have the right to audit the actions of the National Bank of Poland or its President Leszek Balcerowicz, as well as the activities of some members of the Commission for Banking Supervision. Judge Miroslaw Wyrzykowski stressed that an essential element of the status of the NBP is its independence from other state bodies. The Tribunal judges also found the entry indicating the time period which the committee was to address contrary to the Constitution. Examination of the situation in the banking sector from 4 June 1989 to mid-March 2006 – in the context of dates – had, according to the Tribunal, no logical justification. Despite the inconsistency of the majority of the provisions of the resolution, the commission could formally still continue to operate. The Tribunal held that it had no right to audit the passage concerning the appointment of the commission itself³ and therefore discontinued the proceedings in

³ 30 March, 2007, Parliament amended the resolution appointing the banking committee of inquiry: the scope of the Commission's activity was limited to the investigation of irregularities in the activities of state bodies in the transformation process of certain banks. The work of the banking inquiry commission resumed on 17 April, 2007 and lasted until 9 October, 2007, when at its final meeting the commission of inquiry completed its work due to the dissolution of Parliament. See: Transcript of the meeting of the Commission of Inquiry to investigate irregularities in the activities of the State organs in the process of transformation of certain banks (no. 26), the Chancellery of the Sejm Commission Office of the Parliamentary Bulletin no. 2383/V cad. 9.10.2007, [http://orka.sejm.gov.pl/KomSled5.nsf/0/9E9ECCDB13E9FBE3C125738D004515AC/\\$file/0238305.pdf](http://orka.sejm.gov.pl/KomSled5.nsf/0/9E9ECCDB13E9FBE3C125738D004515AC/$file/0238305.pdf), 3.07.2013.

this part of the case. NBP President Leszek Balcerowicz⁴ did not comment on the Tribunal's judgment. A communique was, however, issued by NBP Spokesman Karol Smolağ, expressing the conviction that this ruling prevented a dangerous precedent that could permanently impair the NBP's ability to defend the zloty. The Constitutional Tribunal confirmed that Poland was a country of law, in which the legislature was subject to restrictions. This protects the independence of these institutions, which need it to perform their mission (Praczyk, 2006).

Conclusions

The political system and legal solutions adopted in Poland provide the National Bank of Poland with a high position in the structure of state bodies and a large degree of independence. This is evidenced equally by the manner of appointing authorities of the central bank and their tenure, the competency of the exclusive right to formulate and implement monetary policy, the prohibition of direct central bank financing of the budget deficit, and to a large extent, limited Parliamentary and government supervision over the activities of the NBP. In the face of attempts to deprive the National Bank of Poland of even part of its autonomy, it is worth noting that the proponents of such changes do not want to see the effects of making the central bank dependent on the political parties forming the government and parliament. To be effective, monetary policy requires the implementation of long-term goals, which is contrary to the short-term policy of government determined by a political agenda and election timetable. The Judgment of the Constitutional Tribunal on the banking commission of inquiry was extremely important both for the image of the Polish state in the world and for the functioning of the Polish National Bank. On the one hand, it showed that Poland is a country of law, that the activities of the body which itself makes the law always remain in accordance with the Constitution. On the other hand, it confirmed the independence of the Polish National Bank, and its right to carry out an autonomous monetary policy free from political influence, which is a guarantee of the value of the Polish zloty.

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⁴ An important act emphasising the independence of the NBP was the refusal to appear before a parliamentary commission of inquiry on the banks of the President of National Bank of Poland, Leszek Balcerowicz, until the Constitutional Tribunal decided whether it was legal. The commission of inquiry brought a case to court on fining the President of the NBP for this, but on 9 October, 2006 the Warsaw Regional Court froze the case referring to the conclusion of the Constitutional Tribunal that stated that the NBP and its president are not under the control of the Sejm.

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Streszczenie

Wybrane aspekty niezależności Narodowego Banku Polskiego w kontekście polskiej praktyki ustrojowej

Niezależność banku centralnego jest pojęciem złożonym i wielostronnym, a jego podstawową przesłanką jest dbałość o wartość współczesnego pieniądza i założenie, że autonomiczny bank jest bardziej odporny na oddziaływanie pozostałych uczestników życia polityczno-gospodarczego. Przyjęte w Polsce rozwiązania ustrojowo-prawne gwarantują Narodowemu Bankowi Polskiemu wysoką pozycję w strukturze organów państwa oraz duży stopień niezależności w trzech podstawowych aspektach: personalnej, finansowej i funkcjonalnej. Świadczy o tym zarówno sposób powoływania organów banku centralnego i ich kadencyjność, kompetencja wyłącznego prawa do ustalania i realizowania polityki pieniężnej, zakaz bezpośredniego finansowania przez bank centralny deficytu budżetowego oraz w znacznym stopniu ograniczony nadzór Sejmu i rządu nad działalnością NBP. W obliczu prób pozbawienia choćby części autonomii NBP warto podkreślić, że polityka monetarna dla swej skuteczności wymaga realizowania celów długofalowych, co stoi w sprzeczności z krótkoterminową polityką rządu zdeterninowaną programem politycznym i kalendarium wyborów. Potwierdził to wyrok Trybunału Konstytucyjnego w sprawie bankowej komisji śledczej wskazując na niezależność Narodowego Banku Polskiego oraz jego uprawnienie do realizacji autonomicznej polityki pieniężnej wolnej od wpływów politycznych, co stanowi gwarancję wartości polskiego złotego.

Słowa kluczowe: bank centralny, Narodowy Bank Polski, niezależność