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PRINCIPLES OF INDEPENDENCE AND ACCOUNTABILITY IN THE ACTIVITIES OF THE EUROPEAN CENTRAL BANK AND THE CENTRAL BANK OF THE EU MEMBER STATE

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Naturkach R.P. Principles of independence and accountability in the activities of the European Central Bank and the central bank of the EU member state.

The scientific article is devoted to the study of the principles of independence and accountability in the activities of the European Central Bank and the central bank of the EU member state. The article focuses attention on Art. 108 and Art. 109 of the Treaty on the Establishment of the European Community, which is an integral part of the Treaty on the European Union, which contain norms according to which both the European Central Bank and the central banks of the EU member states must be independent, and on the national legislation of the EU member states and Ukraine, according to which national banks are economically independent bodies.

It was established that the principle of independence in the activities of the European Central Bank presupposes the absence of external and internal influence on the part of EU institutions, their employees, members of the governments of the EU member states on decision-making by the European Central Bank, but the principle of independence in the activities of the European Central Bank does not include the prohibition of free exchange of opinions between the above-mentioned subjects and the European Central Bank within the framework of the existing EU institutional mechanism.

Doctrinal approaches to the principles of independence and accountability in the activities of national banks of states are analyzed. It is argued that the degree of independence of one or another branch of state power cannot be an object for comparison with the central bank of the state, since this contradicts the content of the very principle of independence of one or another branch of government, and also levels the system of checks and balances as such - the Central Bank of the State does not belong to any of the three branches of state power and is not the fourth branch of power, although it is a special central

body of state administration. The central bank of the state cannot be isolated from other bodies of state power - on the contrary, in the balancing of state powers between the bodies of state power, its importance is no less important, but this does not give grounds for classifying it as one of the three branches of state power to separate into the fourth branch of power.

It has been established that in the legal literature the principle of independence in the activities of the Central Bank of the State is identified with functional and/or legal autonomy. An argument is given that refutes this approach. The principle of independence in the activity of the Central Bank of the EU member state is characterized. It was established that the principle of accountability corresponds to the principle of independence in the activities of the Central Bank of the State. This principle is characterized.

Key words: special central body of state administration, state power, branches of state power, principle of independence, principle of accountability, European Central Bank, central bank of the state, system of checks and balances, state power, functional autonomy, legal autonomy.

Натуркач Р.П. Принципи незалежності та підзвітності в діяльності Європейського центрального банку та центрального банку держави-члена ЄС.

Наукова стаття присвячена дослідженню принципів незалежності та підзвітності в діяльності Європейського центрального банку та центрального банку держави-члена ЄС. В статті акцентується увага на ст. 108 та ст. 109 Договору про заснування Європейського Співтовариства, що є складовою частиною Договору про Європейський Союз, які містять норми, відповідно до яких і Європейський Центральний Банк, і центральні банки держав-членів ЄС повинні бути незалежними, та на національному законодавстві держав-учасниць ЄС і України, відповідно до якого національні банки є економічно самостійними органами.

Констатовано, що принцип незалежності в діяльності Європейського Центрального банку передбачає відсутність зовнішнього і внутрішнього впливу з боку інституцій ЄС, їх співробітників, членів урядів держав-учасниць ЄС на прийняття рішень Європейським Центральним банком, але принцип незалежності в діяльності Європейського Центрального банку не включає заборону вільного обміну думками між вище зазначеними суб'єктами і Європейським Центральним банком в рамках існуючого інституційного механізму ЄС.

Проаналізовано доктринальні підходи щодо принципів незалежності та підзвітності в діяльності національних банків держав. Аргументовано, що ступінь незалежності тієї або іншої гілки державної влади не може виступати об'єктом для порівняння з центральним банком держави оскільки це суперечить змістовному наповненню самого принципу незалежності тієї чи іншої гілки влади, а також нівелює систему стримувань і противаг як таку – Центральний банк держави не відноситься до жодної з трьох гілок державної влади і не є четвертою гілкою влади, хоча і є особливим центральним органом державного управління. Центральний банк держави не може бути й ізольованим від інших органів державної влади – навпроти, при збалансуванні державно-владних повноважень між органами державної влади, його значення є не менш важливим, але це не дає підстави для того, щоб відносити його до однієї з трьох гілок державної влади аби виокремлювати в четверту гілку влади.

Встановлено, що в юридичній літературі принцип незалежності в діяльності Центрального банку держави ототожнюється з функціональною та/або юридичною автономією. Наведено аргументацію, яка цей підхід спростовує. Охарактеризовано принцип незалежності в діяльності Центрального банку держави-члена ЄС. Встановлено, що принципу незалежності в діяльності Центрального банку держави кореспондує принцип підзвітності. Охарактеризовано цей принцип.

Ключові слова: особливий центральний орган державного управління, державна влада, гілки державної влади, принцип незалежності, принцип підзвітності, Європейський центральний банк, центральний банк держави, система стримувань і противаг, державна влада, функціональна автономія, юридична автономія.

Formulation of the problem.

The organization and activities of the Central Bank of the State are carried out in accordance with general and special constitutional principles. One of them is the principle of independence. In the legal literature, both domestic and foreign scholars emphasize that, ideally, the Central Bank

of the state should be completely independent from state authorities, and they cite the Central Banks of the EU member states as an example (N. Biloglazova [1], O. Orlyuk [2], V. Savenkova [3], M. Sidak [4], etc.). R. Smits believes that in certain cases it is possible to talk about an independent central bank as the fourth branch of government in the state [5].

Nevertheless, such points of view are considered debatable, since the principle of independence in making relevant decisions by the Central Bank of the State is identified by scientists either with the absence of its direct subordination to the state authority, or with the absence of indirect influence of the state authorities on decision-making by the Central Bank of the State. That is, it is usually about only one component of independence – independence from public authorities, officials or officials. Other components remain outside the attention of researchers. In addition, in this context, the question of the lack of influence of private and political interests remains outside the attention of scientists, which seems to be no less important when making certain decisions by the Central Bank of the state.

In addition, as E. Chyhyrynets rightly points out, «The Treaty on the European Union, adopted in 1992, contains provisions aimed at creating an Economic and Monetary Union (EMU) within the framework of the European Union. EMU provides not only a high degree of economic integration, but also the creation of a single European currency and the European System of Central Banks. It consists of the European Central Bank and the national central banks of the EU member states. Art. 108 and Art. 109 of the Treaty establishing the European Community, which is an integral part of the Treaty on the European Union, provides that both the European Central Bank and the central banks of the EU member states must be independent» [6].

The above testifies to the relevance and completeness of the study of the principle of independence in the activities of the Central Bank of the State.

In legal science, the principle of independence in the activities of the National Bank of Ukraine was studied by such scientists as N. Biloglazova, Yu. Bysaga, L. Voronova, A. Olefir, O. Orlyuk, V. Savenkova, M. Sidak and others. Such factors as the development of constitutionalism in Ukraine, the European integration intentions of Ukraine, the creation of a banking union throughout the EU influence these discussions. It is necessary to deepen discussions on this issue, taking into account the dynamic change of social relations.

The purpose of this article is to prove the hypothesis that the Central Bank of the state is not completely independent.

Presenting main material.

E. Luhnu in his dissertation research emphasizes that «special importance for the constitutional and legal status of the Central Bank ... is acquired by such special principles as independence» [7]. At the same time, the independence of the Central Bank of the state cannot be an end in itself, it is a necessary prerequisite for the practical realization of the purpose of its activity.

«The activities of the Central Bank as the leader of monetary policy should be based on the principles of cooperation between the state authorities and the banking regulator and should be aimed at achieving the main goal – price stability and the development of inflation within the established limits,» notes M. Shchegliuk [8, p. 41]. Thus, the scientist emphasizes cooperation between the Central Bank of the state and state authorities. Cooperation assumes the absence of direct subordination of the Central Bank of the state to state authorities.

Moreover, despite the fact that state power is divided into three branches - legislative, executive and judicial, nevertheless they do not exist in isolation from each other. There is a system of checks and balances, which is an element of the mechanism of separation of state power. V. Rebkala, M. Logunova, V. Shakhova emphasize that «its importance lies in the balancing of state powers between state authorities, preventing the concentration of all power in the hands of one of them (legislative-representative, executive-administrative, judicial) and thereby ensuring an effective system of checks and balances» [9]. Thus, it can be seen that the Central Bank of the state cannot be isolated from other state authorities. On the contrary, when balancing state-authority powers between state authorities, its importance is no less important.

Investigating the issue of the independence of the Central Bank of the State, V. Sovenkova notes that the performance of tasks by the National Bank of Ukraine is directly related to «ensuring the real political and economic independence of central banks» [3, p. 73]. Regarding the above, the opinion of O.P. is relevant. Orliuk, who also notes that «...in the banking environment, the bank supervisory body should have its own special status or at least parity with other main departments of the central bank, the ministry or be a separate independent organization» [2].

Thus, scientists distinguish only two components of the independence of the Central Bank of the state - political and economic. At the same time, other components, such as, for example, the independence of the banking system itself, are left out of consideration. In addition, emphasizing the presence of guarantees against external influence on the Central Bank of the state, consideration of the issue of internal influence is neglected.

A. Marushchak notes that «the German model of the central bank is basic in the countries of Central Europe. Back in 1991, the former president of the Bundesbank, H. Schlesinger, called for making all European central banks independent, giving them complete autonomy in the implementation of monetary policy, so that they could ensure price stability regardless of the instructions of their governments» [10, p. 134]. Thus, according to H. Schlesinger, the Central Banks of the states should have external independence from the government in carrying out their activities.

N. Yerpileva emphasizes that «ECB functions on the basis of two principles - independence and accountability» [11]. Of course, these principles must correspond to each other. The scientist, like other scientists, draws attention to the fact that «the principle of independence is key in Art. 130 of the Agreement and Art. 7 of the Charter, which reveal its meaning and content. The principle of independence affects the freedom (autonomy) in making appropriate decisions by the body whose activities it determines [12; 13; 14]. Thus, the principle of independence is reduced by scientists purely to autonomy in decision-making.

At the same time, foreign scientists emphasize that «...the degree of independence of this or that body is different. For example, the degree of independence of the central bank cannot be compared with the degree of independence of the judiciary, which is significantly higher. However, in certain cases it is possible to talk about the independence of the central bank as the fourth power in the state» [15].

First, the point of view that the degree of independence of one or another branch of state power can be an object for comparison with each other is considered debatable, since it contradicts the content of the very principle of independence of one or another branch of government, and secondly, it levels the system of restraints and counterbalance as such. Secondly, the statement that the Central Bank of the state is the fourth branch of government is considered debatable.

N. Yerpileva notes that «the fundamental provisions on the independence of the ECB can be considered in two aspects. On the one hand, the ECB itself, the NCBs and the members of the governing bodies of the ECB and the NCBs are prohibited from receiving instructions and directives from EU bodies, member state governments and any other bodies. On the other hand, EU bodies and national governments should not exert any influence on the members of the management bodies of the ECB and NCBs during their exercise of the subject competence of the ECB. First of all, the principle of independence covers those functions and powers of the ECB and the NCB, which are enshrined in the Statute and the Treaty, that is, it does not apply

to other functions of these structures, which they perform in connection with the implementation of the goals of currency regulation» [11].

Scientists are unanimous in their opinion that the principle of independence is addressed to the management bodies of the ESCB (the Governing Council, the Executive Committee and the General Council, which in the terminology of the primary source are qualified as decision-making bodies), their members, any management bodies of the NCB. This principle is aimed at excluding the potential political influence on these structures by the institutions of the Union (the European Parliament, the European Council, the Council of the EU, the European Commission, the Court of Justice of the EU and the Audit Chamber); bodies of the Union (in particular, the Economic and Social Committee, the Committee of the Regions, the European Prosecutor's Office); institutions of the Union (in particular, Europol and Eurojust) [16]; any government bodies (by which are understood legislative, executive and judicial bodies, and the Charter covers all three levels of the management hierarchy in the state – national, regional and local); of any other bodies (referring to bodies within the jurisdiction of the Union) [11]. Thus, scientists focus on such a form of independence as political and organizational.

N. Yerpileva emphasizes that “the next moment in revealing the meaning of the principle of independence concerns the circle of persons who are prohibited from exerting political pressure on the EU currency regulation bodies. First of all, this applies to members of management bodies and organizations of the EU (at the same time, the emphasis is shifted from institutions to personnel), members of government bodies of member states (with an adequate shift of emphasis). It should be noted that a too strict interpretation of the expression “exclude political influence” would affect the free exchange of opinions between representatives of various structures within the EU. At the same time, the Chairman of the Council of the EU and members of the European Commission (the main political bodies of the EU), present at the meeting of the Governing Council without the right to vote (Article 284 (1) of the Treaty), or members of the European Parliament, listen to the President or members of the Executive Committee (Article 284 (3) of the Treaty), and should try to create an atmosphere of open dialogue and not cross the fine line that separates the free exchange of views from political influence [17, p. 107; 11]. Thus, scientists emphasize such a form of independence as political. At the same time, financial and personal independence remained outside the attention of scientists.

A similar situation exists with regard to the Court of Justice of the European Union, whose

jurisdiction extends to the ECB (Article 35 of the Statute), and with regard to the Accounting Chamber, which has the right to conduct audits of the accounting statements and management of the ECB (Article 27 (2) of the Statute). The EU Court, when considering a number of cases related to the adoption of decisions on the implementation of a single economic policy of the Union, has already demonstrated strict adherence to the principle of independence [18, p. 107; 11]. Thus, scientists emphasize such a form of independence as organizational.

By actually classifying according to such a criterion as a subject of influence on the decision-making by the European Central Bank on EU institutions and their employees, members of the governments of EU member states, we prove that the principle of independence in the activities of the European Central Bank implies the absence of external and internal influence on the part of EU institutions, their employees, members of the governments of EU member states for decision-making by the European Central Bank. At the same time, the principle of independence in the activities of the European Central Bank does not include the prohibition of the free exchange of opinions between the above-mentioned subjects and the European Central Bank within the framework of the existing EU institutional mechanism.

A. Maruschak notes in his dissertation research that the current regulatory system in Europe is likely to be the subject of fundamental changes. The changes are caused by a political initiative to create a banking union throughout the EU. On September 12, 2012, the European Commission presented a proposal to transfer key competences of national supervisory authorities to the European Central Bank (“ECB”). This transfer aims to centralize the administrative standards of banking supervision in the European Union through a single supervisory mechanism (“SSM”) under the responsibility of the ECB. These proposals were discussed in the so-called “*Triolog*” between the European Commission, the Council of Ministers and the European Parliament. On March 25, 2013, “*Triolog*” approved the draft of the creation of the ECB’s regulatory board regarding the policy of prudential supervision of the activities of credit institutions. The draft resolution was adopted on the basis of Art. 127 clause 6 of the Treaty on the Functioning of the European Union (“TFEU”) [19]. The legislative procedure requires the consent of all 27 member states of the European Union. According to the draft regulation, the ECB has the right to instruct the national regulator to take certain management decisions. As a result, the supervisory duties of BaFin and the Bundesbank will be significantly reduced [10, p. 135].

We cannot talk about the absolute independence of the central banks of the EU member states. According to the Treaty on the Establishment of the European Union and the Statute of the European Central Bank, the independence of the central banks of the EU member states is a mandatory element of their legal status. At the same time, as A. Olefir points out, "independence should not have an absolute character, but should be reduced to such forms as: political, financial, organizational, personal. There are examples when central banks are subordinate to the Ministry of Finance or the Treasury Service" [20]. In the European Union, the central banks of the member states are subordinate to the European Central Bank.

In addition, domestic scientists emphasize that there are several mechanisms of interaction between national governments and central banks: the government provides the central bank with macroeconomic indicators on the functioning of the state, the central bank performs the functions of the government's financial agent, the management of the central bank participates in government meetings and presents information in terms of the conducted monetary policy, etc. Therefore, despite its important public importance, state authorities have limited influence on the activities of the central banks of the EU member states, which poses a significant threat of violation of national economic interests [20].

An additional argument that the central banks of the EU member states are not completely independent is that in the Federal Republic of Germany monetary and currency policy is established by the highest body of the German Federal Bank – the Council of Central Banks. It was the German banking model that was taken as the basis for the functioning of the European Central Bank [21, p. 25]. In France, in 1993, a decision was made on the independence of the Bank of France. It ensures price stability and does not depend on state policy [21, p. 27]. With the accession of Poland to the European Monetary Union, the National Bank of Poland supports the provisions of the European Central Bank regarding the implementation of the main principles of monetary policy and the minimization of ties with the state sector of the economy [22].

Thus, the central bank in Germany is independent from the state authorities, and in France it is formally independent. Poland minimizes the dependence of the central bank on the state.

Conclusions.

It was established that in the legal literature the principle of independence in the activities of the Central Bank of the State is identified with functional and legal autonomy. An argument is given that refutes this approach. It has been

proven that the Central Bank of the country is not completely independent in its activities. It was established that the principle of accountability corresponds to the principle of independence in the activities of the Central Bank of the State. The thesis that the Central Bank of the state is the fourth branch of government has been refuted. At the same time, attention is focused on its key importance in balancing state-authority powers between state authorities.

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