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THE EVOLUTION OF THE ROLE OF THE BOARD OF THE NATIONAL BANK OF UKRAINE AND THE CHAIRMAN OF THE NATIONAL BANK OF UKRAINE IN STRENGTHENING THE INDEPENDENCE OF THE NATIONAL BANK OF UKRAINE

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Naturkach R.P. Evolution of the role of the Council of the National Bank of Ukraine and the Chairman of the National Bank of Ukraine in terms of strengthening the independence of the National Bank of Ukraine.

The article is devoted to the study of the evolution of the role of the Council of the National Bank of Ukraine and the Chairman of the National Bank of Ukraine in terms of strengthening the independence of the National Bank of Ukraine.

It was established that during 1999–2023, the range of subjects entrusted with the main task of the National Bank of Ukraine was changed - currently it is entrusted only to the Council of the National Bank of Ukraine, there were changes in the legal norms that determined the composition and procedure of forming the composition of the Council of the National Bank of Ukraine of the Bank of Ukraine, the term of office of the chairman of the National Bank of Ukraine was extended and the law was changed, which established the requirements for acceptance and dismissal from the position of the chairman of the National Bank of Ukraine – the requirements for this subject of law were strengthened.

It has been established that the evolution of the role of the Council of the National Bank of Ukraine in terms of strengthening the independence of the National Bank of Ukraine is manifested in the fact that it was followed by the Parliament of Ukraine in a special law – the Law of Ukraine “On the National Bank of Ukraine” with the following powers: development of the main principles of monetary policy and implementation of control over the conduct of monetary policy; supervision of the internal control system of the National Bank of Ukraine.

It is noted that the requirements of the legislation of Ukraine regarding the incompatibility of the position of a member of the Council of the National Bank of Ukraine with other types of his activities are currently debatable.

It has been established that the evolution of the role of the Chairman of the National Bank of Ukraine in terms of strengthening the independence of the National Bank of Ukraine is manifested in the fact that the Parliament of Ukraine, in a special law – the Law of Ukraine “On the National Bank of Ukraine”, changed the term of office of the Chairman of the National Bank of Ukraine, established legal norms that strengthen the requirements before his acceptance into office and dismissal from office, it is prohibited for the Head of the NBU to have a representative mandate/hold the position of head of a state authority or other state body (provided that one year has not passed since the day of dismissal from such a position), or to be the head of a political party or a member of the governing bodies of a political party, or be a manager/member of the governing body of a legal entity (with the exception of the NBU), or be a direct or indirect owner of any number of shares (parts, shares) of a legal entity.

Key words: parliament of Ukraine, law of Ukraine, regulatory and legal regulation, effectiveness of constitutional and legal regulation, Council of the National Bank of Ukraine, Chairman of the National Bank of Ukraine, principle of independence, functional independence, National Bank of Ukraine, powers, task.

Натуркач Р.П. Еволюція ролі Ради Національного банку України та голови Національного банку України в частині посилення незалежності Національного банку України.

Статтю присвячено дослідженню питання еволюції ролі Ради Національного банку України та голови Національного банку України в частині посилення незалежності Національного банку України.

Встановлено, що протягом 1999–2023 рр. було змінено коло суб'єктів, на які покладалось

виконання основного завдання Національного банку України – наразі воно покладено лише на Раду Національного банку України, зазнали змін норми права, які визначали склад та процедуру формування складу Ради Національного банку України, збільшено термін повноважень голови Національного банку України та зазнали змін норми права, яка закріплювали вимоги до прийняття на посаду та звільнення з посади голови Національного банку України – вимоги до цього суб'єкта права були посилені.

Встановлено, що еволюція ролі Ради Національного банку України в частині посилення незалежності Національного банку України проявляється в тому, що за нею було парламентом України в спеціальному законі – Законі України «Про Національний банк України» закріплено такі повноваження: розробка основних засад грошово-кредитної політики та здійснення контролю за проведенням грошово-кредитної політики; здійснення нагляду за системою внутрішнього контролю Національного банку України.

Зазначається, що наразі дискусійними залишаються вимоги законодавства України з несумісності посади члена Ради Національного банку України з іншими видами його діяльності.

Встановлено, що еволюція ролі Голови Національного банку України в частині посилення незалежності Національного банку України проявляється в тому, що парламентом України в спеціальному законі – Законі України «Про Національний банк України» змінено термін повноважень Голови Національного банку України, закріплено норми права, які посилюють вимоги до прийняття його на посаду та звільнення з посади, встановлено заборону Голові НБУ мати представницький мандат/обіймати посаду керівника органу державної влади та іншого державного органу (за умови, якщо не минув один рік з дня звільнення з такої посади), або бути керівником політичної партії чи членом керівних органів політичної партії, або бути керівником/входити до складу керівного органу юридичної особи (за винятком НБУ), або бути прямим чи опосередкованим власником будь-якої кількості акцій (часток, паїв) юридичної особи.

Ключові слова: парламент України, закон України, нормативно-правове регулювання, ефективність конституційно-правового регулювання, Рада Національного банку України, Голова Національного банку України, принцип незалежності, функціональна незалежність, Національний банк України, повноваження, задача.

Formulation of the problem. The legislation of Ukraine defines the National Bank of Ukraine as an economically independent body (Article 4 of the Law of Ukraine "On the National Bank of Ukraine" [1]). Nevertheless, although changes were made

to the legislation of Ukraine during 2010–2023 in order to strengthen its functional independence, it still contains a number of restrictions on its functional independence. The consequence of this is that the functional capacity of the National Bank of Ukraine partially corresponds to the European fundamental principles of the independence of the central bank of the state [2; 3; 4] and affects the efficiency of its activity, reducing it. Therefore, it is expedient and necessary to strengthen the functional independence of the National Bank of Ukraine.

The issue of functional independence of the Central Bank of the state is one of the most controversial in the science of constitutional and administrative law. In their research, domestic and foreign scientists raise questions about the European fundamental principles of independence of the Central Banks of countries, including functional independence as its component [9–11]. At the same time, the issue of improving the legal foundations of the functional independence of the National Bank of Ukraine after the adoption of the laws of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine" dated July 9, 2010 [5]. The above testifies to the relevance, theoretical and practical conditioning of the issue of functional independence of the National Bank of Ukraine.

The purpose of the article is to justify the key role of the Council of the National Bank of Ukraine and the Chairman of the National Bank of Ukraine in strengthening the functional independence of the National Bank of Ukraine, to identify the shortcomings of the Law of Ukraine "On the National Bank of Ukraine".

Presenting main material. In 2010, in accordance with Article 93 of the Constitution of Ukraine, the President of Ukraine submitted to the Verkhovna Rada of Ukraine a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine" and defined this bill as urgent for extraordinary consideration by the Verkhovna Rada of Ukraine [6]. The Explanatory Note to the Draft Law stated that it was prepared to fulfill Ukraine's obligations stipulated by the Memorandum on Economic and Financial Policy concluded on April 30, 2009 within the framework of the "Stand-by" program jointly with the International Monetary Fund, and in order to implement the obligations Yazan before the World Bank within the framework of the system project "Program loan for the rehabilitation of the financial sector". According to these international documents, Ukraine undertook to strengthen the independence of the National Bank of Ukraine by reforming the Council of the National Bank of Ukraine, defining qualification

requirements, non-involvement criteria and conditions for termination of the powers of its members, etc. [7].

The draft law was prepared with the aim of creating legal conditions for the National Bank of Ukraine to fulfill its constitutional tasks as the central bank of the state, which has a significant impact on financial stability in the state, as well as with the aim of bringing certain provisions of the Law of Ukraine «On the National Bank of Ukraine» into compliance with the the Ukrainian side's obligations to the International Monetary Fund and the World Bank.

The bill envisaged strengthening the functional independence of the National Bank of Ukraine by amending the Law of Ukraine «On the National Bank of Ukraine».

On July 9, 2010, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine.»

So, first of all, the functional independence of the National Bank of Ukraine was strengthened according to such a criterion as «monetary policy development» by amending the Law of Ukraine «On the National Bank of Ukraine». Thus, before the amendment of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine» Art. 8 of the Law of Ukraine «On the National Bank of Ukraine» was worded as follows: «The governing bodies of the National Bank are the Council of the National Bank of Ukraine (hereinafter - the Council of the National Bank) and the Board of the National Bank of Ukraine (hereinafter - the Board of the National Bank)» (Article 8 in the wording of the Laws No. 1919-III dated July 13, 2000) [8]. In accordance with the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine» dated July 9, 2010, Art. 8 is set out in the following wording: «Article 8. Tasks of the Council of the National Bank. According to the Constitution of Ukraine, the main tasks of the Council of the National Bank are to develop the Basic Principles of monetary policy and to exercise control over the conduct of monetary policy.»

Thus, the task of developing the basic principles of monetary policy and monitoring the implementation of monetary policy is the main task of the Council of the National Bank only.

At the same time, it is noteworthy that Art. 8 of the Law of Ukraine «On the National Bank of Ukraine» in the new version duplicates the provisions of the first part of Article 100 of the Constitution of Ukraine: «The Council of the National Bank of Ukraine develops the basic principles of monetary policy and exercises

control over its implementation. The legal status of the Council of the National Bank of Ukraine is determined by law.» In 2015, Art. 8 of the Law of Ukraine «On the National Bank of Ukraine» was supplemented by Part 2, according to which «The Council of the National Bank supervises the system of internal control of the National Bank».

Thus, the Council of the National Bank of Ukraine is tasked with: 1) developing the basic principles of monetary policy and exercising control over the conduct of monetary policy; 2) supervision of the internal control system of the National Bank of Ukraine.

In accordance with Part 2, Clause 21 of Art. 9 of the Law of Ukraine «On the National Bank of Ukraine» in case of repeated failure or improper implementation by the Board of the National Bank of the decisions of the Council of the National Bank, which are mandatory according to this Law, the Council of the National Bank has the right to appeal to the Chairman of the National Bank or to the Verkhovna Rada of Ukraine and of the President of Ukraine with an explanation of his positions.

According to Art. 10 of the Law of Ukraine «On the National Bank of Ukraine», the Council of the National Bank includes members of the Council of the National Bank appointed by the Verkhovna Rada of Ukraine and the President of Ukraine. The Verkhovna Rada of Ukraine appoints four members of the Council of the National Bank by adopting a corresponding resolution. The President of Ukraine appoints four members of the Council of the National Bank by issuing a corresponding decree. The Chairman of the National Bank, who is appointed to the position by the Verkhovna Rada of Ukraine on the proposal of the President of Ukraine, is an ex officio member of the Council of the National Bank. Candidates for appointment by the Verkhovna Rada of Ukraine as members of the Board of the National Bank are discussed at a special open meeting of the specialized committee of the Verkhovna Rada of Ukraine, which submits its recommendations to the Verkhovna Rada of Ukraine. A member of the Council of the National Bank can be a citizen of Ukraine who permanently resides in Ukraine, has a full higher education in the field of economics, finance or law or a scientific degree in the field of economics, finance or law and at the same time has at least 10 years of work experience in a legislative body or in managerial positions in other state authorities and state bodies that ensure the conduct and implementation of state financial, economic or legal policy, or in managerial positions in international financial organizations, or in managerial positions in a bank, or scientific work on financial, economic or legal subjects and has an impeccable business reputation, in particular, he has no criminal record

that has not been extinguished and not removed in accordance with the procedure established by law.

At the same time, in Art. 10 of the Law of Ukraine "On the National Bank of Ukraine" does not establish the term of permanent residence of a candidate for the position of a member of the Council of the National Bank of Ukraine. Similarly, Art. 18 of the Law of Ukraine "On the National Bank of Ukraine" does not establish the term of such residence for a candidate for the post of Chairman of the National Bank of Ukraine.

The requirements regarding the incompatibility of the position of a member of the Council of the National Bank of Ukraine with other types of activities are also debatable. Yes, according to Art. 10 of the Law of Ukraine "On the National Bank of Ukraine" a person cannot be a member of the Council of the National Bank if he has a representative mandate or is a member of the Cabinet of Ministers of Ukraine, or holds or has held the position of head of a state authority (deputy head) and other state body (unless one year has passed since the date of her dismissal from such a position), or is a person authorized to perform the functions of the state or local self-government, or is the head (deputy head) of an enterprise, institution and organization, or is the head of a political party or a member of the governing bodies of a political party, is an official who is in labor relations or provides services in accordance with a civil law contract to a legal entity that provides financial services and is under the supervision of the National Bank, or is the owner of a significant share in such a legal entity.

In accordance with Part 2 of Art. 78 of the Constitution of Ukraine "people's deputies of Ukraine may not hold any other representative mandate, be in public service, hold other paid positions, engage in other paid or entrepreneurial activities (except for teaching, scientific and creative activities), be a member of the governing body or supervisory board of an enterprise or profit-making organization". As for the membership of the Council of the National Bank of Ukraine, it already falls under these constitutional restrictions on the compatibility of the representative mandate with other types of activities, since part 14 of Art. 10 of the Law of Ukraine "On the National Bank of Ukraine" states that the members of the Council of the National Bank (except the Chairman of the National Bank) receive remuneration for the performance of their functions at the expense of the National Bank. The size of the remuneration is determined in accordance with the methodology approved by the Board of the National Bank at the request of the Board of the National Bank.

In addition, the fact that the Verkhovna Rada of Ukraine appoints part of the members of the Council

of the National Bank of Ukraine is not a criterion for reducing the independence of the National Bank of Ukraine. Yes, according to Art. 85 of the Constitution of Ukraine, one of the main functions of the Verkhovna Rada of Ukraine is the function of parliamentary control. The power granted to the Verkhovna Rada of Ukraine, according to which it appoints and dismisses half of the members of the Council of the National Bank of Ukraine, is one of the forms of such control over the activities of the National Bank of Ukraine.

In addition, Art. 10 of the Law of Ukraine "On the National Bank of Ukraine" contains an evaluative concept: impeccable business reputation, but does not contain criteria for its measurement. Likewise, the specified article does not establish the procedure for detecting the fact of inaccurate information when appointing a member of the Council of the National Bank of Ukraine.

Thus, the functional independence of the National Bank of Ukraine was strengthened by making changes to Art. 8, 9, 10 of the Law of Ukraine "On the National Bank of Ukraine": the main task of the Council of the National Bank of Ukraine is established, the role of this body is strengthened according to the "composition and formation" criterion.

Also, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Activities of the National Bank of Ukraine" dated July 9, 2010 "amended Art. 18 of the Law of Ukraine "On the National Bank of Ukraine": the term of office of the Chairman of the National Bank of Ukraine has been changed to 7 years, the requirements for his acceptance and dismissal have been strengthened, a ban has been established for the Chairman of the National Bank of Ukraine to have a representative mandate or to hold the position of head of a state authority and of another state body (unless one year has passed since the date of dismissal from such a position), or be the head of a political party or a member of the governing bodies of a political party, or be the head or member of the governing body of a legal entity (with the exception of the National Bank), or be a direct or an indirect owner of any number of shares (parts, shares) of a legal entity.

At the same time, although Art. 18 of the Law of Ukraine "On the National Bank of Ukraine" and contains legal norms according to which "the Chairman of the National Bank is dismissed from his position by the Verkhovna Rada of Ukraine at the request of the President of Ukraine in the following cases... loss of impeccable business reputation; ...establishing the fact of providing inaccurate information when appointing the Chairman of the National Bank", nevertheless, the procedure for confirming the loss of an impeccable reputation, as well as the procedure for detecting the fact of

providing inaccurate information when appointing a member of the Council of the National Bank of Ukraine, is not fixed in the legislation.

Therefore, the grounds for terminating the powers of the Chairman of the National Bank of Ukraine need to be clarified, such as the procedure for confirming the loss of an impeccable reputation, the procedure for detecting the fact of providing unreliable information when appointing a member of the Council of the National Bank of Ukraine.

Conclusions.

The functional independence of the National Bank of Ukraine was strengthened by: 1) amending Art. 8, 9, 10 of the Law of Ukraine "On the National Bank of Ukraine": the main task of the Council of the National Bank of Ukraine is established, the role of this body is strengthened; 2) amendments were made to Art. 18 of the Law of Ukraine "On the National Bank of Ukraine": the term of office of the Chairman of the National Bank of Ukraine has been changed to 7 years, the requirements for his acceptance and dismissal have been strengthened, a ban has been established for the Chairman of the National Bank of Ukraine to have a representative mandate or to hold the position of head of a state authority and of another state body (unless one year has passed since the date of dismissal from such a position), or be the head of a political party or a member of the governing bodies of a political party, or be the head or member of the governing body of a legal entity (with the exception of the National Bank), or be a direct or an indirect owner of any number of shares (parts, shares) of a legal entity.

The Council of the National Bank of Ukraine is tasked with: 1) developing the main principles of monetary policy and monitoring the conduct of monetary policy; 2) supervision of the internal control system of the National Bank of Ukraine.

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