

LEGAL OPINION

**concerning the evaluation of the activities of the Governor of Narodowy Bank Polski
in the context of the constitutional prohibition of engagement in political and public
activity irreconcilable with the dignity of the office**

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for: Narodowy Bank Polski with its registered office in Warsaw

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concerning: **The evaluation of the pertinence of a potential allegation
against the Governor of Narodowy Bank Polski in the context
of infringement of the constitutional prohibition of affiliation
to political parties, trade unions and of engagement in public
activity irreconcilable with the dignity of his office
(hereinafter: “apoliticality obligation”).**

CONCLUSIONS

- 1. Special legal protection associated with the position of the NBP Governor in the
political system as a constitutional body does not directly stipulate any normative**

measures that allow the introduction of an element of his subordination to or dependency on, be it organisational or personal, other public authorities.

2. The principle of a 6-year term of office, directly provided for in the Constitution [of the Republic of Poland], in itself endorses the independence of the Governor of NBP from the executive power and legislative power in particular.
3. The standards of a law-abiding democratic state – in the context of the above regulations – exclude the possibility of the Sejm suspending another constitutional body from their duties without a prior ruling of the competent judicial body in this regard.
4. The organisation and principles of the operation of NBP and performance of functions by its bodies (the Governor of NBP and the Management Board of NBP, and the Monetary Policy Council) and the specific principles of appointing and dismissing them are specified by statute. In accordance with the Act on NBP, the Governor of NBP can be dismissed if, among others, the Tribunal of State has prohibited him/her from occupying managerial positions or holding posts of particular responsibility in state bodies.
5. The systemic form of the control and balance of the powers regarding the constitutional competence of NBP is exercised – in accordance with Article 227 (5) of the Constitution of the Republic of Poland – by the activity of the Monetary Policy Council, also composed of the Governor of NBP, of which he/she is an ex officio chair. In addition to the Governor of NBP, its members are persons who excel in the field of finance, who are appointed for the period of 6 years, in equal number by the President of the Republic of Poland, the Sejm and the Senate. This is – in the light of constitutional regulations – the only form of exerting influence by political forces, which at the same time balances the influences of the major state bodies regarding the activity of NBP concerning the setting and implementing of monetary policy.
6. In the context of the potential allegation of infringement of the "apoliticality obligation", there is the issue of the difficulty of separating these activities of the Governor that he performs as a NBP body from those that he performs as the Chair of the NBP Management Board or the Chair of the Monetary Policy Council. This is significant insofar as the competences of the Governor of NBP resulting directly from the Act on NBP or the Banking Act are basically of a representative or consultative nature, exercised as part of the cooperation with

other bodies. The vast majority of relevant tasks are carried out as part of the chairmanship of collegial bodies whose accountability should be examined in the context of their overall performance by verifying the content of individual resolutions.

7. As a consequence of the above legal regulations, there is no possibility of alleging a deliberate infringement of the Constitution or a law by the Governor of NBP (sub-legislative acts or internal acts cannot constitute a legal basis) in the context of the commission of an act prohibited by the law when it was in force.
8. The constitutional competence of a central bank in principle applies in full to NBP as a state institution, and the details of task assignment are implemented in laws. Irrespective of the above, as indicated in the literature, the statement "shall be responsible for the value of Polish currency" should not be understood too one-sidedly as a permanent pursuit of the high value of the Polish zloty against other currencies (cf. Mazurkiewicz M., in: *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 r.*, ed. J. Boć, Wrocław 1998, p. 335). In one of its judgments, the Constitutional Tribunal simply found that "it is more important for monetary policy to serve sustainable and comprehensive economic development and to raise the living standards of citizens" (the Constitutional Tribunal judgement of 24 November 2003, K. 26/2003, LexisNexis No. 364461, OTK-A 2003, No. 9 item 95). It is therefore a vague concept and difficult to assess in a comprehensive way in the short term.
9. It is difficult to identify and clarify the issue of apoliticality and its real dimension. The very context of the rulemaking of the 1997 Constitution should be kept in mind, to which attention is still drawn in the doctrine. As pointed out by W. Skrzydło, the constitutional status of the Governor of Narodowy Bank Polski and the principle of appointing him/her by the Sejm, at the request of the President of the Republic of Poland, under the clearly defined tenure of this office, is a manifestation of drawing conclusions from the discussion on the admissibility of the incumbent Governor of NBP to run for the office of the President, with a view to preventing such situations in the future (cf. W. Skrzydło [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. VII, Warszawa 2013, Article 227). According to the author, in this very context the Constitution underlines the apoliticality of the post, which is expressed, among others, in the prohibition of

affiliation to political parties, trade unions and of engagement in public activity irreconcilable with the dignity of his office.

10. The other example of the activity of the Governor of NBP in the conditions that cast doubt on its apolitical nature would be activities resulting in broadening the scope of competence of the central bank, introduced in the Act of 29 August 1997 on Narodowy Bank Polski. The controversy concerned in particular the amendments to the Act, "advised" in the notorious wiretapped conversation in 2013 of the then Governor of NBP Marek Belka with the then Minister of the Interior Bartłomiej Sienkiewicz. According to the recorded conversation, released by the Wprost weekly, it dealt with NBP's support of the State budget on the condition that the then Minister of Finance Jacek Rostowski would be dismissed, and the Act on NBP would be amended. According to the weekly, the conversation was held in July 2013 and in November [of the same year] Rostowski was dismissed; then, a draft law amending the Act on NBP as discussed at the meeting was handed over to the government. The above conversations of NBP Governor Marek Belka with Minister Sienkiewicz were later found to be just "taken out of context fragments" concerning, among others, financial stability, by means of which only "attempts were made to portray this as overstepping the NBP Governor's powers, which never happened." In the above case, NBP Governor Marek Belka completed his term of office, despite publicly undermining independence and freedom from political influences and pressures.
11. It is impossible to identify clear examples of the relationship between the incumbent NBP Governor and the executive power. Also it is impossible to assume that they can constitute the grounds for the allegation of apoliticality of activities of the Monetary Policy Council, which is after all the body appointed – in principle in full – by political entities such as the Sejm, the Senate and the President of the Republic of Poland.
12. In view of the above, I see no grounds to consider it legitimate to make a potential allegation against the Governor of Narodowy Bank Polski in the context of infringement of the constitutional prohibition of affiliation to political parties, trade unions and of engagement in public activity irreconcilable with the dignity of his office.

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