

*Przemysław Litwiniuk*

Warsaw University of Life Sciences, Poland

email: [przemyslaw\\_litwiniuk@sggw.edu.pl](mailto:przemyslaw_litwiniuk@sggw.edu.pl)

ORCID: 0000-0003-2099-157X

## CONSTITUTIONAL GUARANTEES FOR PROTECTING THE VALUE OF POLISH MONEY

### Abstract

This article outlines the issues related to constitutional guarantees for protecting the value of Polish money in the context of the responsibility for it as specified in Article 227, Paragraph 1(3) of the Constitution of the Republic of Poland. According to this provision, the National Bank of Poland, as the central bank of the state, which has the exclusive right to issue money and to determine and implement monetary policy, is responsible for the value of Polish money. The purpose of the study is to define the subject of the NBP's responsibility, determine the legal standard for the application of instruments for the central bank's fulfilment of its constitutional obligation and seek to answer the question of whether failure to achieve the result which has been set by the legislator involves legal consequences for the unlawful act or the omission of a public authority or the individuals serving as central bank bodies.

### KEYWORDS

the National Bank of Poland, the Monetary Policy Council, inflation, value of money, monetary system, monetary policy, Constitution of the Republic of Poland

## SŁOWA KLUCZOWE

Narodowy Bank Polski, Rada Polityki Pieniężnej, inflacja, wartość pieniądza, ustrój pieniężny, polityka pieniężna, Konstytucja Rzeczypospolitej Polskiej

## I. INTRODUCTION<sup>1</sup>

Constitutional law should be seen as a tool for protecting the axiological foundation that the nation has accepted as the basis for the proper functioning of the Polish state. This primarily includes the systemic values and principles that define the Republic as a ‘common good’. Legal science, as one of the forms of seeking and proclaiming the truth, involves discovering and highlighting what should be considered part of this defined set. This is an important task of lawyers, both those who write and teach about the law and those who apply the law or participate in its enactment. After 26 years since the 1997 Constitution, it can be observed that, during this time, various challenges related to the interpretation of its provisions have emerged. One of the most significant challenges was European integration, which was initially approached in a pro-European manner in the first decade of the 21<sup>st</sup> century, while today, it is taken up in the spirit of revision of the principles formed thus far, which is, unfortunately, taking place even within the framework of the Constitutional Tribunal. Recently, there has also been a need to debate the essence of the rule of law, often emphasising the alleged contradictions between its Polish and European models. The restrictions during the pandemic period revealed significant deficiencies in the understanding and application of constitutional standards applicable when limiting the rights and freedoms of individuals. Finally, the active policy of social transfers carried out in recent years, the extensive state interventionism based on the mechanism of the so-called quantitative easing during the COVID-19 period as well as the supply shocks caused by the pandemic and the Russian aggression against Ukraine, resulted in the phenomenon of high and persistent inflation, which to this day many economies, including Poland, have not managed to cope with.

The subject of this article is an outline of the constitutional guarantees for protecting the value of Polish money in the context of the responsibility defined in Article 227, Paragraph 1(3) of the Constitution of the Republic of Poland.<sup>2</sup> According to the provision contained in this editorial unit of the Constitution, the

---

<sup>1</sup> Article compiled from the theses of the inaugural lecture delivered by the author at the Faculty of Law and Administration of the University of Warsaw on 28 September 2023.

<sup>2</sup> Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

National Bank of Poland, as the central bank of the state with the exclusive right to issue money and to determine and implement monetary policy, is responsible for the value of Polish money. It seems, therefore, that in a period of significant loss of purchasing power of the Polish zloty, when inflation in the last three calendar years (2020-2022) amounted to more than 30%, it is reasonable to consider whether the legislator has created real constitutional guarantees to protect its value. Support in addressing this question may be provided by the conclusions of more detailed enquiries, which include, first and foremost, the definition of the object of responsibility as adopted in the content of the already cited Article 227(1) of the Constitution, the definition of the legal standard for the application of instruments for the fulfilment of the central bank's constitutional duty as well as an attempt to answer the question of whether the failure to achieve the result set by the legislator of the constitutional system entails legal consequences for the unlawful actions or omissions by public authorities and persons serving as central bank bodies.

## II. THE VALUE OF POLISH MONEY

The starting point for these considerations is to address the essence of currency in the constitutional sense. It is noteworthy that, in the Constitution, one cannot find any formal establishment or confirmation of the name of the Polish currency – the ‘zloty’. It seems that the constitutional system legislator did not regard it as a value equally significant as the emblem, national colours and anthem as mentioned in Chapter I, Article 28, or the capital city of the Republic in Article 29. However, this does not mean that the ‘Polish currency’ does not qualify as a category of elements of the ‘common good’ which is referred to in Article 1 of the Constitution. As Marek Zubik accurately pointed out, “the term ‘common good’ should be understood as the sum of all institutions and conditions that enable individuals and groups to achieve full development through coordinated cooperation, optimal use of various legal, economic and cultural means, guaranteeing the rights of each person as well as creating and securing a just social and economic order and enabling lasting and fair coexistence with other nations”.<sup>3</sup> Therefore, the ‘Polish currency’ – the zloty, as a legal means of payment, a symbol of the national economy and a beneficiary of its reputation, and in its materialised form – as a monetary symbol – serves not only as an economic value but also as a representation of the Polish emblem and historical-patriotic symbolism. It fits into the proposed understanding of the category of the ‘common good’.

---

<sup>3</sup> M. Zubik, *Prawo konstytucyjne współczesnej Polski*, 3rd edition, Warsaw 2022, section no. 65, p. 36.

Therefore, you can argue that the constitutional system legislator, by using the term ‘Polish currency’ used the so-called well-established concept which is fairly uniformly defined in academia and jurisprudence. Undoubtedly, in the conditions of the enactment of the Constitution in 1997, it was the ‘new Polish monetary unit called the zloty’, referred to in Article 1, paragraphs 1 and 2 of the Act of 7 July 1994 on the denomination of the zloty.<sup>4</sup> The category of ‘monetary unit’ includes with its meaning both cash, i.e. banknotes and coins issued by the National Bank of Poland,<sup>5</sup> and non-materialised non-cash money occurring mainly in the form of deposits in bank accounts. The constitutional term ‘Polish currency’ also encompasses the concept of the ‘Polish currency’, as referred to in Article 358 of the Civil Code<sup>6</sup> and Article 2, paragraph 1, point 7, of the Foreign Exchange Act,<sup>7</sup> i.e. banknotes and coins that are a legal means of payment in Poland.

Given the above findings, it is worth considering what the subject of constitutional protection is which was established in the third sentence of Article 227(1) of the Constitution being referred to as ‘the value of Polish money’, for which, according to the cited provision, the National Bank of Poland is responsible.

It has been aptly established in the literature that a monetary unit in circulation can represent the nominal, purchasing, and exchange rate value.<sup>8</sup> The nominal value arises from legal regulations and is presented on bills and coins by means of an appropriate inscription or number. The purchasing value (purchasing power) of a monetary unit is determined in relation to the economic forces of supply and demand in a given market, and at a specific point in time, within the price structure of goods and services. The exchange rate value, on the other hand, is determined by supply and demand in the foreign exchange market and is expressed in relation to the current value of a given foreign currency.

The latter two types of ‘value’ of the monetary unit are the focus of the NBP’s monetary (and exchange rate) policy.<sup>9</sup> Alongside the budgetary policy (fiscal policy) reserved for the competence of the Council of Ministers, monetary policy is

---

<sup>4</sup> Journal of Laws of 1994, No. 84, item 386, as amended.

<sup>5</sup> According to Article 31 of the Act of 29 August 1997 on the National Bank of Poland (consolidated text: Journal of Laws of 2022, item 2025, hereinafter referred to as the ‘NBP Act’), the legal tender of the Republic of Poland are banknotes and coins denominated in zlotys and grosze. In accordance with Article 32 of this Act, the bills and coins issued by the National Bank of Poland are legal means of payment in the territory of the Republic of Poland.

<sup>6</sup> Act of 23 April 1964, Civil Code (consolidated text: Journal of Laws of 2023, item 1610, as amended).

<sup>7</sup> Act of 27 July 2002, Foreign Exchange Act (consolidated text: Journal of Laws of 2022, item 309).

<sup>8</sup> T. Wiśniewski (in:) *Civil Code. Commentary. Tom III. Liabilities. General Part*, 2nd edition, J. Gudowski (ed.), Warsaw 2018, Article 358.

<sup>9</sup> Although macroeconomic policy encompasses various types of policies, it differentiates monetary policy from the exchange rate policy. Contemporary literature presents convincing arguments in favour of the thesis that monetary policy is the primary factor influencing exchange rate volatility. See: E. Ilzetzki, C. Reinhart, K. Rogoff, *Exchange rate volatility and monetary*

a fundamental component of macroeconomic policy. As pointed out in the literature, monetary policy indirectly affects the economy and is less discretionary.<sup>10</sup>

### III. THE OBJECT OF RESPONSIBILITY OF THE CENTRAL BANK

In the presented conditions, derived from the legal framework and the rules of macroeconomic policy, it is clear that the National Bank of Poland (NBP) has the capacity (instruments) to influence the value of Polish money in terms of its purchasing power and, to a more limited extent,<sup>11</sup> its exchange rate value. However, this does not mean that the responsibility for this value is reduced to the obligation to maintain it over time with respect to a specific ‘basket’ of basic prices of goods and services and a ‘basket’ of basic foreign currencies.<sup>12</sup> The view of the Constitutional Tribunal on this issue, expressed two decades ago, is consistent with the contemporary views of some economists, according to whom low and stable inflation has a positive impact on economic development, and occasional and slight decrease in the value of the Polish currency against the US dollar or the euro may contribute to increasing the competitiveness of the economy and boosting exports. In a judgment dated 24 November 2003, the Constitutional Tribunal assessed that the responsibility of the NBP for the value of Polish money “is not synonymous with an obligation to strive for an increase in this value or merely to maintain it at a constant level, but is understood as assigning to the NBP the duty to conduct monetary policy in a manner conducive to comprehensive economic development and the improvement of the living standards of citizens”.<sup>13</sup> From what is stated hereinabove, it follows that, although the protection of the value of Polish money is undoubtedly the primary objective and subject of the responsibility of the National Bank of Poland, it is not possible to directly decode from the provision derived from Article 227(1)(3) of the Constitution what type of conduct

---

*policy*, “Vox EU”, 4 April 2023, source: <https://cepr.org/voxeu/columns/exchange-rate-volatility-and-monetary-policy> (accessed 24 September 2023).

<sup>10</sup> Ł. Hardt, *Eseje o polityce pieniężnej czasu niepewności*, Warsaw 2022, p. 71.

<sup>11</sup> The exchange rate of the zloty against foreign currencies has been a floating rate since 12 April 2000.

<sup>12</sup> In the provisions of the pre-constitutional NBP Act, which was in force during a period of significantly increased inflation rates (1989–1997), the essential goal of the central bank was clearly expressed. Article 16(1) of the Act of 31 January 1989, on the National Bank of Poland (consolidated text: Journal of Laws of 1992, No. 72, item 360, as amended) stated that the NBP cooperates with the relevant state authorities in determining and implementing the state’s economic policy, with particular regard to strengthening the Polish money.

<sup>13</sup> Judgment of the Constitutional Tribunal of 24 November 2003, K 26/03 (OTK-A 2003, No. 9, item 95).

the central bank's authorities are instructed to take or what type of conduct they are prohibited from taking. Determining the expected attitude of the addressee of this norm, as envisaged by the constitutional system legislator, requires carrying out independent argumentative operations that often refer to premises beyond the legal text, especially to the principles of economic and financial science and empirical knowledge. Therefore, it can be argued that we are dealing here with incomplete normative statements, referred to in the constitutional law as programmatic norms.<sup>14</sup> Legal theorists emphasise that such norms are binding on the addressees but impose *prima facie* duties rather than definitive duties. When applying such norms, the most difficult question to resolve is the extent to which balancing conflicting principles must rely on legal criteria and to what extent it can be based on non-legal values.<sup>15</sup>

#### IV. THE LEGAL POSITION OF THE CENTRAL BANK

It seems that essential support in determining detailed legal directives regarding the manner (model) of implementing the constitutional responsibility for the value of Polish money can be the result of exegesis of the constitutional functions and the position of the National Bank of Poland and its key organ (from the perspective of the task of establishing and conducting monetary policy) – the Monetary Policy Council.

Under Article 227(1) of the Constitution, the National Bank of Poland is vested with the position of the state's central bank, which, in broad terms, encompasses the role of the state's bank, the issuing function, and the bank of banks function.<sup>16</sup> Furthermore, the Constitution entrusts it with the exclusive right to determine and implement monetary policy. Within the framework of the defined activities, as stated by the Constitutional Tribunal, the "NBP has various instruments for influencing commercial banks, used to adjust the credit and deposit activities of the latter to the priorities of this policy (...). Monetary policy involves shaping the money supply in the economy, and its basic instruments have been specified in the Act on the National Bank of Poland".<sup>17</sup> However, it should be noted that, due to the principle of a social market economy as expressed in Article 20 of the Constitution, the NBP cannot be positioned as an entity replacing or limiting the commercial banking system.

---

<sup>14</sup> See: T. Gizbert-Studnicki, A. Grabowski, *Normy programowe w konstytucji*, (in:) J. Trzciniński (ed.), *Charakter i struktura norm konstytucji*, Warsaw 1997, pp. 95-113.

<sup>15</sup> *Ibidem*, pp. 112-113.

<sup>16</sup> Judgment of the Constitutional Court of 28 June 2000 K 25/99 (OTK 2000, No. 5, item 141).

<sup>17</sup> Judgment of the Constitutional Court of 16 July 2009 Kp 4/08 (OTK-A 2009, No. 7, item 112).

An important issue which should be the subject of a more detailed *ex-post* assessment is the compatibility with the constitutional concept of central banking and the principle of economic freedom of the decision made in 2006<sup>18</sup> to exclude the supervision of banks from the competence of the NBP. It should be borne in mind that the instruments of exercising this supervision significantly affect the matter of money creation and supply in the economy, which is the essence of monetary policy, and the actual methods used by the supervisory authority with respect to commercial banks bearing the features of sovereign interference in the activities of private economic entities, which the Constitutional Tribunal allowed in the cited judgment, but in favour of the NBP, and not the Polish Financial Supervision Authority, which is unknown to the provisions of the Constitution. It can be argued that the Polish Financial Supervision Authority and Bank Gospodarstwa Krajowego, which is under its supervision, have a more modern and effective range of instruments for protecting the value of Polish money than those decreed for the central bank. However, it is the National Bank of Poland that is responsible for it.

In the provisions of the Constitution (Article 227(2)), the constitutional system legislator defined the bodies of the National Bank of Poland, including the President of NBP, the Monetary Policy Council, and the Management Board of NBP. The President of the National Bank of Poland is appointed by the Sejm (Parliament) upon the President of the Republic of Poland's recommendation for a six-year term. The President of NBP cannot be a member of a political party or a trade union, nor can he engage in public activities incompatible with the dignity of their office. As per Article 227(5) of the Constitution, the Monetary Policy Council includes the President of the NBP as its chairman and individuals with expertise in finance, appointed for six years, in equal numbers by the President of the Republic, the Sejm and the Senate. The NBP Act specifies that the entities mentioned in the Constitution which form the composition of the Monetary Policy Council each appoint three of its members. Each member of the Council carries out their individual term in this body.<sup>19</sup> It also follows from the constitutional provision in question that the selection criterion of "distinguishing oneself with financial expertise" only obligatorily applies to members appointed to the MPC pursuant to Article 227(5) of the Constitution and, therefore, does not apply to the Chairman of the Council, who is *ex officio* the President of the NBP. It should be added that the provisions of the Constitution do not specify the method of appointing the composition of the NBP's Management Board, referring in this regard entirely to a statutory determination.

---

<sup>18</sup> Act of 21 July 2006 on financial market supervision (Journal of Laws of 2006, No. 157, item 1119).

<sup>19</sup> See: judgment of the Constitutional Tribunal of 24 November 2003, K 26/03 (OTK-A 2003, No. 9, item 95).

It is also noteworthy that, with regard to the powers of the National Bank's authorities, the Constitution only determines in general terms the role of the NBP President as chairman of the MPC, while providing more detailed provisions about the tasks of the Monetary Policy Council. According to Article 227(6) of the Constitution, the Monetary Policy Council annually establishes the principles of monetary policy and presents them to the Sejm concurrently with the submission of the draft budget bill by the Council of Ministers. In addition, the Monetary Policy Council, within 5 months of the end of the fiscal year, submits a report on the implementation of the monetary policy principles to the Sejm. For these reasons, the prevailing view in the literature is that neither the NBP<sup>20</sup> nor the President of the NBP have the status of a constitutional organ of the state, which is reserved for the Monetary Policy Council, as the sole central bank body whose competencies are defined in the Constitution.<sup>21</sup> It is emphasised that this situation places the Monetary Policy Council in a dual role: as an internal body of the National Bank of Poland and as a constitutional organ of the state.<sup>22</sup>

From the aforementioned constitutional provisions aimed at separating monetary policy from direct political influences and pressures, jurisprudence and literature derives the principle of the independence of the National Bank of Poland, which the Constitutional Court has recognised as “one of the basic constitutional principles of [its] functioning”.<sup>23</sup> Although this principle is not expressed in the Constitution *expressis verbis*, it is considered to derive from the regulation of the Constitution indirectly (*implicite*) and manifests itself in three aspects: functional, personnel and financial.<sup>24</sup> Such a view of the constitutional position of the NBP and its organs is supported by the exclusive constitutional powers granted to them, the lack of legal instruments for enforcing the political responsibility of those holding the functions of the central bank's organs, their apolitical nature and practical irremovability during their term of office, the catalogue of the NBP's own revenues, which allows the institution to function without the need to obtain funds from the state budget, and the prohibition on covering the budget deficit

---

<sup>20</sup> Cf.: L. Góral, K. Koperkiewicz-Mordel (in:) M. Safjan, L. Bosek (ed.), *Konstytucja. Komentarz, Vol. II*, Warsaw 2016, p. 1602. These authors state that “the NBP is a constitutional organ of the state performing central banking tasks”, while pointing out that its legal nature “escapes uniform classification both in the jurisprudence of the Constitutional Tribunal and administrative judiciary (...) and in the doctrine (...)”.

<sup>21</sup> W. Brzozowski, *Niezależność konstytucyjnego organu państwa i jej ochrona*, Warsaw 2016, p. 60.

<sup>22</sup> T. Machelski, *Charakter prawny Rady Polityki Pieniężnej*, “Przegląd Legislacyjny” 2009, No. 3-4, pp. 56-68.

<sup>23</sup> Judgment of the Constitutional Court of 16 July 2009 Kp 4/08 (OTK-A 2009, No. 7, item 112).

<sup>24</sup> A. Łabno, *Narodowy Bank Polski. Pozycja ustrojowa i funkcje. Wybrane zagadnienia*, (in:) M. Zubik (ed.), *Minikomentarz dla Maksiprofesorów. Księga jubileuszowa profesora Leszka Garlickiego*, Warsaw 2017, p. 930.

by incurring liabilities in the central bank. Thus, it seems that the legislature has provided the NBP and its bodies with independence in a descriptive, rather than a directive, sense, limiting it only to the subject-object conditions for the performance of constitutionally decreed competencies (tasks).<sup>25</sup>

The principle of the independence of the central bank is also derived from binding international law in the Republic of Poland, primarily from the treaties establishing the European Union. In particular, it follows from Article 130 TFEU<sup>26</sup> that in exercising the powers and performing the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and the ECB, neither the European Central Bank, nor a national central bank, nor a member of any of their decision-making bodies, shall seek or accept instructions from the institutions, organs or organisational units of the EU, the governments of the Member States, or any other body. The institutions, bodies or organisational units of the EU as well as the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or the national central banks in the performance of their tasks. By contrast, under Article 131 TFEU, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Treaties and the Statute of the ESCB and the ECB.

## V. THE LEGAL NATURE OF THE ASSUMPTIONS OF MONETARY POLICY

From the above-mentioned constitutional regulations concerning the Monetary Policy Council, it also follows that the key to conducting monetary policy in a given year is an act, determined by the MPC, of unclear legal character referred to as the ‘assumptions of monetary policy’ in the Constitution. Its definition, nature, level of detail and component elements are not specified by either the Constitution or the NBP Act. The likely point of reference for the constitutional system legislator, who elevated the ‘assumptions of monetary policy’ to the level of a constitutional act in 1997, was its statutory form under Article 17(2) of the Act of 31 January 1989, on the National Bank of Poland.<sup>27</sup> According to the cited provision of the no longer applicable law, the assumptions of monetary policy were adopted by the Sejm together with the budget law. However, in the current constitutional framework, it appears to be a programmatic document, a kind

<sup>25</sup> See: W. Brzozowski, *op. cit.*, p. 62.

<sup>26</sup> Treaty on the Functioning of the European Union (Journal of Laws of 2004, No. 90, item 864/2 as amended).

<sup>27</sup> Consolidated text: Journal Laws of 1992, No. 72, item 360, as amended.

of economic strategy established in conditions of the NBP's distinctiveness and independence from the legislative and executive authorities.<sup>28</sup> However, it cannot be completely denied its normative value, particularly in the parts covering the establishment of the inflation targeting strategy, based on which the MPC seeks to ensure price stability as well as the establishment of monetary policy instruments for the given year.<sup>29</sup> Since 2004, the objective of monetary policy has been to maintain inflation, defined as the percentage annual change in the consumer price index, at 2.5% with a symmetrical deviation range of +/- one percentage point in the medium term.<sup>30</sup> The addressees of the norms contained in the assumptions of monetary policy are the bodies of the National Bank of Poland, and indirectly also the entities of the executive and legislative branches of government responsible for drafting and passing the budget act.<sup>31</sup>

The literature indicates that the assumptions of monetary policy should be treated as a catalogue of objectives of a macroeconomic nature and an orderly and internally consistent set of specific instruments, the application of which should aim to maintain the optimal value of Polish money.<sup>32</sup> It should be borne in mind that the application of certain monetary policy instruments may shape obligations and affect the factual and legal situation of economic participants, particularly financial institutions (e.g. determination of the mandatory reserve rates), thus constituting a sovereign interference in the sphere of constitutionally protected freedom of economic activity. Bearing in mind the definition in the Constitution of the competencies of the NBP, which include the "exclusive right ... to determine and implement monetary policy" (the second sentence of Article 227(1)), it should be noted that the manifestation of the former is the 'determination' of the assumptions of monetary policy ("determination of certain norms and rules

---

<sup>28</sup> The development of new forms of regulation covered by plans, strategies and programmes is accompanied by the conviction presented in the literature that their common feature is the lack of unambiguity of the nature and legal character, and this diversity manifests itself in terms of the entities that create them, the scope of their addressees, the content, the area of application, the effects of their establishment and the binding force. See: D. R. Kijowski, *Programy, plany i strategie jako podstawa działań organów administracji publicznej*, (in:) J. Zimmermann, P. J. Suwaj (ed.), *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną*, Warsaw 2013, p. 245.

<sup>29</sup> Such a view is in line with the view of the Constitutional Tribunal regarding the nature of a normative act, as expressed in its decision of 7 January 2016, U 8/15, item 3.2 (OTK-A 2016, No. 1).

<sup>30</sup> See: *Założenia polityki pieniężnej na rok 2024*, attached to Resolution No. 5/2023 of the Monetary Policy Council of 5 September 2023 on establishing monetary policy assumptions for 2024.

<sup>31</sup> See: Article 227(6)(1), of the Constitution, Article 12(1)(1), and Article 23(1)(2) of the NBP Act.

<sup>32</sup> Z. Ofiarski, *Założenia polityki pieniężnej Rady Polityki Pieniężnej a ochrona ustroju pieniężnego jako wartości publicznej*, "Białostockie Studia Prawnicze" 2020, Vol. 21, No. 1, p. 118.

of influence on the economy in order to achieve the assumed results<sup>33</sup>), and the latter is the use by the NBP bodies of the regulatory measures provided for by the Act (e.g. by setting NBP interest rates<sup>34</sup>) and from traditional financial and economic instruments (e.g. by conducting open market operations, applying currency interventions<sup>35</sup>). In the Constitutional Tribunal's jurisprudence, the possibility of using direct instruments of sovereign interference by the NBP authorities against commercial banks has been allowed (within the concept of organisational subordination for issuing normative acts of an internal nature), with the reservation that their purpose is the implementation of constitutionally defined public tasks.<sup>36</sup> Therefore, it can be argued that the assumptions of monetary policy, at least in their normative part, are an element of the model of hierarchical control of compliance (legality) of the resolutions of the Monetary Policy Council and the Management Board of the NBP, which are a manifestation of the exercise of the competence to 'implement' this policy. The assumptions themselves should maintain material conformity with the model of their establishment, resulting from the provisions of the Constitution and the provisions of the Act on the NBP.

## VI. THE LEGAL ENVIRONMENT FOR CONDUCTING MONETARY POLICY

When discussing the normative model for establishing and implementing monetary policy, you must first consider the relevant provisions of the Constitution and the NBP Act. When it comes to the constitutional model, it is only seemingly limited to the content of the third sentence of Article 227(1) of the Constitution. The value of Polish money is also determined by the decisions of the legislator and the subjects of the executive power with regard to the directions of the budget (fiscal) policy pursued as well as the compliance of the public authorities with constitutional limitations (Article 216(5) of the Constitution) and international obligations, particularly concerning financial stability (Article 126 TFEU).

It is also crucial to properly identify and respect the constitutional position of the budget act as defined in Article 219(1) of the Constitution. In legal doctrine, it is emphasised that the state budget, in constitutional terms, is a "public financial plan of revenue and expenditure, constituting the basis for managing the state's financial affairs". The budget act, as a legal form of the state budget, expresses the defining and guaranteeing meaning of Article 219 of the Constitution, realising

---

<sup>33</sup> Judgment of the Constitutional Court of 28 June 2000 K 25/99 (OTK 2000, No. 5, item 141).

<sup>34</sup> See: Article 12(2) of the NBP Act.

<sup>35</sup> See: Article 17, paragraph 4, items 2 and 4 of the NBP Act.

<sup>36</sup> *Ibidem*.

the protection of the value of democratic, open, and stable, precisely based on the state budget and the management of public finances for the common good.<sup>37</sup> With such a view of the constitutional position and nature of the state budget, it is impossible to accept the practice, introduced in recent years on a large scale, of programming and implementing significant public revenues and expenditures, amounting to hundreds of billions of zlotys, and incurring state obligations in a para-budgetary formula, using the so-called system of development institutions,<sup>38</sup> including funds created in Bank Gospodarstwa Krajowego,<sup>39</sup> which does not even maintain the standard of being subject to parliamentary and social control, and due to its expansive nature has a negative impact on price stability in the economy.

There are also serious doubts about the selected aspects of the quantitative easing mechanism used during the COVID-19 pandemic with the participation of the National Bank of Poland, which, due to its scale, undoubtedly contributed to a significant increase in the inflation rate after 2020. This mechanism, implemented through open market operations, involves increasing the money supply in the economy by buying financial assets from banks or other securities from the market. However, it is noteworthy that the fundamental part of the assets acquired by the National Bank of Poland intentionally consisted of bonds previously issued and coordinated in a systematic manner by commercial banks as well as debt securities guaranteed by the State Treasury and issued by Bank Gospodarstwa Krajowego for the COVID-19 Counteracting Fund and by Polski Fundusz Rozwoju S.A. In this context, it should be mentioned that Article 220(2) of the Constitution states that “the budget act cannot provide for covering the budget deficit by incurring liabilities in the central bank of the state”. As rightly noted in the doctrine, although this provision directly applies to the budget act, considering the entire set of constitutional provisions in this regard, especially the principle of the exclusivity of the budget act and the provisional budget act in determining state revenues and expenditures, there is no doubt that Article 220(2) of the Constitution applies to all acts and even factual actions with such effects. In this sense, the prohibition established in this provision is of a general nature.<sup>40</sup> Within the framework of this constitutional concept of the budget act, you can argue that the engagement of the National Bank of Poland in financing the gov-

<sup>37</sup> T. Dębowska-Romanowska (in:) M. Safjan, L. Bosek (eds.), *ibidem*, pp. 1517-1518.

<sup>38</sup> Act of 4 July 2019 on the system of development institutions (consolidated text: Journal of Laws 2023, item 1103).

<sup>39</sup> See, among others, Article 65 of the Act of 31 March 2020, on amendments to the Act on special solutions related to the prevention, counteracting and control of COVID-19, other infectious diseases and crises caused by them, and certain other acts (Journal of Laws, item 568, as amended), and Article 14 of the Act of 12 March 2022, on assistance to citizens of Ukraine in connection with the armed conflict on the territory of Ukraine (Journal of Laws of 2023, item 103, as amended).

<sup>40</sup> M. Zubik, *op. cit.*, section no. 886, p. 362.

ernment's borrowing needs violates the principle of the financial independence of the central bank.

The issue of the NBP's cooperation with the government is also the subject of legal controversy. For while the central bank's mandate is unambiguously defined in Article 227(1) of the Constitution, its statutory form partially deviates from this model. Specifically, according to Article 3(1) of the Act on the NBP, "the primary purpose of the NBP's activities is to maintain a stable price level, while supporting the Government's economic policy, insofar as this does not limit the primary purpose of the NBP". The probable intention of applying such a legislative approach was to limit the central bank's independence by subordinating its actions to the goals defined within the economic policy conducted by the Council of Ministers, as long as it does not negatively affect the protection of the value of Polish money. It seems that the intention of the ordinary legislator, who formulated the provision in question in such a way, did not achieve the desired practical effect. This is because this regulation does not give rise to any authority for the executive authorities (the government, the Minister of Finance) to wield any power to influence the actions of the central bank, nor does it constitute a source of justification for the NBP authorities that would wish to support the Council of Ministers while neglecting their basic constitutional duty. You can assume that, by a *contrario* interpretation, this provision establishes an obligation for the NBP not to support the government's economic policy if it threatens price stability. It can also be argued that this 'subsidiary goal' enshrined in the NBP Act represents a kind of *superfluum* in the regulation. The obligation of the central bank to interact with the government, with respect for their separate constitutional roles, is derived directly from the principle of interaction of authorities, which is derived from the preamble to the Constitution, and on which the fundamental rights of the state were based. This principle is also reflected in the modern economic concepts of conducting economic policy, in which the creators of fiscal policy and monetary policy mutually observe and take into account the relationship between the two policies ('policy mix'), and in the optimal model, make efforts to harmonise them.<sup>41</sup> It should not be forgotten that both components of macroeconomic policy share a common interest and responsibility – the well-being of the economy, which is defined in three fundamental areas: economic growth, unemployment and inflation.<sup>42</sup>

---

<sup>41</sup> See: F. Bianchi, C. Ilut, *Monetary/Fiscal policy mix and agents' beliefs*, "Review of Economic Dynamics", 2017, vol. 26, pp. 113-139.

<sup>42</sup> D. Begg, S. Fisher, R. Dornbusch, *Makroekonomia*, 3rd edition, Warsaw 2003, p. 19.

## VII. THE RESPONSIBILITIES OF THE NATIONAL BANK OF POLAND

The central bank's organs, when interpreting the provisions of the Constitution and the provisions of the NBP Act to determine the content of their duty in given economic conditions, should respect the results of the interpretation made in a pro-constitutional spirit and in line with the values derived from the treaties constituting the European Union. The stability of purchasing power and the credibility of the Polish currency, as an instrument for investment, are essential factors for the development of the domestic economy and its position in the European and global markets.

In terms of the constitutional model against which the effects of the National Bank of Poland's activities can be verified, it is also worth considering the provisions on property protection included in Article 21 and Article 64 of the Constitution. The legal solutions currently in force in Poland already acknowledge and implement the concept of compensation for public authorities' actions that lead to a decrease in the value of property (Article 36, paragraph 3 of the Spatial Planning and Development Act of 27 March 2003<sup>43</sup>). This suggests that a similar model of responsibility could be applied to the consequences of actions or omissions by monetary authorities that result in a decrease in the value of the monetary unit. Defining the prerequisites for such responsibility and the methodology for determining the amount of incurred losses would be an important area of collaboration for legal, economic and financial experts. It would seem that a necessary element of a model for such a responsibility would be a causal relationship between the NBP's failure to take necessary actions or the central bank's taking actions contrary to its constitutional mandate and the established loss of the money's value exceeding the medium-term inflation rate assumed in the monetary policy framework.

The above considerations are not unrelated to contemporary manifestations of undesirable inactivity or the undesirable activity of the Polish central bank, which included the phenomena of refraining from tightening the parameters of monetary policy in conditions of rising inflation, signals of currency interventions aimed at lowering the exchange value of the zloty in the last days of the calendar year in order to increase the posted amount of the NBP's profit for the year, 95% of which goes to the state budget as well as reductions in the interest rates in a situation in which the disinflation path covered by the projection does not indicate a return to the inflation target in the medium-term perspective (by the end of 2025). Such practices can hardly be assessed as consistent with the

---

<sup>43</sup> Consolidated text: Journal of Laws of 2023, item 977, as amended.

constitutional model, the implementation of which is entrusted to the bodies of the National Bank of Poland.

As already mentioned, members of NBP bodies do not bear political responsibility for their actions. However, this situation does not exclude the possibility of holding them criminally liable, especially for an act specified in Article 231 of the Criminal Code,<sup>44</sup> and in the case of the NBP President, constitutional liability before the State Tribunal for a constitutional offense.

## VIII. CONCLUSIONS

In summary, it can be assessed that the Constitution implicitly defines the characteristics that constitute the Polish monetary system. Its essence can be grasped by considering the fundamental values that should be recognised as a manifestation of the constitutional protection of the value of Polish money: the principle of a social market economy, the independence of the central bank and its organs, the exclusivity of the NBP in the issuance of currency and in the determination and implementation of monetary policy, the responsibility of the NBP for the value of Polish money, including the constitutional responsibility of the central bank's president, the principle of conducting fiscal policy based on the budget law, the principle of not covering the budget deficit by incurring obligations in the central bank, the principle of maintaining the stability of public finances, and the principle of respecting binding international obligations of the Republic. Merely respecting the principles decreed by the constitutional system legislator, even without their desired specific legislative concretisation, in a lawful and democratic state, provides sufficient protection for the value of Polish money.

## REFERENCES

- Begg D., Fisher S., Dornbusch R., *Makroekonomia*, 3rd edition, Warsaw 2003, p. 19
- Bianchi F., Ilut C., *Monetary/Fiscal policy mix and agents' beliefs*, "Review of Economic Dynamics", 2017, Vol. 26, pp. 113-139
- Brzozowski W., *Niezależność konstytucyjnego organu państwa i jej ochrona*, Warsaw 2016, p. 60
- Dębowska-Romanowska T. (in:) Safjan M., Bosek L. (eds.), *Konstytucja. Komentarz*, Vol. II, Warsaw 2016, pp. 1517-1518

---

<sup>44</sup> Act of 6 June 1997 Criminal Code (consolidated text: Journal of Laws of 2022, item 1138, as amended).

- Gizbert-Studnicki T., Grabowski A., *Normy programowe w konstytucji*, (in:) Trzcíński J. (ed.), *Charakter i struktura norm konstytucji*, Warsaw 1997, pp. 95-113
- Góral L., Koperkiewicz-Mordel K. (in:) Safjan M., Bosek L. (ed.), *Konstytucja. Komentarz*, Vol. II, Warsaw 2016, p. 1602
- Hardt Ł., *Eseje o polityce pieniężnej czasu niepewności*, Warsaw 2022, p. 71
- Ilzetzki E., Reinhart C., Rogoff K., *Exchange rate volatility and monetary policy*, “Vox EU”, 4 April 2023, source: <https://cepr.org/voxeu/columns/exchange-rate-volatility-and-monetary-policy> (accessed 24 September 2023)
- Kijowski D.R., *Programy, plany i strategie jako podstawa działań organów administracji publicznej*, (in:) Zimmermann J., Suwaj P. J. (ed.), *Wpływ przemian cywilizacyjnych na prawo administracyjne i administracja publiczną*, Warsaw 2013, p. 245
- Łabno A., *Narodowy Bank Polski. Pozycja ustrojowa i funkcje. Wybrane zagadnienia*, (in:) Zubik M. (ed.), *Minikomentarz dla Maksiprofesorów. Księga jubileuszowa profesora Leszka Garlickiego*, Warsaw 2017, p. 930
- Machelski T., *Charakter prawny Rady Polityki Pieniężnej*, “Przegląd Legislacyjny” 2009, No. 3-4, pp. 56-68
- Ofiarski Z., *Założenia polityki pieniężnej Rady Polityki Pieniężnej a ochrona ustroju pieniężnego jako wartości publicznej*, “Białostockie Studia Prawnicze” 2020, Vol. 21, No. 1, p. 118
- Wiśniewski T., (in:) *Civil Code. Commentary. Vol. III. Liabilities. General Part*, 2nd edition, Gudowski J. (ed.), Warsaw 2018, Article 358
- Zubik M., *Prawo konstytucyjne współczesnej Polski*, 3rd edition, Warsaw 2022, section no. 65, p. 36