

ON THE ISSUE OF INDEPENDENCE OF THE CENTRAL BANK (ON THE EXAMPLE OF THE REPUBLIC OF AZERBAIJAN)

MUSTAFAYEV Rafiq - Corporate legal assistant Deloitte Touche Tohmatsu Limited (Baku)

DOI: <https://doi.org/10.71404/EP.2025.3.18>

At the beginning of the article it is stated that in all countries, the legislation not only does not disclose the legal nature of the Central Bank, but does not even clearly establish its static legal status. It is further stated that the concept of independence of the Central Bank is disclosed in the legislation of most countries also in the context of a dynamic legal status.

The author believes that the concept of independence of the Central Bank is so vague that it has long ceased to be a purely legal category. He also argues that the goals, functions and powers of the Central Bank of Azerbaijan as a public-legal institution should not be established even at the level of law. It is concluded that the independence of the Central Bank is its independence, first of all, from the state, and the Central Bank of Azerbaijan, accordingly, must be independent from all state authorities.

Keywords: Central Bank, legal status, legislation, independence index, government.

If at the beginning of the last century the presence of a Central Bank was a sign of a country's civilization, then at the beginning of the current century such a sign is the presence of an independent Central Bank. True, even in the 19th century, opinions were occasionally expressed about the need for an independent Central Bank. Now, most developing countries are seeking to improve the institutional framework for the functioning of the Central Bank, and the countries of Central and Eastern Europe, gradually entering the eurozone, need to increase the degree of independence of the

Central Bank in accordance with the regulations of the European System of Central Banks. In the late 1990s, a number of countries, including Japan, Chile, France, Mexico, Luxembourg and New Zealand, revised their central bank legislation. The aim of the changes was to increase autonomy. Even the Bank of England, which had long been one of the least independent central banks in the world, finally received the necessary autonomy from the government in 1997 [1, p. 87].

It should be noted that in all countries the legislation not only does not disclose the legal nature of the Central Bank, but does not even clearly establish its static legal status. However, the absence of the latter directly follows from a misunderstanding of the legal nature of the Central Bank, the fact that it is a public-legal institution of the economic system of civil society. At the same time, the dynamic legal status of the Central Bank in the legislation of most countries is not only fixed in more detail (precisely in detail, but not clearly, and even more so incorrectly, because without a correct definition of the status of the Central Bank this is simply impossible), but in fact even unified.

Oddly enough, the concept of independence of the Central Bank is also disclosed in the legislation of these countries in the context of a dynamic legal position. For example, the status of independence of the European System of Central Banks in the Protocol on the Statute of the European System of Central Banks and the European Central Bank, which is considered the most progressive, is disclosed as follows:

“...In exercising the powers vested in them and in carrying out the tasks and duties conferred on them by this Treaty and this Regulation, neither the European Central Bank nor the national central banks nor any member of their decision-making bodies shall seek or receive instructions from the Community institutions or bodies, from any government of a Member State or from any other body” [2].

The institutions and bodies of the Community and 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 of national central banks in the performance of their tasks” (Article 7). A similar or identical definition is contained in the laws on Central Banks of different countries: Lithuania (Article 3), Georgia (Article 3), etc. The Law “On the Central Bank of Azerbaijan” is no exception, Article 6.1 of which discloses the independence of the Central Bank of Azerbaijan as follows: “The Central Bank is independent in exercising its functions and powers as defined by the Constitution and laws of the Republic of Azerbaijan, and at the same time, no state authority or local self-government body, physical or legal person may directly or indirectly restrict its activities for any reason, monitor its activities, or exert unlawful influence or interference, except in cases provided for in this Law” [3].

As we can see, this traditional definition lacks the most important thing – the consolidation of the independence of the Central Bank from the state, in other words, its legal status as an independent entity. Without defining the legal nature of the Central Bank, the legislator is forced to list in detail from whom it is independent in the exercise of its functions, often making reservations such as “illegal interference”, “except in cases provided by law”, etc. The legislator does not understand that without a clear legal status, such a definition of independence leads to other ambiguous provisions of the law.

In practice, such an approach leads to two opposite consequences. Some, interpreting independence broadly, accuse the Central Bank, this “state within a state”, of isolation and abuses, which are possible due to absolute independence. In this case, the independence of the Central Bank is likened to the independence of

the judiciary, especially the constitutional court. As world experience shows, attacks on the independence of the Central Bank intensify during economic crises. At the same time, they even propose to approve the Central Bank’s budget and monetary policy, the latter in the form of a law. It is not difficult to guess that the approval of the Central Bank’s budget (as in the Czech Republic) excludes its economic independence. As for the approval of monetary policy, such a state of affairs exists, for example, in Georgia. However, we believe that policy cannot be approved by law, if only because policy should ideally be flexible, while the law should be as unambiguous as possible.

Others, interpreting independence narrowly, believe that the independence of the Central Bank is a concept similar to the independence of an investigator, and therefore, we are talking only about unofficial interference in its activities. For example, in Mongolia, the Central Bank is considered independent. At the same time, the parliament can give it mandatory instructions.

Of course, the Central Bank, oddly enough, cannot have such almost absolute independence as, say, the Constitutional Court. Firstly, the latter is a state body involved in the system of checks and balances. Secondly, the Constitutional Court interprets laws and is not self-financing, does not have a monopoly on the issue of money. Thirdly, the Constitutional Court does not conduct politics, which is, naturally, a much more subjective phenomenon. In this context, an independent Central Bank should be as transparent as possible, and its responsibilities, as well as possible cases of state interference in its activities, should be provided for in the country’s basic law.

However, a narrow understanding of the independence of the Central Bank leads to official interference in its activities in favor of the political ambitions of the legislative and executive authorities of the state. The main argument of opponents of the independence of the central bank is to ensure the absence of conflict between monetary and fiscal policies. But practice has shown that conflicts can be overcome even in the conditions of an independent central bank. A narrow understanding of independence actually reduces it to the level of some autonomy in the state apparatus. Such independence does

not contribute to achieving the main goal of the Central Bank - price stability.

It is no secret that the practical basis for the concept of the independence of the Central Bank was the long-term experience of the German Bundesbank, which in the second half of the last century demonstrated an amazing ability to maintain a low and stable level of inflation. Many economists believe that this was facilitated by the high degree of legal independence of the Bundesbank.

Interestingly, even supporters of Friedrich Hayek consider the Bundesbank to be the best independent central bank. However, they also note the following: "High German professional ethics ensure the quality of the decisions taken by its leaders, and the people's memory of the two hyperinflationary periods of the current century ensures their political support. However, such a combination of favorable conditions is rarer than their absence. Moreover, examples from recent years, in particular the 1:1 exchange of Ostmarks for the Deutsche marks imposed by the Chancellor at the time, which was carried out purely for political purposes and forced the Bundesbank to raise interest rates, indirectly triggering the currency turmoil of 1993, have shown the limitations of the central bank's independence". Indeed, it must be acknowledged that in a situation of conflict between political and economic goals, the Bundesbank was unable to resist the infringement of its rights. By the way, in the US, the Federal Reserve System is far from independent from the government. The dollar is an important instrument of the US superpower foreign policy, and therefore it should not be surprising when the US President discusses with the heads of other states the prospects for adjusting the dollar exchange rate. The US is increasing pressure on its trading partners to raise their currencies against the dollar. As is known, the country issuing the international currency receives a number of advantages: 1) an actual interest-free loan in an amount equal to the monetary equivalent of banknotes in circulation outside the national economy; 2) a reduction in transaction costs; 3) an increase in the flow of investments. This is why we are currently witnessing a confrontation between the US dollar and the euro.

In short, the concept of the independence of the Central Bank is so vague that it has long ceased to be a purely legal category. It is no coincidence that some scientists believe that this is the crossroads "where politics and law converge with economics". All this forces scientists to focus on various aspects (criteria) of the independence of the Central Bank, arguing that the independence of the Central Bank "cannot be an end in itself" (which is, in principle, true). Some economists even argue that there are three models of Central Bank independence in the world: procedural (in the US), instrumental (in the UK and Scandinavian countries) and normative (in Germany). The first model comes down to promptly informing the government: The head of the Federal Reserve System reports to Congress twice a year on economic development trends and prospects for monetary policy. The instrumental model is organized according to the principle of "manager" and "executor" in the person of the Central Bank. Quite interesting and close to our understanding of the legal nature of the Central Bank is the characteristic of the latest model, when in modern Germany the main bank is not subordinate to the government and parliament, it is responsible to the country as a whole.

In general, at present, economic theory distinguishes between several types of independence of the Central Bank: monetary policy goals (goal autonomy), operational (target autonomy) and monetary and credit (instrument autonomy) instruments. In economic theory there is also a more global classification: political independence and economic independence. Political independence is determined by the degree of government intervention in the affairs of the Central Bank, primarily in the appointment of the Central Bank's management, as well as the autonomous functioning of its managers. Economic independence depends on the terms of the Central Bank's lending to the state budget and the involvement of monetary authorities in the supervision of commercial banks. In general, such an approach once again confirms that the independence of the Central Bank is rather understood in the context of the dynamic rather than static legal status of the Central Bank.

In the issue of independent regulation of banking activities, the main thing is that the

Central Bank of Azerbaijan does not go beyond the framework of banking law and does not intrude into civil law. The Central Bank of Azerbaijan does not interfere in the current activities of banks (Law of the Republic of Azerbaijan on Banks) [4]. Unfortunately, our classification of legislation does not single out banking legislation, which, in fact, determines the scope of banking regulation.

These normative acts must undergo state registration, like acts of executive authorities. In fact, they constitute the overwhelming majority of banking law. In this sense, it would be good to adopt a Banking Code, which will bring clarity to the structure of banking law. In principle, the Banking Code exists, for example, in France and Belarus, but they cannot be called a standard. This is most likely a mechanical combination of several regulatory legal acts. The Decree of the President of the Republic of Azerbaijan on the application of the Law on Banks also instructed to prepare such a Code. However, there is still no Code, and it is unlikely to be without a systemic concept of such a significant legislative act.

And legal scholars focus their attention on studying those very aspects of independence. At the same time, these aspects or criteria are not the same for everyone. For example, German researchers distinguish three degrees of independence: (1) functional (institutional) (2) economic (instrumental) (3) personnel.

One must agree with the authors who believe that any assessment of the independence of the Central Bank is subjective. Nevertheless, researchers, mainly economists, are attempting to mathematically derive a generalized index of independence (A.Alezin, Cukierman Index, GMT Grilli-Masciandaro-Tabellini Index and Eijffinger-Schaling Index), based on the so-called independence factors, which actually represent a certain detailed classification of independence elements. The ranking of the Central Bank according to the degree of their independence is usually based on a certain classification, which takes into account the possible combinations of values of the corresponding variables.

Studies conducted by various experts have yielded generally similar results: the group of the most independent central banks includes the German Bundesbank and the Swiss National Bank, while the group of "laggards" includes

the French, Australian and Canadian central banks. Empirical studies based on central bank independence indices have found that there is an inverse relationship between the degree of central bank independence and the level of inflation.

At the same time, a number of authors note that the legal independence of the Central Bank without actual independence (measured using the indicator of the frequency of changes in the leadership of the Central Bank) may not only be ineffective, but even counterproductive. A formally independent Central Bank in an unstable position risks compromising anti-inflationary policy, and such "institutional deception" could undermine confidence in national monetary authorities.

Based on Article 5 of the Law on the Central Bank of Azerbaijan, in order to achieve its goals, the Central Bank of Azerbaijan carries out other functions provided for by this Law and other Laws. This raises certain questions. Thus, Article 1.3 of the Law on the Central Bank defines the following: "The purpose, functions and powers of the Central Bank are determined by the Constitution of the Republic of Azerbaijan and this Law. In its activities, the Central Bank is also guided by other legislative acts of the Republic of Azerbaijan and international treaties to which the Republic of Azerbaijan is a party". If we follow the first sentence of this article, then the functions of the Central Bank of Azerbaijan can be established only in the Constitution and the Law on the Central Bank of Azerbaijan. But this contradicts Article 5, which also refers to other Laws. As for the second sentence of Article 1.3, it should be understood only in the sense that in its activities, like any other legal entity, the Central Bank of Azerbaijan is guided by all national legislation (for example, in civil law transactions, etc.). This does not mean that any subordinate regulatory legal act can establish the goals, functions and powers of the Central Bank of Azerbaijan as a public legal institution.

In general, we believe that the goals, functions and powers of the Central Bank of Azerbaijan as a public-legal institution should not be established even at the level of law. Firstly, similar characteristics of the legal capacity of the state and municipalities are established in the Constitution and Constitutional laws (if Constitutional

laws are adopted even on state bodies, for example, the ombudsman, why not adopt them on the Central Bank of Azerbaijan), which, as is known, are an addition to the Constitution (Part I of Article 156 of the Constitution of the Republic of Azerbaijan) [5].

Secondly, the law is already a state act, and therefore, how correct is it from the point of view of the independence of the Central Bank of Azerbaijan to give the state the opportunity to establish the legal personality of a public-legal institution independent of it? Consequently, it is necessary to adopt a separate Constitutional Law on the Central Bank of Azerbaijan. This opinion has already become prevalent today.

Today, as already noted, there is a tendency to consolidate the legal status of the Central Bank in the country's basic law. In the post-Soviet space, the Constitutions of all former republics in one form or another consolidate the foundations of the Central Bank's activities. For example, the Constitution of Lithuania, while establishing the monopoly of the Central Bank on money emission, determines the procedure and term of appointment of its management (board), and specifies that the procedure for organization and activities, as well as its powers, are established by a special law (Articles 125-126) [6]. The Constitution of Estonia, in addition to this, defines the accountability of the Central Bank to the parliament and specifies that the Central Bank organizes money circulation and ensures the stability of the national currency (paragraph 111-112) [7]. Similar provisions are also contained in the Constitution of Ukraine (Articles 99-100) [8]. But independence in the direct sense is enshrined in the Constitution of Georgia, while it is stated that guarantees of the independence of the Central Bank are determined by organic law (Article 95) [9]. This approach is the only correct one, because if the Central Bank is independent from the state, then the law on it cannot be ordinary and depend entirely on the state.

The Central Bank is a public-legal institution of the economic system of civil society. Thus, not only is it not a state body, but the state is not even its founder. The founder of the Central Bank is the people. In this context, excluding the judicial branch of government, three pub-

lic-law institutions or authorities can be distinguished: the state (state power), municipalities (local power) and the Central Bank (monetary power). Thus, the independence of the Central Bank is its independence, first of all, from the state. This approach, unlike other existing concepts, predetermines an absolutely consistent legal status of the Central Bank. At the same time, the property of the Central Bank is also its exclusive property.

The Central Bank of Azerbaijan must be independent from all state authorities. In this sense, the current practice of directive subordination to the President and the Cabinet of Ministers contradicts the principle of independence of the Central Bank of Azerbaijan. At the same time, a mechanism is needed by which, under certain extraordinary circumstances, the state, represented by a joint decision of all its authorities, can give instructions to the Central Bank of Azerbaijan. All these issues must be clearly spelled out in the Constitution or in the constitutional law on the Central Bank of Azerbaijan.

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