

WORKERS' REPRESENTATIVES IN SUPERVISORY BOARDS IN THE MANAGEMENT OF MUNICIPAL COMPANIES

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Abstract: The article raises the subject of the functioning of workers' representatives of municipal companies in supervising bodies of these companies i.e. supervisory boards. Pursuant to the analysis of the regulations of the code of trading companies and regulations which normalise the functioning of local government and municipal economy of the units of local government, the article presents an institution of the board of supervisors, the creation of these authorities, their competence and methods of realising supervisory tasks, emphasising the peculiarities which distinguish supervisory boards of communal companies in comparison with supervisory boards of companies without the participation of local government units. It also discusses practical consequences of the existing legal status in the field of participation of municipal companies' employees in their supervisory boards on the basis of the study carried out in one-man companies of a local government unit. The author's conclusions about the participation of municipal company workers in supervisory boards indicate a necessity to explicitly and homogeneously regulate this issue with regard to all the communal companies.

Keywords: a unit of local government, municipal economy, municipal company, supervisory boards, workers' representatives in the supervisory board

Introduction

The notion of a municipal company has not been directly defined in Polish legislation, yet it has been put into common circulation due to the content of regulations which determine the system of functioning of a local authority in the Republic of Poland, and which determine forms and principles of municipal economy of local government units.

Municipal economy is conducted mainly in the form of a budgetary institution or communal company [6, p.36]. In order to introduce the concept of a municipal company, it is necessary to determine what should be understood under the notion of municipal economy. Municipal economy includes public utility tasks of the municipality, whose aim is to meet collective needs of the residents by providing services, e.g. within the scope of technical infrastructure: media delivery, refuse collection, transport [8 p.49]. In laws which regulate the activity of units of local government, understood as municipal economy, we will not find a legal definition of this term. However, an analysis of tasks of local government units of public utility allows defining what municipal economy includes and what its aims are.

The Law from 8 March 1990 on a local government (i.e. Dz. U. {This abbreviation stands for Dziennik Ustaw – the Journal of Laws of the Republic of

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Poland [transl.]} 2001 No. 142, pos. 1591) states that **one of the own tasks of a municipality is to satisfy collective needs of the community** (art. 7 act 1).

Furthermore, the aforementioned law says that tasks of public utility, as defined by the law, are own tasks of a municipality, defined in art. 7 act 1, whose aim is to systematically and incessantly satisfy collective needs of the population by way of providing widely available services (art. 9 act 4).

A complementary deed to the law on local government, with reference to the discussed issues, is **the bill from 20 December 1996 on municipal economy** (Dz. U. 1997 No. 9, pos. 43 with further amendments). This law **determines the rules and forms of municipal economy of local government units, which lie in performing own tasks by these units, in order to meet collective needs of a municipal community** (art. 1 act 1). Bearing in mind art. 1 law 2 on municipal economy: **„Municipal economy includes in particular tasks of public utility, whose aim is to systematically and continuously satisfy collective needs of the population by way of providing widely available services.”**

Forms of running municipal economy are defined by art. 2 of the law saying that: **„Municipal economy may be operated by units of local government especially in the forms of municipal budgetary institution or companies of commercial law”**. A supplement to the model of municipal economy, created by the quoted law, is included in the regulation of art. 3 law 1 stating that: **„Units of local authority, under the terms of the agreement, may entrust performing municipal economy tasks to natural persons, legal persons, or to organisational units that do not possess legal personality, taking into account regulations of the law from 27 August 2009 on public finances (Dz. U. No. 157, pos. 1240, with further amendments), as a matter of statutory provisions from 19 December 2008 for public-private partnership (Dz. U. from 2009 No. 19, pos. 100 and from 2010 No. 106, pos. 675), statutory provisions from 9 January 2009 for a concession on building works or services (Dz. U. No. 19, pos. 101, with further amendments), provisions of statutory law from 29 January 2004 – The Law of public auction (Dz. U. from 2010 No. 113, pos. 759, No. 161, pos. 1078 & No. 182, pos. 1228), statutory provisions from 24 April 2003 for public utilities and voluntary service (Dz. U. from 2010 No. 234, pos. 1530) and acts from 16 December 2010 on public mass transportation (Dz. U. No. 5, pos. 13) or on general principles.**

Supervisory board issues in companies established by units of local government will concern limited companies of commercial law, for the creation and participation in which, the units of local government are authorised by the regulation of art. 2 on municipal economy, and in which this body is appointed either under the generally binding provisions of the partnership law, or on the basis of special regulations, functioning within the scope of municipal economy of local government units and regulating the forms of such an activity.

An institution of the board of supervisors derives from commonly binding legal articles of the commercial companies' law. These bodies are established only in

limited companies, while with regard to a limited liability company, regulations of commercial law allow for the functioning of a review board, alternatively or simultaneously with the supervisory board. Such a solution is not acceptable in relation to partnerships in which units of local authority participate.

A limited liability company and a joint-stock company are ranked as municipal limited companies, in which supervisory boards are created. **A municipal company's supervisory board.**

The creation and functioning of limited companies, as well as the structure and competence of the bodies of such partnerships are regulated by the law from 15 September 2000, i.e. the Polish Code of Commercial Partnerships and Companies (Dz. U. 2000 No. 94, pos. 1037 with further amendments). Supervisory powers in relation to the activity of limited companies in every sphere of their functioning, are granted by the Polish Code of Commercial Partnerships and Companies to the established by way of the partnership's agreement supervisory boards or review boards (permissible instead or next to supervisory boards for limited liability companies).[12, p.42-43]

The bill on municipal economy, by means of regulating the issues of establishing and functioning of municipal companies, does not provide for creating review boards within them, introducing **an obligation to create only a board of supervisors**. Art. 10a of act 1 determines it precisely. Moreover, generally sticking to the rule of using the articles of the Polish Code of Commercial Partnerships and Companies in relation to supervisory boards of municipal companies, the law on municipal economy includes special regulations with reference to boards of supervisors in municipal partnerships, mentioned in the articles of art. 10a acts 3-6.

The role of the supervisory board

The competence of the supervisory board, determined by the regulations of the code of commercial companies, is based on exercising constant supervision over the company in every sphere of its activity. The supervisory board does not really have the rights to give binding orders to the management board concerning an arrangement of the company's affairs; however, it may study all the company's documents, require reports and explanations from the board and company employees and carry out a search of the company's assets.

The supervisory boards shall protect the interests of the owner of the company, carrying out the functions which consist of:

- establishing the main objectives and strategic policies of the municipal company;
- selection of managers of a municipal company;
- supervision of people managing the company as well as counselling and acceptance of strategic decisions;
- supervision of the company's state of property, approval of the most important decisions which affect the amount of this property;
- analysis of the annual report on the activities of the company's board and of the financial statements in terms of their compliance with the books and documents, as

well as with the actual state, an assessment of the management's proposals on the distribution of profit or covering of loss, but also submitting to the owner the annual written report on the results of this evaluation, analysis of the accuracy of the company's financial statements;

- establishment and revision of the organisational structure of the company;
- attention to the overall efficiency of the company's management.[13, p.371; 5, p.281-282]

An amendment to the bill on accountancy, in force from 1 January 2009, has assigned to the members of supervisory boards direct responsibility for the correctness of financial reports by means of providing an assurance that the financial report and the report on the activity fulfil the requirements provided for in the law on accountancy (Law from 29 September 1994 on accounting (i.e. from 2.09.2009 Dz.U. from 2009 No. 152, pos. 1223 with further amendments).

The powers of the supervisory board may be extended by the deed of association, in particular by a resolution that the management board is obliged to gain permission from the supervisory board before performing certain activities specified in the deed of association, and also by giving to the board of supervisors the right to suspend individual or all the members of the board from their duties, for important reasons. In joint-stock companies, the right to suspend individual or all the members of the board from their duties results directly from the bill (art. 383 ksh {This abbreviation stands for Kodeks Spółek Handlowych – the Polish Code of Commercial Partnerships and Companies [transl.]}), which additionally enables supervisory board members to temporarily take over the duties of the members of the board of directors that were dismissed, handed in their resignation or for other reasons cannot perform their duties.

The law on municipal economy gives the members of supervisory boards of partnerships with the participation of the units of local authorities the right to appoint and dismiss the board members (art.10a law 6). This regulation refers to the principle included in the bill of art. 368 § 4 of the Polish Code of Commercial Partnerships and Companies, which authorises the supervisory board of a joint-stock company to appoint and dismiss the members of the board, provided that the company status does not say otherwise. What is more, the Polish Code of Commercial Partnerships and Companies allows a dismissal or suspension of the members of the board by the general meeting. In the bill on municipal economy there are no such restrictions, which increases the importance of supervisory boards in municipal companies and has great practical significance.

Participation of municipal company workers in supervisory boards

Forming supervisory boards within municipal companies is obligatory. This obligation, addressed to municipal partnerships, results both from the commonly binding regulations of the code of commercial companies and from articles of the bill on municipal economy.

In accordance with the regulations of the Polish Code of Commercial Partnerships and Companies, appointing a supervisory board is mandatory in every joint-stock company, whereas in case of a limited liability company, establishing a supervisory board is obligatory only in companies in which the initial capital exceeds the sum of 500 000 zloty, and there are more than twenty five partners.

On the other hand, the law on municipal economy says, in the regulation of **art. 18 act 1**, that: „ **A board of supervisors operates in a company established from the transformation of a municipal enterprise.**” Commentators of the act on municipal economy pay attention to practical implications of this regulation, noting that: „**Since only one partner (i.e. local government) takes part (at least in the initial phase of the company’s operation) in partnerships created from transformed municipal enterprises, an obligation to appoint a supervisory board there does not at all result from the regulations of the code of commercial companies, but merely from a special regulation of the commented law. Appointing a supervisory board in a one-person limited liability company, formed from the transformation of a municipal enterprise, leads to the fact that the deed of association may then exclude or limit the partners’ individual control (art. 213 § 3 k.s.h.).**” [14]

Regulations included in **art. 18** of the act on municipal economy are the basic legal article which normalises the issues of the supervisory board **within the municipal company, developed as a result of transforming the municipal enterprise**, since, apart from the obligation to establish a board of directors for a municipal company they contain directives on the way of forming a supervisory board together with its composition.

The number of the members of the board of supervisors is defined in the company’s statute or deed of association (art. 18 act 2 u.g.k. {This abbreviation stands for the Polish term Ustawa o gospodarce komunalnej – The Law on the Municipal Economy [transl.]}), however, the number of the members specified by the statute cannot be lower than the one provided for in the regulations of the code of commercial companies on the minimum number of supervisory board members in capital companies of the commercial law. In a limited liability company it will be at least three members (art. 215 § 1 k.s.h.), in a joint-stock company also at least three, whereas in a public company – five members (art. 385 § 1 k.s.h.)

Proportionally to the general number of members, company workers ought to be included as members of the supervisory board. These proportions are defined in **art. 18 law 3** of the act on municipal company, stating that:

„**Company employees retain the right to elect:**

- 1) two members of the supervisory board within the council consisting of up to six members,**
- 2) three members of the supervisory board within the council consisting of from seven to ten members,**
- 3) four members of the supervisory board within the council consisting of eleven or more members.”**

Other members of the supervisory board are appointed by the village mayor (or mayor of a town or city), among those who had taken an exam to become a member of the supervisory board in the procedure provided for in the regulations about commercialisation and privatisation (art.18 act 4 of the law on municipal economy).

Designing plenipotentiaries of the company workers as members of the supervisory board is done by way of voting. Voting, according to art. 18 act 5 of the law on municipal economy, should be direct, secret and in keeping with the rule of generality.

All the company workers, entitled to take part in voting, vote directly for candidates for the board of supervisors, whereas the obligation to remain secrecy of the voting lies in both creating technical opportunities to vote in a secret manner and in not revealing at the very moment of voting as well as after the vote, who a given employee voted for [14]. In elections for company representatives to the board of directors there is no principle of equality; therefore it is possible to grant more than one vote to some categories of workers.

Eligibility to stand for election does not find any subjective restrictions in the law on municipal economy. This means that plenipotentiaries who represent company workers in the supervisory board may not only be company employees, but also people not connected with the company by means of the labour relations (employment).[1, p.121]

A detailed procedure for choosing representatives of workers who apply for the post of members of the supervisory board of a municipal company may be defined in the company's statute or in the regulations passed in a way specified herein (art. 18 act 5a of the law on municipal economy).

Choosing representatives of workers for the board of supervisors does not mean that they become members of the board and from the moment of election their mandate in the board begins. Placing in art. 18 act 5 of the law on municipal economy such a sentence: „**The result of voting is binding to the general meeting**” clearly indicates that **the chosen persons become the members of the supervisory board at the moment of formal appointment, by means of an appropriate resolution adopted by the general meeting of the company or the village mayor (or mayor of a town or city) acting as the general meeting in a one-man company.**

Normalised in art. 18 of the law on municipal economy, the right to elect by company workers their representatives for the board of supervisors relates only and exclusively to **a one-man municipal company**, formed from the transformation of a municipal enterprise. This right, however, is not entitled to workers of the company created as a result of transforming a municipal enterprise, in which a unit of the local government is not the only shareholder either as a result of selling part of the company's shares, or getting the newly issued shares by the new partner. In this case, subjects choosing the members of supervisory boards will be specified in the deed of association or statute (art. 215 and art. 285 § 1 & 2 k.s.h.) and one of

these subjects may be company workers. The right to elect members of the board of supervisors by company employees is not after all legally guaranteed in this case.

When it comes to dismissing by the municipal company workers their representatives from the board of supervisors during the term of office, there are no clear statutory settlements. In specialist literature, there is a view in the matter saying that such a right will be entitled to the employees if the deed of association or statute or voting regulations, passed in the way specified in the statute, clearly provide for such a possibility [14, commentary on art. 18.].

Subjective restrictions upon the membership in the supervisory board of a municipal company

Certain subjective restrictions to the opportunity of being the member of the board of supervisors follow from the regulations of the law on municipal economy, related to the members of supervisory boards. One of these restrictions is the commitment of the village mayor (or mayor of a town or city) to appoint as members of the supervisory board people who had taken an exam to become the member of the supervisory board in the procedure provided for in the articles on commercialisation and privatisation (art.18 act 4 of the law on municipal economy).

In case of one-man municipal companies, this restriction relates to other people (except the workers' representatives). Defining restrictions, which the employees' proxies must be subject to, requires a more thorough analysis of deeds concerning the possibility to elect the workers' representatives for supervisory boards of these companies.

The possibility of electing by employees their representatives for supervisory bodies in municipal capital companies is regulated by the following articles:

- 1) The law from 20 December 1996 on municipal economy,
- 2) The Polish Code of Commercial Partnerships and Companies,
- 3) The law from 30 August 1996 on commercialisation and privatisation (Dz. U. from 2002, No. 171, pos. 1397 with further amendments).

The Polish Code of Commercial Partnerships and Companies does not define in any aspect the workers' entitlements to design their proxies for supervisory boards, leaving it to special acts and resolutions of the deeds of association (statutes). However, it contains regulations which limit the chance to appoint certain people as members of the supervisory board, formulating general bans on combining the functions of the member of the supervisory board (or of the review body in a limited liability company).

Supervisory boards as watchdog bodies appear in two types of capital associations of the commercial law i.e. limited liability companies and joint-stock companies. The range of ban on joining these functions is for both types of companies defined in an identical way by the regulations of the code of commercial companies. In reference to a limited liability company, it also concerns the review board, unless

such exists. It is formulated in the following regulations: art. 214 k.s.h. for a limited liability company and art. 387 k.s.h. for a joint-stock company. These regulations, actually identical, say that:

Art 214. § 1. A trustee, authorised agent, official receiver, branch or plant manager as well as employed by the company head accountant, solicitor or lawyer cannot at the same time be the member of the supervisory board or review body.

§ 2. Regulation § 1 also applies to other persons, who are directly subordinate to the member of the board or receiver.

§ 3. Regulation § 1 appropriately applies to trustees and official receivers of the company or of the dependent cooperative society.

Art 387. § 1. A trustee, authorised agent, official receiver, branch or plant manager as well as employed by the company chief accountant, solicitor or lawyer cannot at the same time be the member of the review board.

§ 2. Regulation § 1 also applies to other persons, who are directly under the authority of the trustee or receiver.

§ 3. Regulation § 1 accordingly applies to trustees and receivers of the company or the dependent cooperative.

Categories of people mentioned in the quoted regulations cannot become a member of the board of supervisors regardless of whether they act like the workers' representatives or like other persons.

Within the scope of requirements imposed on the members of supervisory boards of capital companies, the law on municipal economy introduces special regulations, more accurate, which, however, in accordance with art. 10 act 2 of the law, do not exclude using the regulations of the code of commercial companies. Requirements imposed on the members of supervisory boards of municipal companies are included in art. 10a act 4 & 5 of the law on municipal economy, which states that:

Art. 10a. 4. Members of the supervisory board, representing a unit of the local government within the company, are appointed among those who had taken an exam in a procedure provided for in the regulations on commercialisation and privatisation.

Art. 10a. 5. With reference to members of supervisory boards in companies with the participation of units of the local authority, which represent a unit of the local government in the company, the following are accordingly used: art. 13 of the law from 30 August 1996 on commercialisation and privatisation (Dz. U. from 2002 No. 171, pos. 1397 & No. 240, pos. 2055 and from 2003 No. 60, pos. 535 & No. 90, pos. 844).

The regulation of art. 10a act 4 of the law on municipal economy applies solely to members of the board of supervisors representing a unit of the local government. Therefore, it has no application towards the representatives of workers in the supervisory board. It follows that plenipotentiaries of the employees in the board of supervisors of a municipal company do not have to take the exam, which is discussed in the regulations of the law on municipal economy, in relation to the

members of the supervisory board representing a unit of the local authority or, in case of a one-man company, the members of the supervisory board appointed by the village mayor (or mayor of a town or city), pursuant to a regulation of art.18 act 4 of the law.

Considerably significant for the range of requirements imposed on the members of the supervisory board in a municipal company is the regulation of art. 10a act 5 of the law on municipal economy, which says that in relation to the members of the board of directors in municipal companies, art. 13 of the law on commercialisation and privatisation are used accordingly, stating the following:

Art. 13. 1. Until the time when the State Treasury remains the only shareholder of the company, the members of the board of supervisors of this company are not allowed to:

- 1) be employed by the company or offer work or services for it on the basis of another legal title,**
- 2) have shares in economic entities formed by the company, except for shares allowed for public trading on the basis of separate regulations,**
- 3) be employed by or offer work or services for economic entities, mentioned in point 2, on the basis of another legal title,**
- 4) carry out activities, which would stand in contradiction to their duties or could arouse suspicion of partiality or self-interest.**

2. Restrictions, mentioned in act. 1 point 3, do not apply to the membership in supervisory boards, except for supervisory boards of competitive economic entities.

3. The ban on being employed by the company developed as a result of commercialisation does not apply to persons chosen by the employees for the board of supervisors.

4. The activity, mentioned in act 1 point 4, is also carrying out the function by choice in the company's trade union organisation.

Subjective restrictions on the membership in the board of supervisors, included in art. 13. of the law on commercialisation and privatisation, apply to one-man companies of the Treasury.

In relation to municipal companies, this regulation is applied accordingly, considering that art. 10a. of the law on municipal economy includes not only municipal companies, whose only shareholder is a unit of the local government.

Special regulations in relation to the general principle included in art. 13 act 1 of the law on commercialisation and privatisation, formulated in act 2 & 3 introduce exceptions, from which the most important one for the workers' proxies is included in act 3. This exception enables a municipal company worker to become a member of the supervisory board, provided that he/she was chosen by the employees as their plenipotentiary.

In the light of the aforementioned considerations, a question whether the representatives of workers in the supervisory board of a municipal company are subject to any restrictions comes into being. Doubts arise against a background of

the requirement to take the exam in the procedure provided for by the regulations on commercialisation and privatisation. The source of these doubts is the fact that the law on municipal economy talks about two types of municipal companies, i.e. companies established on general principles and companies developed from the transformation of a municipal enterprise. So long as in case of a municipal company, developed from the transformed municipal enterprise, no requirement to take the exam by the member of the supervisory board who is the proxy for the employees (inference *a contrario* from the regulation of art. 18 act 4 of the law on municipal economy) is indisputable, insomuch in case of municipal companies established on general principles, this issue is no longer so obvious.

Most of all, one should pay attention to the fact that the law on municipal economy, relating in the regulations of art.10a to the institution of a supervisory board of a municipal company established on general principles, does not give the employees the right to choose their representatives in the board of supervisors and, consequently, does not relate in any way to the requirements imposed on the workers' proxies in the board. It does not exclude the presence of such representatives in the supervisory board; however, their participation will not follow directly from the law, and may find its source in the regulations of the deed of association (foundation act). Therefore, one should answer the question whether in this case the workers' representatives will be required to take the exam in the procedure provided for by the regulations on commercialisation and privatisation or whether there will not be such requirement.

In the doctrine, currently two positions clash on the matter.

The first one, supported by the adjudication of the Supreme Court, which stated that **"Taking up a post in the company's body despite the lack of education or knowledge necessary to competently perform the function is a violation of the required accuracy and conscientiousness."** (OSNC 11/1997, pos. 181) clearly indicates an obligation to sit the exam in the mode prescribed by the regulations on commercialisation and privatisation, relating to all the members of the supervisory board. In addition, legal status regarding the members of the board of directors of a partnership developed as a result of commercialisation, whose only shareholder is the State Treasury, is pointed out. The law on commercialisation and privatisation passes this requirement uniformly towards all the members of the supervisory board, and thus both the ones designated by the Minister of the Treasury and chosen by the employees.

The second stand, based on the regulations of the law on municipal economy, assumes that the requirement of taking the exam by the workers' representatives in the procedure provided for by the regulations on commercialisation and privatisation, does not find any justification as it is not required by the mentioned law. In addition, it is further argued that art. 18 of the law on municipal economy explicitly exempts from the obligation of taking the exam for the proxies in supervisory boards of companies developed from transformed municipal

enterprises, which means those in which the participation of the plenipotentiaries in the board of directors is obligatory [2].

In the law on municipal economy, the lack of an explicit injunction to take the exam (as regulated by the articles on commercialisation and privatisation) for the workers' representatives in supervisory boards of municipal companies is based on general principles, as well as the lack of clear exemption of these persons from sitting the exam causes a necessity to use general principles. **If so, it ought to be acknowledged that imposing the condition of sitting the exam on the candidates for the members of the board of supervisors, or resigning from it will depend on the partners' will, expressed in the deed of association (statute), or in the foundation law, when we have to deal with only one partner.** Regulations of the commercial law, treating about the mandatory content of the articles of association, also specify possibilities and limits on placing resolutions in the statute that are different from the ones provided for in the law [compare 10]. This will may also be manifested in the rules of election of employees' representatives to the supervisory board.

Another problem needing consideration is the issue of prohibiting the members of supervisory boards, who are the plenipotentiaries of the employees, from combining positions, which leads to a conflict of interests. In the matter, appropriate regulations of the Polish Code of Commercial Partnerships and Companies, binding in relation to companies established on general principles, previously cited art. 214 & 387 of this law are of vital importance.

It seems that in case of municipal companies created on general principles, if the deed of association (foundation act) provides for the participation of the workers' representatives in the supervisory board, nothing prevents extending in this document the ban on joining posts, in relation to the bans formulated in the code of commercial companies, in a way referring to special regulations included in the law on commercialisation and privatisation.

This issue should be dealt with differently with reference to representatives of workers in the supervisory board of a municipal company developed from the transformation of a municipal enterprise. In this case, the regulations of the law on municipal economy, which do not impose on the workers' representatives an obligation to sit the exam or to respect the ban on competition, are of considerable significance.

However, in case of an incidence or a group of incidences able to cause suspicion about its lack of impartiality, it is acceptable to use in the regulations of the supervisory board a notation which obligates the member of the supervisory board to inform the board about the existing conflict of interests or about a possibility of it. In this case, the member of the board may be obliged to forbear from speaking in the debate and not to take part in voting in the matter in which the conflict of interests arose.

Such a solution is also possible in the regulation of the supervisory board of a municipal partnership, established on general principles.

A *de lege ferenda* conclusion, which comes to mind in connection with the above considerations, is a need for recommending an introduction of the requirement to sit the exam in the procedure provided for by the regulations on commercialisation and privatisation or perhaps on other principles which, however, allow to achieve the effect in the form of the professionalisation of the supervisory board, and thus enhance professional supervision over public funds invested in municipal companies [2].

One cannot deny the truth of the presented in specialist literature views that the competence of the members of the supervisory board ought to be the basic distinguishing feature of their professionalism. [3, p.44]

This kind of regulation, included in the deed of association (foundation act), certainly cannot concern representatives of a unit of the local authority, on whom the law in every case explicitly imposes an obligation to sit the exam.

Another objective would be to strictly regulate the scope of ban on competition in relation to the members of supervisory boards of municipal companies elected by employees of these companies. Currently binding solutions, regulating in a comprehensive manner the matters of representatives of local government units in supervisory boards of municipal partnerships, are far from satisfactory with reference to the representatives of these company workers.

Another restriction, which should be taken into account while selecting candidates for members of supervisory boards in municipal companies, is the education census. The law on commercialisation and privatisation in art. 12 act 7 entitles the Council of Ministers to define by regulation the conditions which should be met by people applying for members of supervisory boards in companies of the Treasury. The directive of the Council of Ministers, issued in pursuance with this legislation, regarding trainings and exams for candidates for members of supervisory boards of companies, in which the State Treasury is the only shareholder (Dz. U. 2004 No. 198, pos. 2038 with further amendments), says that candidates for members of supervisory boards, except candidates chosen by employees, farmers and fishermen, ought to have completed higher education. In the light of the above it needs to be assumed that the requirement to graduate from one's studies should apply to candidates for members of supervisory boards of municipal companies representing a unit of local authorities in them, yet there is no doubt that it will not include representatives of workers who are part of the board of directors. [14, the commentary on art. 18.]

The workers' representatives in supervisory boards in practice

For the purpose of this article we studied 2 municipal companies, whose head offices are located in the Silesian Voivodeship. The examined entities operate in the form of limited liability companies, whose only owner is a local government unit. The entities have a total registered capital of 84.5 million zlotys. Their activity, according to the Polish Classification of Activities (Dz.U.07.251.1885 with further amendments), concentrates on: repair and maintenance of machinery

and appliances, specialised construction works, maintenance and repair of motor vehicles, land transport of passengers and road transport of goods, purchase and sale of real estate, managing and renting real estate, construction of residential buildings, performing plumbing, heating, electrical and gas installations.

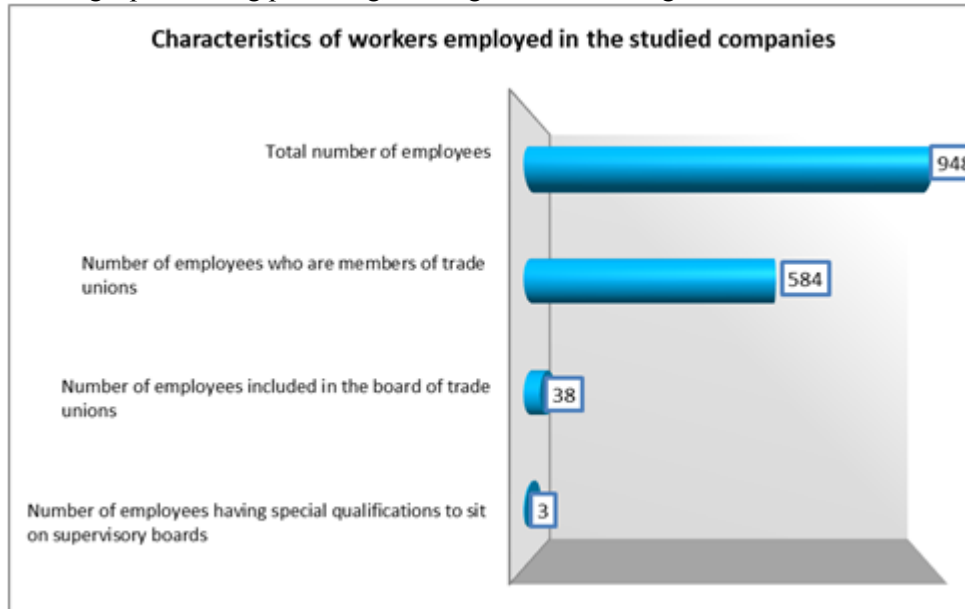


Figure 1. Characteristics of workers employed in the studied companies.

Source: Own study

In the studied entities there are 948 employees altogether. Figure 1 shows the characteristics of employees, taking into account their affiliation to one of the unions operating in the examined companies. The number of employees who are members of trade unions is 584. Within this number, 38 workers are part of the managements of particular trade unions. Only three employees have special education and the right to sit on supervisory boards under the provisions of the commercialisation and privatisation of companies.

Looking at the above figures, one should pay attention to the issue of a possible conflict of interests in case of joining the function of a board member of the trade union and the function of a member of the supervisory board of the company. In fact, the interests of the company, statutorily guarded by the supervisory board, may be in conflict with the interests of the employees belonging to particular trade unions. It is mainly about pay issues as well as issues regarding the time and manner of work. Especially in times of crisis the employer (including also the studied companies) expects reduced wage claims of the employees and even employment reduction, which trade unions usually do not want to agree to. In both studied companies there was a dispute between the employer and trade unions against a background of the salary. The dispute concerned the payment of bonuses to employees, which, in accordance with the relevant regulations was dependent on

the economic performance of the company. Another source of conflict was the issue of changes in the organisation of the company in order to reduce employment. Activities of the managements of the studied entities of such a large scale required the approval of supervisory boards, in which the workers' representatives were the chairmen of the board of trade unions.

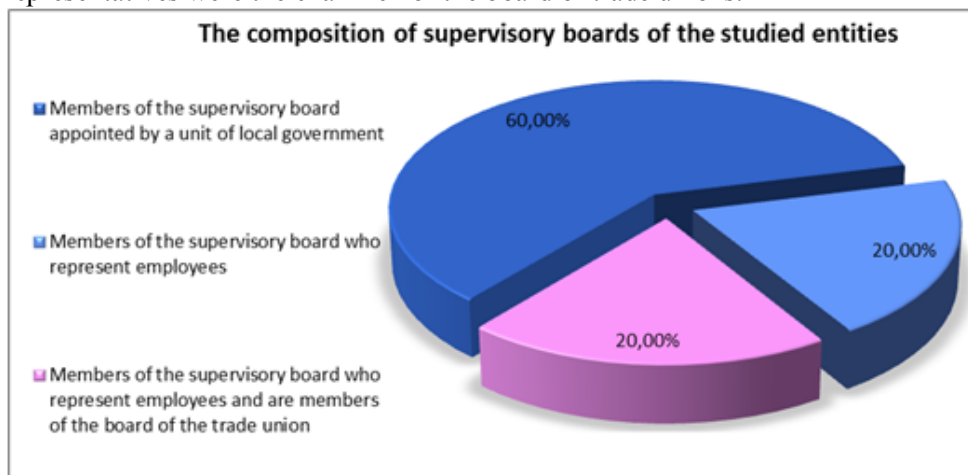


Figure 2. The composition of supervisory boards of the studied companies

Source: Own study

Figure 2 presents the composition of supervisory boards of the surveyed entities. The workers' representatives in the studied companies are 40 % of the number of members of the board of supervisors. In practice, there is a conflict of interests relating to the members of supervisory boards who represent employees – half of the workers' representatives perform two functions simultaneously: of the member of the supervisory board and of the member of the trade union.

There is a hypothetical conflict of obligations arising from both of these functions due to the divergence of aims and tasks set to the members of the supervisory board and the members of the board of the union. In the studied entities this conflict was also real, because the members of the supervisory board who were also members of the board of trade unions „sabotaged” attempts to restructure employment and wages. Board members who had prepared this plan were also attacked personally in other areas not related to the restructuring of employment (it should be noted that in the studied entities it is supervisory board that appoints and dismisses the management of the company).

Finally, it must be emphasised that none of the employees' representatives sitting on supervisory boards met the requirements of special education arising from the provisions on commercialisation and privatisation of companies.

Summary

The problem of participation of municipal company employees in their supervisory boards has not found clear, comprehensive regulations in the provisions of the law. As long as in case of one-man companies established as a result of transforming municipal companies the situation is lucid, in case of partnerships with the participation of local government units established on general principles, the issue of participation of the workers' representatives in supervisory boards requires complementary use of generally valid regulations of the code of commercial companies and local government laws, in particular the law on municipal economy, often with the use of teleological interpretation of these regulations. Maintaining such a situation is, as it seems, with the detriment to the institution of the board of directors of municipal companies, as well as to the interests of municipal company workers.

Offering uniform solutions in terms of the participation of municipal company workers in their supervisory boards, modelled on art. 13 of the act on commercialisation and privatisation, at the same time in accordance with the rules resulting from art.18 of the law on municipal economy, would undoubtedly be beneficial for both improving the professional competence of the members of supervisory boards and ensuring their impartiality, avoiding the conflict of interests and corruptive situations, and at the same time favourable for the proper achievement of the objectives of the establishment and operation of supervisory authorities in municipal companies.

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PRZEDSTAWICIELE PRACOWNIKÓW W RADACH NADZORCZYCH W ZARZĄDZANIU SPÓLKAMI KOMUNALNYMI

Streszczenie: Artykuł porusza temat funkcjonowania przedstawicieli pracowników spółek komunalnych w nadzorowaniu organów tych spółek, tj. rad nadzorczych. Zgodnie z analizą przepisów kodeksu spółek handlowych i wykonawczych, które normalizują funkcjonowanie samorządu terytorialnego oraz gospodarki komunalnej jednostek samorządu terytorialnego, w artykule przedstawiono instytucję rady nadzorczej, tworzenie tych organów, ich kompetencje i metody realizacji zadań nadzorczych, podkreślając specyfikę, która odróżnia rady nadzorcze spółek komunalnych w porównaniu z radą nadzorczą spółek, bez udziału jednostek samorządu terytorialnego. Na podstawie badań przeprowadzonych w jednoosobowych spółkach jednostek samorządu terytorialnego, omówione zostały również praktyczne konsekwencje obecnego stanu prawnego w zakresie uczestnictwa pracowników komunalnych spółek w ich radach nadzorczych. Autorskie wnioski dotyczące udziału pracowników komunalnych spółek w radach nadzorczych wskazują na konieczność wyraźnego i jednolitego uregulowania tej kwestii w odniesieniu do wszystkich gminnych spółek.

職工代表在監事會的管理，市政公司

摘要：本文提出了主體的運作公司職工代表監督市政機構，這些公司即監事會。根據分析的代碼規範運作的單位，當地政府，當地政府和市經濟貿易公司和規例的規定，文章提出了一個機構，董事會，監事會，建立這些機構，他們的實現監督的任務，強調的特殊性，區分監事會的公用企業，在當地政府部門的參與，公司監事會沒有比較的能力和 方法。此外，還討論了在該領域的現行法律地位的城市在一人公司的當地政府單位進行的研究的基礎上，監事會的公司的員工在參與的實際後果。作者的結論的公司參與的市政工人在董事會和監事會的必要性是明確和均勻調節這個問題，考慮到所有的公共公司。