

MANAGER IN THE MUNICIPAL SECTOR – EMPLOYMENT CONDITIONS?

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Abstract: The aim of the article is to characterize the value of various forms of employment for managers in municipal companies in Poland and is an attempt to evaluate them from the point of view of management efficiency and conducting investment processes in connection with the obligation to achieve social objectives. One of the main premises of the article is also the desire to highlight and emphasize the high specificity of the operation of municipal companies in Poland, and thus the requirements regarding the experience and role of managers in the territorial form of economic activity in conjunction with the form of their employment in companies. The Act of 9 June 2016 discussed in the article on the rules of shaping the remuneration of persons managing certain companies constitutes an area of considerations, the intention of which is a general assessment of the substantive functions of managers in relation to economic and financial analysis and the legal form of the adopted solution. The results of these considerations do not confirm the thesis adopted in the construction of the Act of 9 June 2016 that only a managerial contract in its pure form can be an effective tool for corporate governance in municipal companies.

Keywords: municipal sector, public sector, managerial contract, manager, contract of employment.

1. Introduction

Knowledge and skills of managers as well as their methods of reacting and behaving are of key importance for the operation of private and state enterprises (Penc, 2007). In the context of management and quality science, knowledge is usually understood as a strategic resource of an enterprise that guarantees competitive advantage and constitutes a significant source of organizational power (Bieniek, and Pliszka, 2014). In recent years, few peer-reviewed articles on public sector managers have been published. The literature also does not refer to the situation in relation to the country and the area of public services, or to the organizational level (Cregård, Corin, and Skagert, 2017). In view of the above, it seems interesting to consider this topic in

the context of a specific country – Poland. Pursuant to Polish law, until 2017, managers of companies with state capital as well as companies with the participation of local government could conclude standard employment contracts or managerial contracts. Since the entry into force of the provisions of the Act of 9 June 2016 on the rules for shaping the remuneration of persons managing certain companies, the legal environment has changed and since then the company has been obliged to conclude a contract for the provision of management services with members of the management bodies of companies with the participation of the State Treasury or local government units. The main intent behind the changes and the introduction of such a solution was the will to ensure that the company's managers will fully pursue the expectations of stakeholders. Will it be so? Time will tell. There is also some doubt whether a significant element that distinguishes municipal companies from other economic entities has been forgotten about by accident when striving to standardise legal solutions. It is known that municipal companies are established to implement a number of public tasks aimed at satisfying the collective needs of the local government community, i.e. activities that are very cost-intensive, but socially necessary to be performed.

The purpose of the article is to characterize the value of various forms of employment for managers in municipal companies in Poland and to attempt to evaluate them from the point of view of management efficiency and investment processes in connection with the obligation to achieve social goals. One of the main premises of the article is also the desire to highlight and emphasize the great specifics of the functioning of municipal companies in Poland, and thus the requirements for experience and the role of managers in the area of economic activity combined with the form of their employment in companies.

This article is divided into six parts, where the first is an introduction, which presents the general characteristics of the use of employment contracts and managerial contracts in municipal companies in Poland. The second and third parts discuss successively the specifics of management in the municipal sector and the legal aspects of municipal companies in Poland. The fourth part presents the role played by the manager in the companies of Local Government Units (LGUs), while the fifth is the analysis of manager's employment forms in LGUs companies. The article is summarized with conclusions from the analysis and considerations.

2. Specificity of management in the municipal sector

Nowadays, the public sector is facing a serious problem when it comes to retaining management as a result of the growing number of pensions and voluntary resignations from managerial positions. Despite the interest in the subject of managers in the public sector, there that there is still little research and publication on this subject (Cregård and Corin, 2019).

According to literature sources, a huge number of public sector managerial pensions are expected in the next decade in the United States (US) and European Union (EU) (Bright, 2013).

Municipal sector companies are part of the public sector and are subject to similar dependencies in terms of the purposefulness of their operation and connection to the society and the economy as well as the requirements for assessing the effectiveness of the measures implemented. Therefore, managing such a company naturally makes it necessary to adopt a professional approach, use appropriate methods and instruments, and specify standards and indicators for measuring effectiveness. Municipal administration at a local level (municipality, powiat) satisfies the basic, collective needs of the local community. By carrying out these public tasks, the local government became an important and active participant in the economic life of the country. In the light of the applicable regulations, local government units perform a number of public tasks themselves, mainly in the form of a budget unit, local government budget division and commercial law companies. The efficiency of decision-making in the case of a democratic system and the rationality of the decisions aimed at satisfying social needs depend to a large extent on a holistic view of the conditions for the operation and development of local government organizations and the ability to use innovative management methods and techniques in practice. Innovations in management have an increasing impact on the organizational structures of the business sphere and affect the research issues undertaken by scientific institutions (Orbik, 2017). Therefore, one of the important determinants of the success of enterprises operating in the Polish market is their innovativeness (Kochmańska, 2015). The managerial approach, with which one is dealing in such a situation, is considered a new doctrine of public management based on the management process (Szydłowski, 2011). Efficient management affects not only the proper development of a given local government unit but also the efficiency and effectiveness of its organs and bureaucratic apparatus, which are not without significance for residents. In the functional sense, strategic management is an information and decision-making process supported by management functions such as planning, organizing, motivating and controlling, whose main objective is to determine the key problems of the organization's activity, its survival and development, paying particular attention to the impact of the environment and internal development potentials (Stabryła, 2000). Strategic management is enforced by implementing strategies. They are characterized by the fact that they favor better adjustment of the organization to the environment and achievement of strategic objectives (Griffin, 1996). Therefore, the strategy of stimulating management should be a development strategy, defined in the broadest sense as a plan to achieve the organization's objectives. The changing external environment of local government companies, as well as changes inside them, result in a situation where the managers in charge of them need to be fully aware of the social tasks and the necessity to base management on four pillars, i.e. planning, organizing, directing and controlling human resources (Kuc, 2005). The necessity to choose between social objectives and strict market rules causes the state to create legal and organizational solutions,

trying to use them to combine both of these objectives. This is exactly the case in, for example, municipal services (Klimek, 2017).

Municipal companies, in which local government bodies are shareholders or stakeholders, are a very important element on the map of the Polish economy. These entities are intended to fulfill a subservient role in relation to local communities. On the other hand, they are players in the free market and must act in a manner that bears most resemblance to purely private companies. However, the effectiveness of public entities usually does not equal private entities operating under analogous market conditions. Which is why the quality of managing them and the ability to perform acts intended to maintain balance are so important. At this point, a question naturally arises, and it is the one about the status of a manager in such companies.

3. Legal conditions of activities of municipal sector companies

The necessity to provide public services for the population results from the nature of local government (Wojciechowski, 2012). The principles and forms of municipal services of local government units consisting in the performance of their own tasks in order to meet the collective needs of the local government community were defined in the Act of 20 December 1996 on municipal services (consolidated text: Journal of Laws of 2017, item 827). Municipal services can be performed by local government units, in particular in the forms of: a local government budget division or commercial law companies (Article 2). In accord with Art. 1 sec. 2 of the Act, municipal services include, in particular, tasks of a public utility character whose purpose is to provide ongoing and uninterrupted satisfaction of the collective needs of the population through the provision of publicly available services. The wording of the latter provision indicates that public utility tasks have the following characteristics:

- they are part of the tasks of a given local government unit, i.e. they serve to satisfy the needs of the local government community;
- their purpose is to provide ongoing and uninterrupted satisfaction of the collective needs of the population, i.e. they refer to all or most or a significant part of the members of a given community (Jagoda, 2012).

The choice of the form of organization of municipal services leads to a situation where the purpose of the municipality is to meet the collective needs of residents, and at the same time the municipality as an owner is interested in maximizing profit from economic activities carried out by municipal entities (Misterska-Dragan, 2004).

According to Art. 9 sec. 1 of the Act, local government units may establish limited liability companies or joint-stock companies, and may also join such companies. However, Art. 10 sec. 1-3 of the Act of Municipal Services regulates issues of municipalities forming companies outside the public domain and joining them. This is possible if the following conditions are met:

- there are unmet needs of the local government community in the local market,
- unemployment in the municipality has a significant negative impact on the living standard of the local government community, and the application of other measures and legal measures stemming from the applicable provisions did not lead to economic activation, in particular to a significant recovery of the local market or permanent reduction of unemployment, and also when disposal of an item of municipal property able to constitute a non-cash contribution of the municipality to the company or the disposal of it otherwise will cause severe property damage to the municipality.

The overriding principle that determines the superiority of a capital company over other forms of business operation is the principle of the primacy of capital over a person. The influence of owners on the company is determined by the number of votes held, which in turn results from the amount of capital employed in the enterprise. The second feature of a capital company, decisive for its attractiveness, is obtaining, upon its registration, a legal personality separate from the entity of the owners (Bartkowiak and Borkowski, 2013).

Restrictions on the establishment of commercial law companies and joining them by the municipality do not apply to the municipal ownership of shares or stocks of companies involved in banking and insurance activities as well as advisory, promotional, educational and publishing activities for the local government, as well as other companies important for the development of the municipality. Considering the above, two basic cases in which the LGU (local government unit) can establish a company may be distinguished:

- the LGU performs its own tasks within the area of public utility;
- the LGU performs its own tasks outside the area of public utility that meet the requirements specified in Art. 13 sec. 2 of the Act on Voivodship Government and Art. 10 of the Act of Municipal Services. The establishment of a company by a local government unit is also provided for in the Act of 19 December 2008 on Public-Private Partnership (Journal of Laws of 2015, item 696).

Therefore, it is justified to assume that there is a disparity between its own tasks and tasks in the field of public utility, since not all the tasks of the LGU are tasks focused on public utility (Byjoch and Redel, 2000).

As far as legal conditions of the operation of municipal sector companies are concerned, it is important to mention the fact that the conditions of operation of the municipal sector constantly change in terms of: environmental requirements, climate protection, the use of web techniques in the services offered, the intensification of interregional and international cooperation in terms of the implementation of EU directives as well as raising standards of population service and changes to the nature of services forced by demographic changes. Environmental changes concern the municipal sector mostly in the field of waste management, sewage and their utilization. In the light of the available literature and research it is clear that environmental protection regulations are today one of the most important challenges (Synowiec, 2018). The environmental rigor will require new technologies and a change of

management style with particular focus on the processes of acquiring and implementing innovations. As the direction of these activities is unquestionable, making changes in a shorter or more distant time will be necessary. It should be noted that a managerial staff which has competences in acquiring and implementing innovations is essential in order to implement them. Specific features of municipal companies in almost every field of activity are so prominent that, according to many authors specialized in the field, these features should be a sufficient reason to create separate legal provisions, i.e. the return to the concept from the early 1990s (Bachor, 2009).

4. Role of a manager in the companies of Local Government Units

Managers from the public sector play a key role in the development of their organization because they directly affect employees and indirectly affect work procedures and change processes in enterprises (Whitehead, 2006). There is no doubt that the manager is the main figure in any organization. The rapid development of the company depends on them. In turn, the effectiveness and involvement of the manager in the development of the organization depends mainly on how the basis of their employment is regulated. Therefore, the issue of choosing the proper and, at the same time, the best form of linking the administrator with the entrepreneur (owner) evokes a keen interest not only among managers themselves, but also among entities associated with the organization.

Cities are centers of change based on innovations, the spirit of entrepreneurship, and economic growth. Municipal services constitute a group of services significant to the residents of municipalities. They concern, among others, ensuring the cleanliness and waste disposal of cities, providing public transport, water supply and sewage disposal, managing municipal parks, or providing lighting in municipalities. Therefore, they differ in terms of their type. The municipal services sector is characterized by a fairly inelastic demand, high capital intensity and high costs. The ongoing socio-economic changes in cities begin to affect the operation of companies providing municipal services. They must increasingly build their brand, maintain their good image, and pay attention to the needs of their increasingly demanding and aging consumers. These phenomena cause the necessity of careful development of market strategies by companies providing municipal services based on cooperation with various entities both directly operating within and outside their industry (Spychała, 2013).

It affects the style of business management, where the social factor in relation to local communities and the contact of the local government with the enterprise play a very important role. At the level of a municipal company there is a specific and significant contradiction between economic and social elements (Gralka, 2015). One can therefore say that in the field of municipal services there is a dichotomy of goals: the most important thing for the enterprise

is profit, while municipalities are established to satisfy the collective needs of the residents. It should be emphasized that the main difference between a municipal enterprise and a business activity is their objective. Municipal services have no profit-making objective because municipal sector enterprises are forced to carry out tasks of low profitability and even ones that are unprofitable if the good of the local community requires it. Their main objective is to satisfy the needs of the municipality's residents. A manager in this type of enterprise functions in a strictly defined political system, where the decisions of local politicians can often generate major difficulties for the finances or organizational structures of the company. The external pressure on managers to run the enterprise in a given manner, make imposed decisions, or implement policies of a particular influence group is also a threat. Since enterprises with the participation of local government units performing tasks of a municipality in the form of a commercial law company operate in an environment in which there are other entities attempting to act as its principals, there is a so-called issue of a joint agency (Kozioł, 2008), meaning a need for cooperation between interest groups that often have different preferences (Kozioł and Barwacz, 2008).

Regardless of the above, managers must be able to solve such or other problems regarding management in accordance with the political rationality criteria while taking into account the economic rationality of the adequate market economy (Chmielewicz, 2016) and the ethics of conscience and responsibility, which focus on a personal approach to ethical issues in the business world and emphasizes such important experiences as self-esteem and respect for the dignity of others (Kuzior, 2017). It is also worth paying attention to the important role of soft competences in managers and their role in creating innovation, which becomes very important, especially in the context of significant transformations that have recently occurred in the economy (Kochmańska, 2016) which confirms the analysis of the report regarding the desired competences of employees in the context of the coming technological changes in industry 4.0 (Kuzior, and Sobotka, 2019).

It should also be remembered that the sector of municipal enterprises, which in most cases have few owners, does not fit into the neoclassical theory of corporate behavior due to, for example, the multitude of objectives. In addition, apart from shareholders represented by local government institutions, almost all (social, political, economic) organizations existing and operating on a given local level and, most importantly, the local government unit's residents are interested in the operation of companies with the participation of local government units (LGUs).

It is important to remember that the very essence of every commercial company, as well as a municipal company, is to generate profit. The profit should theoretically be in line with the expectations of the owner, i.e. the residents of the municipality in the case of companies that are the property of a local government unit entirely. Therefore, the generation of high profit is unfavorable from the point of view of residents. The revenues of these entities should only marginally exceed the cost of operations, especially when it concerns public utility tasks,

to which access should be wide such as, for example, water supply and sewage disposal and treatment.

This means that discussions continue to this day regarding the precise meaning of public utility and to what extent it refers to social objectives and to what extent to economic ones. It should also be noted that in Poland there is still no uniformly recognized definition of a municipal company itself (Klimek, 2017). In order to attract the best specialists to join the municipal sector companies, who will be able to skillfully balance these two categories, proper conditions for their operation, i.e. employment and remuneration, need to be developed. But is the managerial contract the only right way? Is it the most appropriate form of securing LGUs?

5. Forms of employment of managers in companies of Local Government Units

The term *form of employment* should be understood relatively narrowly and defined as resulting mainly from the legal basis of connections between contractors/managers and enterprises for which they provide work. Meanwhile, in the case of a managerial contract, a system free of professional relations is developed. The subordination of the manager is, on the one hand, mainly resulting from the control rights vested in the superior body over the manager and, on the other hand, the reporting obligations of the manager.

This was also indicated by the Supreme Court in its judgement of 4 April 2002 (I PKN 776/00 OSNP2004/6/94), rightly stating that the conclusion of a contract for enterprise management (managerial contract) causes the owners of this type of enterprise to transfer the rights to take independent factual and legal actions concerning the entire enterprise management process to the managing person (manager), which means independence in terms of its management, freedom of choice regarding the management method (style), the possibility of using existing business contacts, professional experience, organizational skills, reputation and their own image. These characteristics are not demonstrated in the employment relationship, in which the employing entity is entitled to issue binding instructions to the employee.

Is it therefore necessary to change contracts and which solution will be the most effective one? The legislator suggested that the fixed part of the manager's remuneration in a company, a municipal one among others, be made dependent on the scale of the company's operations, especially on the value of its assets, revenues and staff headcount, in the amount ranging from one to fifteen times the average monthly remuneration in the enterprise sector without payment of bonuses based on profit in the fourth quarter of the previous year, announced by the President of the Central Statistical Office (Art. 4 sec. 2 point 1-5 of the Act of Voivodship Government).

At the same time, the company has the right to set the amount of basic remuneration at a different level if it is justified by exceptional circumstances related to the same company or

the market in which it operates. However, shareholders, when adopting a resolution regarding the remuneration of persons managing companies with the participation of the State Treasury and subordinate to local governments, will have to take into account the statutory salary brackets assigned to companies fulfilling specific criteria, regarding, among others, the number of employees and the size of the company (cf. Art. 4 of the Act on Voivodship Government). The variable part of the remuneration of a member of the management body should be dependent on the level of implementation of management objectives. It cannot exceed 50% of the fixed remuneration, and in public companies 100% of the basic remuneration, of a member of a management body in the previous financial year (Art. 4, sec. 5 of the Act on Voivodship Government). The variable part of the remuneration shall depend, among others, on the achievement of company's objectives such as, for example, attaining or changing the volume of production or sales, reducing losses, reducing the costs of management or the costs of running the enterprise, implementing a strategy or a restructuring plan. The basic differences between a contract based on a civil law contract and an employment contract are presented in Table 1.

Table 1.

Legal status of managers employed under a managerial contract and a leader contract

Distinguishing criterion	Managerial contract form of civil law contract	Leader contract form of employment contract
Legal basis	The Civil Code - civil law provides the manager with an autonomous and independent position, giving them a broad discretion in actions.	The Labor Code - labor law certainly imposes more on the parties to the contract. In this case there is no full discretion in actions or full autonomy of parties.
Reporting line	Lack of reporting lines – a contract generally based on the principle of equality of parties to a legal relationship. In LGU companies, however, it is difficult to talk about full autonomy of the manager, since these companies are the service providers of the so-called basic services for local communities and their activities are not intended to generate profit.	There are clear reporting lines based on the supervisor - subordinate principle.
Performance of tasks	Independently, under the employer's supervision specified in the contract (determining objectives and the level of their implementation, recommendations, tips, coordination, performance control).	The work is carried out under the guidance of the employer as defined in the Labor Code (official orders and their enforcement).
Remuneration	In accordance with the Act of 9 June 2016, the parties may determine the principles of remuneration. Remuneration based on the terms and conditions of the contract and dependent on the results.	Subject to internal regulations (Remuneration regulations and/or a corporate collective labor agreement within a given group of leaders).
Job security	Limited, possibility of not renewing the contract, termination of the contract under the contract's terms and conditions.	Larger, on the principles of the Labor Code, as for an ordinary employee. Labor law protects the interests of the manager.

Cont. table 1.

Provision of services	Flexible working time. The manager is not subject to disciplinary action.	Personal performance of work. Specified working time, during which the leader remains at the disposal of the employer, is subject to disciplinary action.
Social benefits/additional entitlements	Limited, negotiated in a contract (limited use of holiday leave/days off), the period of employment is not included in years of service.	Employee rights are guaranteed under the provisions of the Labor Code (holiday leaves, statutory sickness pay, rewards, disability packages, benefits from the Employee Benefit Fund, duration of child care etc.). Labor law provisions guarantee the manager numerous benefits under the law itself without the need to negotiate, i.e. without the consideration of either good or bad will of the owner.
Liability	Contract based on the principles set out in the managerial contract and the Civil Code Pursuant to Article 471 of the Civil Code, the manager always bears full liability for damage resulting from non-performance or improper performance of official duties. In addition, they are liable for damage caused by persons with whom they perform the obligation under the contract for the provision of services, as well as by persons to whom they entrust this obligation (Art. 474 of the Civil Code).	On the basis of Art. 108-127 of the Labor Code; like an ordinary employee's. Only in the case when the damage is caused intentionally - the manager is obliged to redress it in full (Art. 122 of the Labor Code).
Satisfying claims in respect of remuneration from insolvency assets	In the event that enterprise declares bankruptcy, the receivables due to the manager under the contract are regulated in accordance with the Bankruptcy Law – the fourth category.	Claims in respect of remuneration – the privileged position – the second category.

References: Authors' own study.

Pursuant to the Act of 9 June 2016 on the rules of shaping the remuneration of persons managing certain companies, only managerial contracts should be concluded with the managers of State Treasury companies or local government companies. By introducing the Act of 9 June 2016, the main point that a managerial contract is the only effective tool for corporate governance of municipal enterprises was accepted, and the results of these enterprises should be the reference. But rightly so? The work of managers under a managerial contract in the years to come will probably provide an answer to this question.

6. Conclusion

Undoubtedly, one of the most difficult problems to solve is the situation when it is necessary to combine economic and social objective in business activity, as is currently the case in municipal companies. Then there is the issue of how to manage such entities. It must be

remembered that profit is not the only result of a proper management method adopted by the manager in a company, but the fact that municipal sector companies have been the beneficiary of numerous EU funds in recent years is of considerable importance as well. In addition, their effective and timely use by municipal sector companies is the result of the use of efficient and effective management methods. Effective management can only be guaranteed by effective managers who have the ability to apply liberating management, which results from the organization's vigor and positive attitude towards the efforts of employees performing specific tasks. An effective manager should, therefore, be able to resist the temptations of success and easy profit, be responsible, composed, prudent, courageous, persistent and able to inspire employees (Drucker, 2011). Managers should primarily be enthusiastic about what they do and should be the visionaries of the future for innovation of the industry in which they operate. Apart from the aforementioned features and competencies, the manager should also have the ability to gain the trust, credibility, authority and respect of the employees, because they are supposed to show their colleagues how to achieve the goals that have been set (Róžańska-Bińczyk, 2017). Additionally, the manager, while managing the property of a municipal company, also manages municipal property brought to such a company by the municipality, which should automatically result in an increase in management diligence standards (Chyb, 2015). At this point, one returns to the key issue of the form of employment and the amount of remuneration of managers. Pursuant to the Act of 9 June 2016 on the rules of deciding the remuneration of persons managing certain companies, managerial contracts should only be concluded with the managers of State Treasury companies or local government companies. However, the results of these considerations regarding the use of managerial contracts in municipal enterprises do not seem to confirm the thesis adopted when drafting the Act of 9 June 2016 stating that only in its pure form can a managerial contract be an effective tool of ownership supervision in a municipal enterprise and give the owner the sense of having an effective management guarantee.

It should be stated that from the point of view of the employing entity, the managerial contract seems to be more favorable in many aspects, while the employment contract ensures greater job security. The company does not have to apply the provisions of the Labor Code that are uncomfortable for the employer to the manager. In addition, the rules of liability for damage caused to the company (third parties) are clear, and when the manager's performance results are not satisfactory, the contract can simply be terminated without the need to worry about potential interference of the Labor Court. In the case of employment under a managerial contract, inconveniences may be important to many potential managers including: lack of protection of work relationship permanence, much more strict rules of liability for damage to the company's property, or the lack of special procedure for pursuing claims in court. On the other hand, the feeling of insecurity in the opinion of the authors can block the innovation of individual industries of the municipal sector due to the protection of managing persons. At the end of the discussion, it should be emphasized that the protection of shareholders'/owners' interests being

a result of several mechanisms stemming both from the environment and the mechanisms specified by law seems to be the most valid approach.

In the opinion of the authors of the paper the issue of the legal form of managers' employment should always be considered individually: the nature of the unit entrusting the performance of sector/industry obligations, objectives to be achieved, the characteristics of a person accepting to perform such obligations and, above all, the type of such obligations. The main objective of the owner should therefore be to develop such methods of cooperation, procedures, information policy and control structure that will secure their interests on the one hand, while effectively motivating managing persons to act in the interests of the owners on the other. In the opinion of the authors, the most appropriate approach to the discussed issue is to give stakeholders leeway in choosing the form of employment of management board members/managers as given in the Code of Commercial Companies.

According to the authors of the article, it is worth considering in the future conducting research on the perception of the changes introduced by the Act of 9 June 2016 among the management of enterprises in the water and sewage industry. In addition, it seems interesting to conduct a comprehensive assessment of the effectiveness of managerial contracts as an instrument of corporate governance in municipal enterprises.

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