

MANAGEMENT IN PRIVATIZED ENTERPRISES IN POLAND

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ABSTRACT: In the article it was pointed out the need to form management school in Poland. Briefly the history of creating shareholding in Poland and legislation connected with it were quoted. For streamlining running a company in 1991 fixed-term management contracts were enforced. On example of opencast mining sector enterprises an effectiveness and efficiency of managers employed according to this form were demonstrated.

Keywords: management, fixed-term management contracts, management effectiveness, enterprises of opencast mining sector

JEL Codes: L1, L2

Introduction

Time for forming new management school in Poland came in 1989, and recently we accessed the European Union.

During these a dozen or so years many companies carried enormous changes. Management mainly concentrated on *hard* components (finance, technology, marketing), almost no company managed equally consciously its *soft*, i.e. people, and they are the most important.

During privatisation, carried out in the way of direct privatisation, there the employee share ownership was noticed.

1. Genesis of the employee share ownership in Poland and legal regulations

The history of the employee share ownership in Poland reaches the beginning of the 20th century. In the literature it is underlined that one of the first, modern companies in Europe, realising the principle of *the employee share ownership* was "Gazolina" company, established in 1912 in Lvov by Marian Wieleżyński and Władysław Szaynok.¹

In interwar Poland the Prime Minister of Republic of Poland Stanisław Grabski analysed possibilities of applying the employee share ownership. The contemporary Episcopate of Poland was also sympathetic to workers' property. The primate of Poland, August Hlond cardinal, encouraged to activity on this socially-economic field of life.²

In Poland a centrally planned economy dominated the post-war period with prescriptive-distribution management system. The Polish People's Republic took over pre-war state enterprises as well as it enlarged their number by the way of nationalization records.³ There occurred their visible investment development. As a result a dominating economic sector, including all branches of the national economy came into existence. It functioned almost throughout the country in uniform legal form – of state enterprise. Principles of state enterprises commercialization were rejected, and their place took principles of the economic account as new, socialist method of state enterprises

¹ K. Ludwiniak, *Pracownik właścicielem*, Paryż 1989, s. 79.

² Tamże, s. 80, 112.

³ C. Kosikowski, *Prawo zarządzania gospodarką narodową*, Łódź 1986, s. 39 i n.

organization and functioning.⁴ The self-reliance⁵ and responsibility⁶ of state enterprises were considerably limited. State enterprises were supposed to perform economic plans imposed upon them. Economic effectiveness and finances of enterprises stayed on further plan.

The act passed in September of 1981 on *self-government body of the staff of state enterprise*⁷ formally recognised self-government body of the staff as the basic form of staff subjectivity. The act appointed joint organs of the self-government body of the staff, chosen works committee and also general workers assembly. Implementing public inspection in state enterprise followed through granting to the self-government body of the staff organs the law to control activities of the enterprise and its director. In practice this act didn't carry out the real *self-reliance* of state enterprises and the principle of the staff *subjectivity*. In social market economy „about the power of economic organisation subjectivity constitutes human being, who is the highest value. Capital is an object, which is supposed for the man to serve in producing goods, fulfilling services and also in undertaking other business activity. Human being who is a subject in economic organisation appears as: owner, person fulfilling managerial functions and as hired worker. All workers of the economic organization are a collective subject. This subject should be surrounded with versatile care, including spiritual and financial matters and also aiming at creating conditions of full personality development”⁸.

Next amendments to the bill on *state enterprises* created further prospects. Article 29 of this act⁹, determined that in economically justified cases workers committee and director of state enterprise could together appeal to the founding body for giving their assent for transforming enterprise into company.

In Poland¹⁰ and in other East Europe countries,¹¹ in which after 1989 there were started process of doing changes of the economic system, and privatization of state enterprises was supposed to become the main change tool of the subjective economy structure. Moreover, privatization was supposed to accomplish other purposes, such as: removing the source of main economic failures for which were regarded state enterprises, expanding private sector and winning for Poland foreign capital, improvement of the National Budget state, development of the employee share ownership.

Privatization act from 1990 and modifications of act on state enterprises from September 1981 determined two main footpaths of privatisation process course:

1. *Capital footpath*, consisting in selling shares of national subjects transformed into sole-shareholder State Treasury companies – indirect privatisation.
2. *Liquidation footpath*, consisting in sale or leasing of property of enterprises put into liquidation state – direct privatisation.
3. Basing on *leasing method* there followed taking over the enterprise into the specific lease after accumulating adequate means on “repurchase” of the enterprise. This way was called *handing over property for chargeable using*. After certain time there was enforced regulation enabling exchange of lease agreement (lease) to a purchase-sale contract. The condition was top pay off at least 30% of value of the contract subject and on time execution of obligations to the treasury by way of settled agreement. Beside general decisions on the possibility of

⁴ N. Gajl, *Modele zarządzania i finansowania przedsiębiorstw uspołecznionych*, Warszawa 1986, t. 1, s. 238 i n.

⁵ B. Wieczorska, *Prawne gwarancje samodzielności przedsiębiorstwa państwowego*, Lublin 1990.

⁶ C. Kosikowski, *Podstawowe problemy odpowiedzialności gospodarczej*, Folia Iuridica UŁ 1989, nr 34.

⁷ Ustawa z 25 września 1981 roku o samorządzie załogi przedsiębiorstwa państwowego, DzU 1981 Nr 24, poz. 123 z późn. zm.

⁸ L. Bar, *Prawna reprezentacja pracowników najemnych przedsiębiorstwa w gospodarce rynkowej*, [w:] *Partycypacja i akcjonariat pracowniczy w Polsce*, L. Gilejko (red.), Typografia, Warszawa 1995, s. 35.

⁹ Tekst jednolity ustawy o przedsiębiorstwach państwowych, DzU 1987 Nr 35, poz. 201.

¹⁰ Por. *Przekształcenia własnościowe w Polsce* (determinanty prawne), red. S. Prutis, Białystok 1996.

¹¹ W. Wajda, *Procesy prywatyzacyjne w krajach postsocjalistycznych*, [w:] *Kierunki przekształceń własnościowych w gospodarce. Aspekt teoretyczno-praktyczny*, Kraków 1991, s. 39 i n.

purchasing by workers to 20% of privatized enterprise shares on preferential prices (50% of shares value) with time there was introduced the possibility of handing over 15% of the shares for free to workers.

In privatized enterprises *capital footpath*, in particular, when the purchaser was a foreign investor, the number of workers' shares was differently determined in specified cases and fundamentally fluctuated within the borders from 1% to 20% of shares.¹²

In table no. 1. there was compared the number of shares for workers determined in particular acts.

Table no.1

Legal bases of workers participation in capital shares

No.	Legal basis	Shares for workers (%)
1	Act from 13 July 1990 <i>about privatization of state enterprises</i>	20% of shares after preferential prices
2	Pact about state enterprise (bill not carried out) from 1993 year	15% of shares free of charge
3	Act from 30 April 1993 on <i>National Investment Funds (NFI)</i>	15% of shares free of charge
4	Act on state enterprises privatization – art. 37 about handing the enterprise over into chargeable using; direct privatization	20% of enterprise value - right to paid using with the possibility of 100% shares purchase
5	Act on state enterprise from 1981 year - art. 19 (liquidation-bankruptcy)	Lack of regulations
6	Act on privatization - creating single companies of the Treasury*	15% of shares free of charge after beginning the privatization.
7	Act from 30 August 1996 on <i>commercialization and privatization of state enterprises</i>	to 15% of shares free of charge, when after commercialization there will follow privatization

*) This solution was accepted in a bill about privatization and commercialization from 1995. The act from 1996 implements some alterations in this scope.

Source: own study on the basis of literature and regulations of the law.

In accepted legal-organizational solutions an issue of the formal-legal uprising and functioning of the organizational unit weren't adjusted in the form of the “workers' company”. Accepted legal solutions assumed the possibility of uprising only *workers' leasing*¹³ (in the privatization act) and also possibility of participation of workers representatives in the makeup of supervisory boards (in the commercialization act).

For the sake of lack of act regulating conditions of uprising and activity of „workers' companies”¹⁴, (act on pp from 1990 year regulated only leasing conditions), this special role fell to the founding body of state enterprises, i.e. Ministry of Privatisation (from 1997 year to the Ministry of the Treasury). Its decision-makers clearly supported „management” of leasing companies. There was abused name „workers company” by share dominated management.¹⁵

¹² L. Gilejko, *Akcjonariat pracowniczy. Jego rozwój i efektywność*, SGH, Warszawa 1997, s. 8-11.

¹³ Z. Kubot, *Spółki pracownicze i spółki menedżerskie*, ARR, Zielona Góra 1993, s. 29–30.

¹⁴ Tamże, s. 23–24.

¹⁵ T. Kowalik, *Prywatyzacja, partycypacja, leasing*, [w:] *Partycypacja i akcjonariat ...*, s.15, 20–21; J. Bukowski, *Rola Ministerstwa Przekształceń Własnościowych w rozwoju udziału pracowników w prywatyzacji*, [w:] tamże, s. 146; M. Bałtowski, *Przekształcenia własnościowe przedsiębiorstw państwowych w Polsce*, PWN, Warszawa 2002, s. 89.

Privatization process in Poland,¹⁶ differently than in other countries of Eastern Europe,¹⁷ ran more slowly and with numerous resistance.¹⁸ Causes of this state of affairs are complex. However, part of them is undoubtedly in privatisation legal system.¹⁹

Applying at the same time all sorts of techniques and approaches to privatization and also unceasing search of new and alteration of old privatisation forms were a distinctive feature of Polish privatization. To this purpose diverse programs of the privatization were worked out. However, it doesn't mean that privatization processes of companies could run in different way from generally being in force. All enterprises had to be based on a privatization legislation being in force.

To sum up, formal base of privatization of Polish economy in fact was an act on *privatization of state enterprises*²⁰ until the end of 1996 from the July of 1990, its more late amendments and also the act on *National Investment Funds* (NFI)²¹ from April of 1993. Privatization on liquidation way could also be made under the law of amendment to a bill *on state enterprises*²² from September 1981 year. In August 1996 there was accepted new act *on commercialization and privatization of state enterprises*.²³ On basis of these acts there were worked out by annual governments privatization programs. Essential meaning in the process of economy privatization had also an act on *enterprises financial restructuring*²⁴ from the February of 1993. It implemented the possibility of so-called bank reconciliatory proceedings (bpu) from the side of indebted enterprises, but first of all the exchange of debts for actions.

The act *on commercialization and privatization of state enterprises* underwent amendment in 2002-2003 years. Next changes were implemented in law gazettes: JoL. of 2002 No. of 113 pos. 984, JoL. of 171 pos. 1397, all the way to standardizing the text and change of name - *commercialization and privatization*, printed in the JoL. of 2002 No. 240 pos. 2055.

2. Fixed-team management contract as a form of improving enterprise management

Aspiring for streamlining management of state enterprises and through this to improve effectiveness of their action, in year 1991 there was introduced possibility of managing them for marked time through administrator, physical or legal person (managing company), acting on basis of concluded with it by the founding body (or Treasury Minister) **fixed-team management contract** (agreement on managing). Contract, having civil law character, is specifying duties for the administrator in the scope of current management, principles of rewarding him, criteria of assessment of management effectiveness and principles of the administrator responsibility for entrusted enterprise property. With the moment of entering into a contract and taking duties by the administrator there follows disbanding of bodies of the workers' self-government and dismissal of the previous director. The founding body should, however, appoint a supervisory board including representatives of workers, being in charge of enterprise activity. Cases of state enterprise management by administrator are in Poland not

¹⁶ B. Błaszczuk, *Pierwsze lata prywatyzacji w Polsce (1989-1991). Dylematy koncepcji i realizacji*, Warszawa 1993; J. Mujżel: *Przekształcenia własnościowe w Polsce (1990-1992)*, Warszawa 1993.

¹⁷ R. Frydman, A. Rapaczyński, J.S. Earle, *Proces prywatyzacji w Rosji, na Ukrainie i w krajach bałtyckich*, Warszawa 1994; S.T. Surdykowska, *Prywatyzacja*, Warszawa 1996, s. 159 i n.

¹⁸ E. Brozi, *Drogi i bariery...*

¹⁹ C. Żuławska, *Niektóre prawne i ekonomiczne aspekty prywatyzacji*, PiP 1991, nr 2.

²⁰ Ustawa z 13 lipca 1990 r. *o prywatyzacji przedsiębiorstw państwowych*, DzU 1990 Nr 51, poz. 298 z późn. zm.

²¹ Ustawa z 30 kwietnia 1993 roku *o narodowych funduszach inwestycyjnych i ich prywatyzacji*, DzU 1993 Nr 44, poz. 202 z późn. zm.

²² Ustawa z 25 września 1981 roku *o przedsiębiorstwach państwowych*, Tekst jednolity: DzU 1991 Nr 18, poz. 80 z późn. zm.

²³ Ustawa z 30 sierpnia 1996 roku *o komercjalizacji i prywatyzacji przedsiębiorstw państwowych*, DzU Nr 118, poz. 56 z późn. zm.

²⁴ Ustawa z 3 lutego 1993 roku *o restrukturyzacji finansowej przedsiębiorstw i banków*, DzU Nr 18, poz. 82.

very frequent and there is lack of full assessment of this management form²⁵. At present running a company on basis of fixed-team management contract is also taking place in private companies.

There prevails belief that state enterprise, independently whether managed by the director dependent on Civil Service, administrator or staff, provides with neither the enterprise, nor the economic effectiveness. Responsibility is blurred, and as a result of their big unionization and political movement, economical purposes aren't for their executive committees the most important²⁶. They are trying to realize purpose and expectations of the superior power, however, workers demonstrate claiming attitude independently of enterprise economic results. In addition it is emphasised that "effectiveness of the present owner's supervision of state enterprises is much lower in comparison to the effectiveness of this supervision in private companies, including in private joint-stock companies in Poland and behind the borders"²⁷. Greater efficiency and effectiveness of action requires privatization of state enterprises.

However, there should be paid attention to characteristic features of fixed-team management contract. It assumes definitely greater worker **availability**, **task-oriented character of the work** and it requires special **loyalty** and **co-operation** of both contracting parties. Manager when signing contract, is committing himself to obey the **ban on the competition**. After terminating contract he is obliged not to undertake work in the rival enterprise through the specific period of time. In case of not fulfilling this obligation, he will be forced to pay substantial damages.

Responsibility of the manager on account of exercising the board of directors is based on **fault principle**. He is responsible for a full loss, which he caused with the non-performance or undue making his obligation. According to Art. 361 §1 *civil code* the loss includes not only losses suffered by the aggrieved party, but also benefits, which he could gain, if there didn't occur damage. **The advantage** of fixed-team management contract is the fact that its settling often is the only method of winning crucial for given unit of managers, since not being workers - they aren't subject to a collective agreement.

3. Fixed-team management contracts in privatized enterprises of the opencast mining

At work²⁸ there was kept an eye on, among others the role of fixed-team management contracts in privatized enterprises of opencast mining. Examined enterprises indeed were perfectly managed through administrators under the law of settled with them *fixed-team management contracts*.

In basalt mines on the Lower Silesia fixed-team management contracts were ed:

- a) 1993-2004 – **in Lubań** between the Administrator and the Treasury Minister, and from 22.07.2004 (Sorbian) Łużycka Mine of Basalt „KSIĘGNIKI” Co. contracting party is represented by supervisory board – chairwoman of the supervisory board
- b) from 1991 year – **in Wilkow** administrator worked on basis of *the agreement on managing state enterprise*, and at present the party of the new contract is PGP “BAZALT” supervisory board in Wilkow.

²⁵ B. Haus, H. Jagoda, *Kontrakt menedżerski i firnu zarządzająca jako nowe formy zarządzania przedsiębiorstwem w polskiej gospodarce*, Wydawnictwo AE, Wrocław 1997.

²⁶ Widocznym wyrazem upolitycznienia przedsiębiorstw państwowych jest to, że po każdej zmianie ekipy rządowej następuje poważna wymiana członków rad nadzorczych i zarządów tych przedsiębiorstw, przy czym nowi ludzie nie zawsze są bardziej kompetentni od swych poprzedników.

²⁷ M. Moszkowicz, *Rządzić czy zarządzać - zmiana i ciągłość w sprawowaniu nadzoru właścicielskiego w strukturach organizacyjnych*, [w:] *Nowe kierunki w zarządzaniu przedsiębiorstwem - ciągłość i zmiana*, H. Jagoda, J. Lichtarski (red.), Wydawnictwo AE, Wrocław. 2000, s. 188.

²⁸ E. Bitner, „Analiza i ocena ekonomiczna prywatyzacji bezpośredniej w Polsce na przykładzie wybranych przedsiębiorstw”, rozprawa doktorska, PCz 2006 r.

The level of classifications and experiences of company managerial staff, which has the basic meaning for success of planned enterprise is assessed very highly. It has very essential meaning for companies success in the future. In both mines it was guaranteed. Co-owners had very rich experience connected with running company and held in it managerial functions from years.

Conclusions

Creating management in Poland is made difficult through the lack of tradition and good power models. From it among others results an incoherent and inconsistent power politics in relation to business. It is possible to notice it in offices and companies. Patterns of behaviours not always support the effectiveness which company needs. The enterprise is a community, which it is possible to model easier than the entire nation. However, an authority which would shape development directions is missing. From 1989 nobody consistently took such an initiative.²⁹ As long as it won't be tidied up, it will be harder for us than others – despite union money.

Polish management school is to be created. There should be fit existing methods and tools to our reality. Moving models from States, Germany, France or Japan is visible. It is necessary to keep an eye on it, that foreign countries have cohesive management culture with national culture, and that national culture of each of these countries is completely different from Polish. There still does not exist Polish management culture, because these are only a dozen or so years of attempts and mistakes.

Experiences from privatized enterprises show that in sector of opencast mining we managed to be successful. There Polish management faced up to challenges and was able to skilfully direct changes to better.

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