doi: 10.15678/PG.2023.63.1.4

Journal of Public Governance
No. 1(63)/2023
ISSN 2956-6061
e-ISSN 2956-6398

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Interpretation Problems of the Legal Norms of Municipal Companies in Poland

Abstract

Objective: The article addresses the problem related to the interpretation of legal norms on the functioning of municipal companies, filling the research gap resulting from the paucity of literature and scientific research on the interpretative difficulties as well as the lack of clear-cut solutions on this issue. The problems that have arisen in connection with the free interpretation of legal norms on the functioning of municipal companies indicate the necessity of isolating a legal definition of a municipal company in the legal system and defining separate and unified legal norms for this entity. This would often avoid contradictory interpretations of the law or interpretation of the law according to the principle of "good practice". The objective is to indicate the need to create a dedicated legal standard(s) for municipal companies (particularly with a majority share of local government units).

Research Design & Methods: In the course of the research process, various methods were used, including analysis of the literature review, the method of analysis, synthesis, and deduction, as well as legal acts and data on the activities of selected municipal companies.

Findings: The lack of a uniform (sanctioned by detailed, systemic legal regulations) model of a municipal company translates into numerous interpretation problems in applying legal acts dedicated to this legal form. This results in ineffective corporate governance and numerous irregularities in the functioning and exercise of control by local governments, courts, and provincial offices (supervision by the Governor) over companies with local government participation.

Implications/Recommendations: The guidelines about municipal companies should delineate the issues currently addressed across various legislative enactments, incorporating oversight and regulation of utilising public funds. Moreover, this shall contribute to ensuring the judicious conduct of financial operations in conformity with legal standards.

Contribution/Value Added: The suggested definition sets out clear criteria for identifying entities with hybrid public and private management characteristics involved in public utility tasks. Additionally, the proposal emphasises considering social and economic factors, using specialised indicators to assess municipal company performance, and underscores the need to articulate their roles precisely within legal frameworks and in fulfilling socioeconomic missions.

Keywords: interpretation of legal norms, municipal companies, management of municipal companies, local government, supervision, control, audit

Article classification: theoretical article, conceptual article

JEL Classification: K230, M10, M40, M42.

The publication was financed from the subsidy granted to Cracow University of Economics (Grant No. 055/ZZA/2022/PO).

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Introduction

The issue of defining a company owned by local government units and locating it in the legal system has been raised for years (Gonet, 2007). Considerations as to which category of entities it should be included in are still ongoing. Every attempt to define or specify the law in this respect ends with the appearance of further doubts or interpretation problems. In the Polish legal system, there is no unambiguous, universally accepted definition of a municipal company (Srokosz & Raczek, 2022; Biliński et al., 2020; Klimek, 2017; Byjoch & Klimek, 2015). As Z. Dolewka notes, the term is used by academics, practitioners of local government life, representatives of social and civic organisations, mass media, and politicians. This split makes it difficult to accurately understand the content of a municipal enterprise, referred to as a municipal company (Dolewka, 2022).

Despite the difficulties of interpretation and the lack of clear-cut solutions to this issue, we identify a paucity of literature and research on municipal companies. The identified research gap provided the rationale for undertaking the research and allowed us to identify the main research question: Is there a need for a dedicated legal standard(s) for a municipal company in the light of the existing interpretative problems? The consequence of this is the adoption of the research objective as an indication of the necessity of establishing separate from other, unified legal norms for municipal companies (in particular with a majority shareholding of local government units).

The realisation of the research objective was based on the hypothesis that the lack of a statutory definition of a municipal company causes doubts and problems in the application of the regulations concerning such companies, and may prolong the decision-making process and increase costs associated with the need to obtain further legal opinions, interpretations or private investor tests. Underlying the hypothesis formulated in this way were the results of previous research on the characteristics of municipal companies operating in local government.

The first part of the article discusses the concept of a municipal company as one of the forms of performing public utility tasks by local government units, while the following part focuses on analysing the interpretation of the existing legal norms and presenting the problems arising from the lack of unified regulations governing the activities of these companies, proposing solutions to improve the functioning of this area.

Research methodology

In order to assess the analysis of the problems of interpreting the legal norms dedicated to municipal companies, various methods were used during the research process, including the analysis of continuous publications, the literature review methodology, the method of analysis, synthesis, deduction, as well as the analysis of existing data (in particular, management reports and financial statements of municipal companies and documents produced for the purposes of corporate governance of companies with the participation of the analysed municipality), the application of which is necessary, as it enables the understanding of the studied problem.

Literature review and theory development

The characteristics of municipal companies

Municipal companies are often defined as companies set up by municipalities or other local authorities to carry out specific public tasks. However, this definition is not included in any legal

provision. The main feature of these entities is to carry out activities in the area of public utility. The final model for the provision of municipal services, in particular the implementation of these tasks through companies with local government participation, was shaped in the 1990s. "At that time, the concept of the so-called 'free market' and the principle of non-interference of the state in the economic sphere prevailed" (Klimek, 2017).

Pursuant to art. 9 pt. 4 of the Act of 8th March, 1990, on Municipal Self-Government (Act on Municipal Self-Government, 1990; Journal of Laws of 2023, item 40), public utility tasks are the commune's own tasks whose aim is to satisfy the collective needs of the population on an ongoing and uninterrupted basis through the provision of generally available services. On the other hand, in Article 1 of the Act of 20th December, 1996, on municipal management (Municipal Management Act, 1996; Journal of Laws, 2021, item 679) sets out the principles and forms of municipal management of local government units, which are to consist in the performance by these units of their own tasks in order to satisfy the needs of the local community. At the same time, as emphasised by M. Biliński and his team, municipal economy has to find a balance between providing accessible and high quality public services and maintaining their profitability and efficiency, regardless of the management model. This is particularly difficult when the market interests of external actors collide with the needs of the local community (Bilinski et al., 2020).

It should be noted that commercial companies are listed as forms of carrying out this activity. As entities with legal personality, municipal companies function in the Polish legal system on the basis of the Commercial Companies Code (Commercial Companies Code, 2020). Due to the lack of dedicated solutions for this type of company, by virtue of this legal act, in principle, such a company is treated like any entity operating in this organisational form on the open (unregulated) market.

This general qualification puts them on an equal footing with other companies, both those that cater to the needs of residents and businesses (e.g. water, sewage, waste, transport, municipal construction, and heat) and those that operate in a competitive commercial market and provide services or products produced by various economic operators. They are considered to be borderline companies (Jacyszyn, 2008), combining a social purpose and an economic purpose. The assessment of their activities and condition is based on economic and financial indicators typical of the commercial market. They have to satisfy the basic needs of the population, carry out continuity of services, and at the same time take care of the optimal level of profit and compete in the market, while, for example, complying with the law in terms of not only public procurement, but also, as pointed out by M. Biliński et al., public-private partnership and concessions for works or services (contracting, public entity) (Bilinski et al., 2020).

The combination of economic and social objectives in economic activity, as D. Klimek (2017) emphasises, is one of the difficult problems that arise both in science and in practice. This problem is particularly evident where the state has to regulate the availability of services, because it is unable to perform its duties fully due to financial or staffing constraints. When the state has to choose between social objectives and hard market rules, it creates legal and organisational solutions to combine the two. This is precisely the situation in the municipal services sector.

According to many researchers, the specific characteristics of municipal companies (such as, e.g., monopolistic market position, non-market pricing, low price elasticity, territorial limitation of activities, high capital intensity of assets, strong social and political impact of the environment on the company, strong economic and social impact of the company on the environment) should be a sufficient reason to create separate legislation (Byjoch & Klimek, 2015). This is due, among

other things, to the fact that the practical aspect of the existing legal norms often deviates from their original purpose of application in the context of municipal companies.

The concept of a municipal company as a form of business in local authorities

There is no definition of a municipal company in the Polish legal system. The Municipal Management Act uses the phrases 'commercial law company', 'company with the participation of local government units' (Bilinski et al., 2020). On the other hand, in the literature, the term is most often applied to a one-person company or a company with a majority share of a local government unit. According to the legislation, local government units are entitled to create various organisational forms in order to carry out municipal activities. These can be classified in various ways: from those forms under public law management (budgetary establishments, budgetary units, local government cultural institutions) to those under private law management (municipal companies, cooperatives) (Bilinski et al., 2020) or may form commercial law companies, whereas commercial companies are general partnerships, partnerships, limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies (NASA Judgment, 2000).

The choice of the specific organisational form of municipal activities is within the competence of local government bodies (Act on Municipal Economy, 1996; Journal of Laws, 2021, item 679), should be adequate to the scale of the tasks performed, being derived from the needs of local communities, and depends on the classification of a given type of activity of the local self-government unit to the sphere of public utility (Biliński et al., 2020). Moreover, the principle of rational management and spending of public funds should also be applied in each area of activity of the local government, including the forms and manner of conducting municipal management (Bilinski et al., 2020).

Researcher K. Żuk (2006) distinguishes two basic groups. The first one is communal public property comprising that part of property which serves the direct satisfaction of public needs of local communities and remains under the direct management of local authorities (budget units and establishments). The criterion for assessing these municipal organisational units should be primarily related to the degree of satisfaction of social needs. The second type, on the other hand, are entities adopting the form of single-person municipal companies or companies with a majority shareholding, operating in various spheres of economic activity and conducting profit-oriented activities (Dolewka, 2017).

Further analysis of the literature on the subject makes it possible to distinguish three main strands relating to the concept of a municipal company. The first one perceives the municipal company in a narrow sense and limits it only to companies in which 100% of the shares belong to an entity or local government units (Supervision in Municipal Commercial Companies, 2008). Such an interpretation is also adopted by the Supreme Court, stating that only if a municipality took up the entire share capital should a joint-stock company be considered a separate municipal legal person, and stressed that such an interpretation of the concept of a municipal legal person is in line with the view expressed in the resolution of 10th January, 1992, III CZP 140/91 (Stahl, 2002). The second strand assumes that the exercise of actual voting control, i.e. the possession of a majority shareholding, is sufficient to define a municipal company. In contrast, the last category takes into account the broad concept of a municipal company. According to this current, any incorporated company in which a local authority is involved should be considered a municipal company. The consequence of such a determination is the assumption that we are dealing with a municipal

company regardless of the number or size of shares held by the local government (Supervision in Municipal Commercial Companies, 2008).

Having regard to the fact that the basic tasks of the local self-government unit include the performance of services of general interest, the purpose of which is the current and uninterrupted satisfaction of the collective needs of the population through the provision of generally available services (Act on Municipal Self-Government, 1990; Journal of Laws, 2023, item 40), it may be added that a municipal company is a company with the participation of a local government unit performing public utility tasks. The range of tasks is diverse and includes, among others, water supply and wastewater management, public transport management, the maintenance of roads and road infrastructure, health services, housing services. Municipal companies may also undertake other tasks depending on local needs and the specifics of the local government concerned.

As Srokosz and Raczek (2022) rightly note, municipal companies cover a wide range of activities, from municipal services, to municipal infrastructure, to enterprises of a manufacturing or service nature. Their activities are often diverse and multifaceted, which makes their scope of operation ambiguous. Furthermore, combining entrepreneurial aspects with public functions results in specific challenges both in terms of legislation and practical management.

According to the definition of M. Szydło, "a municipal company is a separate legal institution. A legal institution, being a peculiar analytical concept or concept-tool of the theory of law and detailed legal sciences, can be distinguished or defined in the following three approaches: normative-complex, functional (action) and personal. In the normative-complex view, a legal institution is a distinct and functionally forming whole complex (set) of rules (norms) regulating a specific social relationship. In functional (action) terms, a legal institution is a set of actions determined by the above-mentioned complex of rules (norms). Finally, in personal terms, a legal institution is a person or a set of persons acting on the basis of the aforementioned complex of rules (norms). A municipal corporation is a legal institution in all three approaches distinguished above. In particular, a municipal company is a legal institution in the normative-complex view. As such, it is a separate and functionally forming whole (unity) complex of provisions (norms) normalise a specific social relationship, specifically normalise the social relationship of a municipal company" (Szydło, 2016).

The researcher also points out that the special nature of a municipal company directly affects entities legally or functionally related to it. According to the author, different actors, such as the legislator, the courts, the controlling bodies, the local government units, and the persons acting in municipal companies all may have different approaches to the enactment and application of the law on municipal companies. Each of these actors may set different objectives in their legislation, which may differ in content or nature, even though they relate to the same legal area (Szydło, 2016).

In particular, while the constituting or executive bodies of local government units are inclined to interpret or concretise the aforementioned legislator-designated general objective in a broader and more liberal manner, administrative courts, provincial governors, regional chambers of audit and the Supreme Audit Office tend to interpret or concretise this legislator-designated general objective in a narrower and restrictive manner (Szydło, 2016). This highlights the complexity and diversity of interpretation and application of the law in the context of municipal companies.

An example illustrating the problem at hand is the Judgment of the Provincial Administrative Court, 2016, concerning a resolution of the Lubomia Municipal Council, which introduced the "Lubomia 3+ Family Card" for families with many children. In this case, the Municipal Council interpreted the provisions of the Municipal Self-Government Act in an expansive manner

to introduce additional benefits for families with many children in the municipality. A number of other examples are presented in the report (Implementation of Public Tasks by Companies Established by Local Government Units, 2014).

Also T. Srokosz and K. Raczek (2022) draw attention to the diversity in the jurisprudence of common courts, administrative courts, as well as the National Appeal Chamber (NAC) concerning municipal companies. According to the researchers, contradictions in the rulings may result from differences in the interpretation of the law, which translates into ambiguity in the application of the law with regard to municipal companies (Srokosz & Raczek, 2022).

A significant effect of such uncertainty in the free interpretation of legal provisions relating to local authority companies is to introduce legal uncertainty on the part of executive bodies. Legal uncertainty in the context of municipal companies refers to a state of affairs in which the executive bodies of local government units are faced with the challenge of interpreting and applying legal provisions in a way that is not always clear or unambiguous. It results from the lack of consistent and precise legal regulations on the activities of municipal companies. This results in difficulties in decision-making and the risk of taking actions that are unlawful or ineffective in terms of the company's objectives and the public interest.

This also results in other consequences, ranging from the abandonment of activities (e.g. investments) due to legal uncertainty and related potential liability consequences, to financial consequences related, e.g. to penalties imposed by external control bodies. Political risk is also important – failure to invest or otherwise act, paying penalties from the municipal budget (vide: residents), may result in an unfavourable perception in the eyes of potential voters.

Specific legal regulations for companies with local authority participation and the resulting selected interpretation problems

The basic regulatory principles of Polish legislation on municipal companies include: Act on Municipal Economy, 1996; Journal of Laws, 2021, item 679; Act on Municipal Self-Government, 1990; Journal of Laws of 2023, item 40; Act on County Self-Government, 1998; Journal of Laws of 2022, item 528; Act on Provincial Self-Government, 1998; OJ 2022, item 547. At the same time, as noted by M. Biliński, W. Gonet and H. Wolska, the Act on Municipal Management constitutes only a minor part of the regulations on municipal management. At the same time, it is a rather general act to which a number of solutions included in other legal acts are referred to (Biliński et al., 2020). Within the framework of legal regulations concerning municipal companies, it is necessary to take into account the provisions of commercial law and other specific legal acts directly affecting the activities of these companies. We can point to the following normative acts: Act on Restriction of the Conduct of Business Activities by Persons Performing Public Functions, 1997; Law of 2023, item 1090; Regulation of the Minister of the Treasury on the Determination of the Model Statement on the Acceptance of the Obligation to Shape the Remuneration of Members of the Governing Body in the Company, 2016a; Journal of Laws 2016 item 1461; Act on Disclosure of Information on Documents of the State Security Authorities from 1944–1990 and the Content of Such Documents, 2006; Journal of Laws 2023 item 342; Act on Public-Private Partnership, 2008; Journal of Laws of 2023, item 1637; Act on Responsibility for Infringement of Public Financial Discipline, 2004; Journal of Laws of 2023, item 1030.

Unfortunately, this diversity gives rise to a number of legislative and interpretative problems faced by the ownership bodies (local government units) during day-to-day cooperation, in particular

at the level of joint investments, delegation of tasks, or control over the companies in question (Financing and Supporting the Activity of Companies with the Share of JST in the Lower Silesian voivodeship, 2021; Implementation of Public Tasks by Companies Established by Territorial Self-Government Units, 2014).

One of the main problems is the lack of a definition of a municipal company in the Municipal Management Act and the varying criteria for its separation and definition (Municipal Economy Act, 1996; Journal of Laws, 2021, item 679). This results in the interchangeable use of the terms: municipal company, local government company, company under the control of local government, or company with the participation of local government units. There is no doubt that a company in which the sole shareholder is a local government unit is a municipal company and a municipal legal person at the same time (Szczepaniak, 2010). Doubts arise when dealing with mixed capital, i.e. public-private, when the local government co-owns shares with a private entity. The legislator, for the purposes of the law of municipal economy understood as a complex branch of law, which is characterised by the use of various methods of regulation – administrative, civil, and even criminal – while refraining from defining the concept of a municipal company, proposed a division of municipal companies into companies operating in the sphere of public utility and companies operating outside this sphere (Wronkowska, 2005). A detailed analysis of this problem was conducted by K. Byjoch (2017).

In turn, Act on Municipal Self-Government, 1990; Journal of Laws, 2023, item 40, defines the organisational units that may be established by a municipality, determines the competence to conduct economic activity, and lists the forms of carrying out tasks of a public utility nature. Although, as indicated by R. Płaszowska (2016), public utility tasks belong to the self-government's own tasks, not all own tasks are public utility tasks. They should be interpreted as broadly as possible (Resolution of the Constitutional Tribunal on Determining the Commonly Applicable Interpretation of the Public Procurement Act, 1997) and should not be equated with 'ordinary' services. As M. Sadowy (2010) notes, the basic feature of activities in the sphere of public utility is the daily, absolute, and reliable satisfaction of the needs of the population and economic entities. Furthermore, these services must be provided even when there is insufficient prosperity in the market and must be provided continuously and reliably. As a rule, needs such as food, clothing, and housing are mostly fulfilled by a competitive market. However, if – in accordance with EU law – public authorities consider that certain services are in the general interest and the free market cannot provide them comprehensively and sufficiently, they may establish a number of special rules for the provision of these services. These entities may be granted special powers or provided with specific funding mechanisms (Services of General Interest in Europe, 2001; European Council Meeting 1993–2002, 2000).

In addition, the lack of a legal definition of public utilities can constrain the development of local infrastructure and services, lead to conflicts and inefficient use of resources, make it difficult to obtain state funding and support for public utility projects, as well as create misunderstandings and conflicts.

Another major problem is the legislation governing the following issues:

- the mandatory appointment of the supervisory board;
- the term of office of the supervisory board;
- competencies and requirements for candidates for supervisory board members and members of the management board (introduced in Law on the Principles of State Property Management, 2016; Journal of Laws 2016, item 2259);

– restrictions on the possibility of combining the functions of a member of the supervisory board in more than one company with local authority participation;
– making contributions and taking up shares in companies;
– the disposal of shares in companies;
– the definition of public service regulations;
– the transformation of municipal enterprises.

It is worth noting that the institution of the management board in municipal companies applies only to capital companies, where, in accordance with the provisions of the Commercial Companies Code, they have a body, namely the management board. The institution of the board of directors is only applicable to limited liability companies and joint stock companies established by a local authority, as this body does not function in partnerships (Biliński et al., 2020). The legal regulations are covered by the provisions of the Commercial Companies Code and the Municipal Management Act. In accordance with Article 10a(6) and (7) of the Municipal Economy Act, 1996; Journal of Laws, 2021, item 679, the supervisory board appoints the members of the management board of municipal joint-stock companies and limited liability companies. This provision is *lex specialis* with respect to the provisions of the Commercial Companies Code, according to which a member of the management board in a limited liability company is appointed and dismissed by a resolution of the shareholders, unless the articles of association provide otherwise. Management board members in joint stock companies, on the other hand, are appointed and removed by the supervisory board, unless the company's articles of association provide otherwise. In local government limited companies, the process of the appointment of board members by the supervisory board, although formally appearing 'independent' of the will of the owner, in practice may be shaped by the owner. The members of the supervisory board are appointed by the owner and the manner of voting on resolutions to appoint or dismiss the management board is set out in the company's articles of association or the management board's bylaws, amendments to which are at the discretion of the shareholders' meeting or, in the case of single-member companies, the mayor or president.

The same is true for the statutory three-year term of office of the supervisory board. Municipal Utilities Act, 1996; Journal of Laws 2021, item 679, introduced a three-year term of office for a member of the supervisory board in companies with a majority shareholding of local government units. It is not allowed to change this period under the provisions of the company's contract or articles of association. The function of such provisions was to ensure the independence of supervisory board members from changing political conditions and to limit the possibility of pressures that might occur if the board's term of office were determined on a case-by-case basis by the founding body or the general meeting of shareholders. However, according to the Commercial Companies Code, a supervisory board member can be dismissed by a decision of the shareholders' meeting at any time. This provision unequivocally refutes the idea of a three-year unbreakable term of office.

Another piece of legislation detailing the provisions on municipal companies is the Act on Restriction of Business Activities by Persons Performing Certain Public Functions (Act on Restriction of Conduct of Business Activities by Persons Performing Public Functions, 1997; Journal of Laws 2023, item 1090). It defines restrictions on the conduct of business activities by persons holding managerial positions, within the meaning of the provisions of the Act on Remuneration of Persons Holding Public Functions and the Act on Principles of Remuneration of Persons Managing Certain Companies (Act on Principles of Remuneration of Persons Managing Certain Companies, 2016; Journal of Laws 2016 item 1202).

This Act regulates in detail the possibilities and limitations in shaping the remuneration of persons managing companies with the participation of local self-government units, the State Treasury, and state legal persons, as well as issues in the scope of selected provisions of contracts concluded with managing persons. Moreover, it defines the position of these bodies in the structures of companies with participation of local self-government units in a manner quite different from the previously applicable legal norms. The amendments introduced in 2016 (Act on the Principles of Shaping the Remuneration of Persons Managing Certain Companies, 2016; Journal of Laws 2016, item 1202) exempted company boards from the jurisdiction of the Labour Code. An absolute obligation to conclude civil law contracts with company boards was introduced and the criteria for awarding additional remuneration were specified. The manager became a manager, so to speak. The amount of remuneration for managers was made dependent on the value of selected economic and financial parameters. Thus, the ownership (or supervisory) body was deprived of the possibility to shape the remuneration of managers in a manner established by internal regulations. A requirement was introduced to assess the performance of management boards based on predetermined (measurable) management objectives. Such evaluation, without the possibility to indicate additional justification, is often impossible to establish reliably/according to reality, unfair or completely detached from reality. On the one hand, the setting of variable remuneration based on predetermined criteria (management objectives) and the weights assigned to them is devoid of subjectivity, while on the other hand – contrary to the legislator's expectations – it may lead to a lack of commitment on the part of managers to the development of the company in many areas by focusing on the implementation of a specific (often single) task.

The contradiction of the assumptions of the above-mentioned act results from the fact that, assuming a typically managerial approach to the management of companies, which, as we emphasised above, fulfil social goals in addition to economic ones, and their activity often depends not on the rationalisation of the economic assumptions of the company's operation, but on the will of the owner, the legislator ordered that the goals on the basis of which the manager would be assessed should be predetermined and measurable. When attempting to relate these principles to the tasks of municipal companies, the purpose of which is the continuous and uninterrupted provision of services of general interest, the indication of such a purpose may be considered unmeasurable.

On the other hand, attempts at a typically 'economic' approach, based on the profit and loss account and referring to two variables – revenue and costs – are also questionable. A company operating under 'ordinary' goods conditions such as production or trade will always seek (as a rule) to increase revenues while reducing operating costs.

In a public service environment, setting a cost reduction target of a certain value (so that it is measurable), without the possibility of introducing so-called additional information into the assessment, may, in fact, lead to a lack of the implementation of renovation intentions or an ineffective employment policy. Attempting to compensate for these actions with an increase in revenue is also fraught with risk. An increase in revenue necessitates an increase in utility prices. In addition, prices for municipal services are often set by external bodies (city council, regulators), over which company boards have largely no influence. Of course, there are many other measurable economic indicators, widely described in the literature, which are the basis for management evaluation, but the way in which they are applied – for a municipal company – may also be questionable (the problems of economic indicators will be discussed in the following sections).

Considerations of the complexity of the problem and the contradictions between the public utility of municipal entities, working for the quality of life of the inhabitants and improving the operating conditions for local entrepreneurs, and the economic rules of the market economy, mean that the issues of public utility and relating them to social as well as economic objectives have not been clearly resolved (Klimek, 2017).

In turn, the law on the principles of state property management (Act on Principles of Management of State Property, 2016; Journal of Laws 2016, item 2259) – directly implemented to local government companies the solutions adopted for companies with State Treasury shareholding – in terms of requirements for members of management and supervisory bodies and in terms of rules for the disposal of shares and stakes. These provisions raise many doubts from the perspective of companies with majority private capital participation. In such a case, even when the local government's shareholding is negligible and the majority shareholder of the company is an entrepreneur from outside the public sector, the owner has to meet the conditions for establishing and applying the provisions on the competence of the management and control body. It is significant that according to the Act on the Principles of Shaping the Remuneration of Persons Managing Certain Companies, 2016; Dz.U. 2016 item 1202, and the regulation of the Minister of the Treasury (Regulation of the Minister of the Treasury on the Determination of the Model Statement on the Acceptance of the Obligation to Shape the Remuneration of Members of the Management Body in the Company, 2016a), a candidate for a member of the supervisory body shall submit a declaration of acceptance of the obligation to shape in the company the remuneration of the members of the management body in accordance with the discussed Act.

In practice, the implementation of this obligation may be limited in situations where the local authority holds a minority shareholding. In such a case, despite the formal obligation, the local government as a minority shareholder may not have sufficient influence over the decisions of the supervisory body, especially when it comes to the remuneration of the board, due to its limited ability to vote down proposals that differ from those proposed by the majority shareholders. This means that the submission of a declaration by a supervisory body candidate does not always translate into a real possibility to influence the company's remuneration policy, especially when the local government's shareholding is minority and does not ensure a controlling vote on the supervisory body. Although the Act on the Principles of Shaping the Remuneration of Persons Managing Certain Companies, 2016; OJ 2016, item 1202, imposes a formal obligation, the effectiveness of its implementation depends on the specific ownership structure and voting powers in the company concerned. This also points to the complex dynamic between the formal statutory requirements and the practical aspects of managing companies in which the local government does not have a decisive vote.

Moreover, it opens the way for disputes that may arise against this background between the majority private owner (who takes care of his/her property) and the representative of the public shareholding (who wants to implement the provisions of the Act). The implementation of this obligation is introduced by Article 2(2) para. 1 (Act on the Principles of Shaping the Remuneration of Persons Managing Certain Companies, 2016; Journal of Laws 2016, item 1202), ordering the entity entitled to exercise shareholder rights "to cause the general meeting of the company to vote on draft resolutions on the principles for shaping the remuneration of members of the management body and members of the supervisory body of the company in accordance with the Act and to cast votes in favour of their adoption". According to the provisions of the Commercial Companies Code, only in the case of a minority shareholder holding more than 1/10 of the share capital,

a shareholder representing at least 1/10 of the share capital has the right to convene an extraordinary shareholders' meeting and place matters on the agenda (Art. 236 § 1; Commercial Companies Code Act, 2020; Act of the Code of Commercial Companies, 2020, item 1526 as amended) or a shareholder representing at least 1/20 of the share capital may request that certain matters be placed on the agenda of the next shareholders' meeting (Act of the Code of Commercial Companies, 2020; Journal of Laws 2020, item 1526, as amended). Thus, the legislator leaves unanswered the question of what legal means a member of the controlling body has that can be used to fulfil this task.

The Court of Appeal in Białystok confirmed that from the essence of a capital company, including a limited liability company, stems the principle of the rule of the majority over the minority, expressed, inter alia, in the provisions of Article 245 and Article 246 of the Code of Commercial Companies, this principle is related to the principle of proportionality of rights and contributions, which means that if a shareholder has made a larger contribution to the company, he should also have more rights in the company (more votes at the company's meeting) than a shareholder who has made a smaller contribution. Consequently, in relation to capital companies, there is talk of the primacy of capital over the person (Ruling details I AGa 27/18, 2018).

The Law on Responsibility for Breach of Public Finance Discipline also applies to laws affecting the operation of municipal companies (Act on Liability for Breach of Public Finance Discipline, 2004; Journal of Laws of 2023, item 1030; Journal of Laws of 2023, item 1030) to the extent referred to in Section II, Chapter 1, concerning responsibility for violation of public finance discipline. Importantly, neither municipal companies nor their employees are subject to liability for breach of public finance discipline. Exceptions in this respect are set out in Article 4.2 and Article 4a of the Act on Liability for Breach of Public Finance Discipline. However, these exceptions also apply to employees of any entity which is not a unit of the public finance sector. Moreover, there are the provisions of Chapters XXXIII–XXXVII of the Penal Code, 1997; Journal of Laws, 2023, item 289 – regarding offences against protection of information, offences against credibility of documents, offences against property, as well as offences against economic turnover and property interests in civil law transactions and against trading in money and securities. Detailed guidelines on the conduct of competitive activities by members of company bodies and sanctions for violations of competition rules are provided for in the Competition and Consumer Protection Act (Competition and Consumer Protection Act, 2007; Journal of Laws 2023, item 1689).

Thus, the above selected contradictions in the legal norms have a practical impact on the operation of companies with local government participation and raise a number of legal, economic as well as managerial problems.

As emphasised by researchers T. Srokosz and K. Raczek (2022), corporate governance in municipal companies is of a unique nature, as the owners of these companies are local government units (municipalities, counties, or provincial governments). These units have a dual role: they are both entrepreneurial legal entities and public authorities. The head of the municipality, mayor or town mayor, exercising both administrative and ownership functions, influences the municipal services market by issuing administrative decisions and participating in the general meetings of municipal companies. This means that decisions regarding municipal companies are often linked to both entrepreneurial goals and the needs of the local community (Srokosz & Raczek, 2022).

Discussion

In summary, it can be pointed out that the provisions concerning the municipal company should detail the issues currently contained in a number of acts, such as, *inter alia*:

- state aid, or the lack thereof, in the event of a cash recapitalisation of the company or an in-kind contribution (in exchange for shares subscribed);
- the definition of specific financial and non-financial indicators dedicated to the analysis of the company's financial and asset situation in the short and long term, taking into account investments in progress or investment needs and the sector-specific nature of the municipal company;
- clarifying the reporting of depreciation and amortisation in the financial analysis – especially in cases where the value of operating costs is the basis for setting tariffs/fees to be paid by residents;
- creating a uniform and rational way of remunerating company managers (combining the need for high qualifications with achievable remuneration, allowing for additional variable remuneration in case of social, missionary goals – *vide*: often immeasurable);
- the clarification of the provisions allowing or indicating the conditions for companies to carry out activities outside the sphere of public utility;
- the clarification of the possibility of joining (or forming) companies outside the home territory of the municipality;
- the removal of mutually exclusive or inconsistent provisions arising from different pieces of legislation (e.g. pursuant to Article 10a(3) of the Municipal Utilities Act, 1996; Journal of Laws, 2021, item 679), in companies with a majority shareholding of the municipality, the term of office of the supervisory board is three years, whereas according to the Commercial Companies Code Act, 2020, "by a shareholders' resolution, members of the supervisory board may be dismissed at any time";
- the clarification of the provisions of Article 10 (1)-(3) (Municipal Utilities Act, 1996; Journal of Laws, 2021, item 679) so that they do not contain "vague" terms ("unmet needs", "to a significant extent", "important for the development of the municipality", etc.) This leaves a large margin allowing for free interpretation of these provisions. This is not always done in a restrictive manner. The essential premise should be to demonstrate the relationship of Article 10(1)-(3) (Municipal Utilities Act, 1996; Journal of Laws, 2021, item 679) with article 6 and article 7 of the (Act on Municipal Self-Government, 1990; Journal of Laws of 2023, item 40);
- clarifying or extending the applicability of the 'in-house entity' provisions beyond the realm of public procurement;
- the clarification of the legal liability of board members;
- the introduction of more stringent criteria for assessing investment performance;
- establishing clear, understandable, and accessible rules and procedures to ensure fairness, accountability and transparency in financial management. This will enable the monitoring and control of how public funds are used. Furthermore, it will help to make sure that financial activities are carried out in an accountable and legal manner. In addition, the formulation of rules is key to building public trust and ensuring effective public financial management.

The above indications are not an exhaustive catalogue of all improvements and changes that can be made to the regulation of municipal companies. In addition, it should be emphasised

that any change should be carefully considered in order to ensure consistency in legislation and efficiency in the management of municipal companies.

Implementing a public service mission effectively and in accordance with the principles of the law requires the creation of a legal basis that is the core of all activities serving the local community, among other things with care for public funds.

The problems of the interpretation of the legal norms dedicated to municipal companies, demonstrated in the article, lead to a number of anomalies that may result, among other things, in difficulties in decision-making and the implementation of business activities, which may lead to delays in developing and achieving business objectives, as well as waste of funds that could serve residents, or the abandonment of investment plans. In addition, legal instability can lead to a lack of confidence on the part of investors and customers, and, consequently, a reduction in the availability of financing. Also, an increase in legal risk can result in costly litigation and financial losses.

As a confirmation of the necessity of the legal provisions established and adopted by the legislator, it is worth citing, in fine, M. Szydło (Municipal Management Act. Commentary, 2008), who defines the principle of legalism in relation to tasks performed by public authorities as acting on the basis of a specific, literal legal norm, excluding the so-called general exclusionary norm, according to which if a given behaviour is neither prohibited nor ordered by the legislator, then this behaviour is legally indifferent from the point of view of the legal order. The researcher emphasises that the concept of a general norm, in relation to the activities carried out by public authorities, may pose a "threat to the legal order in the state", and that in order to carry out any type of activity, local authorities "need a clear and special (i.e. explicitly addressed to them) statutory authorisation, which is a logical consequence of the constitutional principle of legalism (…)".

Problems of the interpretation of legal norms also include the difficulty of ensuring the consistency and compliance of operations with legal requirements, which can lead to negative social and environmental consequences. One of the difficult practical problems associated with the operation of a company operating on the boundary between public and private law is the attempt to reconcile social and economic objectives. This issue remains unresolved.

Importantly, however, the determination of the main direction of the companies' development depends on many factors, including the applicable legislation, the current socioeconomic situation, the financial condition, investment needs, the need to implement modern technologies, or the vision of the owner. This makes it necessary to take decisions with the active participation of the owner and the controlling body, aiming to implement the company's future activities and taking into account the proportion between costs, profits, and the quality of services due to the residents. Nowadays, for the bodies of municipal companies, these issues represent decision-making problems. Hence the need to preserve the principle of legalism and the necessity to create legal norms that would allow the governing bodies and external control bodies to be guided by the same rationale in defining objectives, strategies of action, and measures.

It also appears that a legal definition of a municipal company in the legal system and the establishment of separate and standardised legal norms for this entity would also make it possible to avoid the over-interpretation of provisions or failure to take decisions due to legal uncertainty. Furthermore, it would provide a basis for more effective corporate governance of companies with their shares.

Also, the proposal to create a new organisational and legal form, adequate for the implementation of tasks of a public utility nature, i.e. an intermediate form between a budgetary establishment

and a commercial company, could be a solution allowing for the separation of a municipal public utility with a separate economic and financial status, adapted to the specific purpose (Dolewka, 2022; Wojciechowski, 2012).

Another solution, which piecemeal solves the analysed problem, is to create a different model for evaluating a municipal company on the basis of dedicated financial and economic indicators, and the inclusion of social aspects and objectives with the development of indicators to assess them. To some extent, this could contribute to reducing legal and management dilemmas.

However, it should be emphasised that municipal property, as a type of public property, should be subject to a different management regulation than the civil law one, the aim of which would be to define the optimal way of using this property. A different issue is the clarification and systematisation of legal provisions on the issue of public aid and the definition of services of general interest. Leaving the legal status of a municipal company under the jurisdiction of many different legal acts leads to difficulties of interpretation as well as company owners or managers acting on the edge of the law, in good faith or as so-called good practice.

The activities of local government units and municipal companies, although differing in their specific objectives and methods of operation, should comply with the principles of a democratic state of law. It is important to distinguish that municipal companies, as commercial law entities, operate within the framework of the law and under the supervision of local government units, but are not identical to them. According to the commentary by M. Szydło (Municipal Economy Act. Commentary, 2008), the actions of local government entities should not only remain 'within the framework of the law', but also comply with the fundamental principles of a democratic state of law, which implies transparency, accountability, and the legality of actions.

Conclusions

Taking the above into account, we point out that a municipal company is a specific organisational and legal form, which is a combination of the characteristics of a budgetary establishment and a commercial law company, created in order to effectively perform public utility tasks. It is distinguished by an individualised economic and financial status, adapted to the specifics of the provision of public services. This entity combines the characteristics of public management with the flexibility of action inherent in the private sector, and its activities are based on financial and economic principles that take into account social objectives while striving for efficiency and profitability. In addition, it uses municipal property in a manner consistent with the public interest, in accordance with legal regulations on the management of public property, public assistance, and services of general interest.

The proposed definition seems to provide clear criteria for identifying such entities, highlighting their hybrid nature, combining features of public and private management as well as their role in the implementation of public utility tasks. In addition, a reference to the need to take into account social and economic aspects and the use of dedicated indicators to assess the performance of a municipal company is included. This proposal harmonises with the main message of this article, pointing to the need to clearly define the role and functions of municipal companies, both in legal terms and in the context of the implementation of their socioeconomic mission.

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Funding
This research received no external funding.
Research Ethics Committee
Not applicable.
Conflicts of Interest
The author/autors declare no conflict of interest.

Published by Malopolska School of Public Administration – Krakow University of Economics, Krakow, Poland.
Data Availability Statement
All data will be available and shared upon request.