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A Dual Approach to Exercising Statutory Supervision over Hospitals in Poland

Abstract

Objectives: The paper aims to describe the current model of supervision over public hospitals in Poland.

Research Design & Methods: The paper is based on a scoping review and content analysis of applicable legislation, their resumes, and pertinent data sourced from the Internet, including articles, reports, and dedicated websites. The sourced data was identified with the aid of the Google search engine. All assembled source materials were subsequently filtered out in terms of their suitability for the subject matter under scrutiny, and assessed in line with the key assumptions of the agency theory, whereby an agent is entrusted by the principal with the task of managing an organisation.

Findings: Polish hospitals operate either as the so-called autonomous public healthcare units, or as commercial companies. Both forms are publicly owned and invested with identical scope of statutory tasks, whereas their supervision remains subject to different statutory regulations. However, the organisational models presently in place do not actually provide for an effective securing of the key supervisory objectives.

Implications / Recommendations: A general structural overhaul is therefore postulated, with a view to introducing more effective, in-house-developed supervisory solutions, especially with regard to autonomous public hospitals.

Article classification: research article

Keywords: hospitals, Poland, supervision, regulation, supervisory bodies

JEL classification: I180

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Introduction

Technologically-induced changes – in particular the development of out-patient care, modern advances in diagnostics, and the introduction of e-health – have contributed to the altering of the positioning of hospitals within any nationwide healthcare system (Saltman et al., 2011). That being said, they still remain the keystone of the system itself, with some authors arguing that their contributory role is, in fact, on the rise (Lee et al., 2004). According to the EUROSTAT (2019) data, hospital expenditure in Europe makes the highest proportion within overall healthcare spending. The plans of the Polish public payer, i.e. the National Health Fund (NFZ), indicate that expenditure to be incurred on hospital treatment alone in 2020 is expected to account for 52% of public spending allocated to healthcare services (Narodowy Fundusz Zdrowia, 2020). It should be noted at this juncture that hospitals also provide a wide scope of other services (e.g. outpatient specialist care, physical rehabilitation, diagnostics, primary care, etc.).

The present paper describes the current model of supervision over public hospitals in Poland (although the above-referenced term also applies to all public service providers; for the sake of semantic simplification, though, the author has opted for making use of the term "hospital" further below). The non-existence of effective supervision paradigms precludes/hinders any monitoring of the processes entailed as well as any changes taking place within respective hospitals. This, in turn, deprives the supervisory authorities of the factual grounding for their decision-making process in undertaking pertinent interventions, which might potentially improve routine operational functioning of these hospitals, so crucial for the entire public healthcare system. Problems with maintaining effective supervision have been plaguing the system since the very onset of the democratic changes initiated in Poland in 1989. As far back as 1996, Tymowska et al. (1996) highlighted that there were no systemic solutions in place to facilitate the effective monitoring of the organisational changes taking place in hospitals in Poland.

The issue at hand appears to be invested with a lot of pertinence, as the ongoing public debate on the healthcare system is liberally seasoned with postulates to have public spending on healthcare urgently boosted, as by far the most favoured remedy for having the present status quo rectified. Pushing for improvements in overall operational efficiency is not being considered as an effective means of reforming the system, though. Admittedly, however, the non-availability of adequate and readily operational supervisory instruments calls into question the very reasonableness of the proposed boosting of public expenditure on healthcare. If there is no way of establishing whether the supervision currently in place is effective and, consequently, to what extent the hospitals themselves are effective, why push for financial boosting? Likewise, one could also challenge the assertion that current spending is perfectly sufficient. What is beyond doubt, though, is the fact that public hospitals are now heavily debt-burdened, and this burden is steadily growing (Ministerstwo Zdrowia, n.d.).

The above arguments make creating a coherent system of supervision over hospitals urgently necessary – a system which would make it possible to ensure that they function properly and effectively. The issue of exercising supervision over hospitals is addressed in international publications (Kirkpatrick et al., 2013; Saltman et al., 2011; Weiner & Alexander, 1993). In terms of supervisory prerogatives, however, what essentially matters are the actual legal regulations in place, structured specifically for respective countries. It is these regulations that actually determine what is to be the subject of supervision and how it is going to be ensured and implemented. The legal status of the healthcare units subject to supervision is yet another essential matter to be taken on board.

This paper aims to address the issue of exercising supervision over hospitals in Poland, especially with regard to the scope of supervisory duties separated from the control procedures, but still invested with

a potential to appreciably affect the way hospitals are run. Bearing in mind the legally complex nature of Polish public hospitals, addressing the issue of adequate terminology proved of primary importance, i.e. how a hospital should be conceived in terms of its legal constraints as well as its actual positioning within the national healthcare system.

Method

The paper is based on a scoping review providing an overview of the available research evidence without producing a summary answer to a discrete research question (Arksey & O'Malley, 2005), which is useful for answering broad questions (Munn et al., 2018). The content analysis of applicable legislation was performed [primarily the Act on Healthcare Units (Ustawa, 1991), the Act on Medical Activity (Ustawa, 2011), and the Polish Commercial Companies Code (Ustawa, 2000) – see below their resumes and pertinent data sourced from the Internet, including articles, reports, and dedicated websites]. The sourced data was identified with the aid of the Google search engine. The search made use of the combination of the following keywords and terms: "supervision", "corporate governance", "hospital", and "healthcare". The content of all the assembled source materials was subsequently analysed, filtered out in terms of their suitability for the subject matter under study, and assessed in line with the key assumptions of the agency theory, whereby an agent is entrusted by the principal with the task of managing an organisation.

Results

This article points to the fact that the analysed topic had not enjoyed the interest of researchers before, and there has been few works on supervision in healthcare. Works on supervision by public authorities over the State Treasury or municipal enterprises are more numerous. With these constraints in mind, based on the collected material, the results of the research were presented in the following way: definitions related to understanding who medical service providers are (and their characteristics) as well as definitions related to supervision and issues with applying it in healthcare. Then, problems of supervision in terms of the agency theory were discussed, the legal framework for supervision in Poland was presented, and the role of social and supervisory boards was elaborated on.

The service providers – definitions and characteristics

Understanding the specific model of supervision as the one currently applied in Poland requires that the actual entities subject to supervision be adequately defined.

The units providing healthcare services have long been named in Poland the "health care units" (Polish – ZOZ). In line with the provisions of the Act on Healthcare Units (no longer in force), they had been defined as "organisationally autonomous groups of personnel and material assets, established and maintained for the purpose of providing a scope of healthcare services, and pursuit of general health-promoting activities" (Ustawa, 1991). Briefly speaking, throughout the two decades of the above-referenced Act remaining in effect, they were divided into autonomous public (Polish – SPZOZ) and non-public (Polish – NZOZ) healthcare units. Both types of healthcare units boast the corporate status and are fully liable for their commercial decisions. The non-public ones are managed like commercial companies, whereas the autonomous public ones are similar to the Foundation Trusts in the British National Health Service (NHS).

The above-referenced division into public and non-public entities appears quite misleading, though. Apart from the truly private, non-public units, owned either by companies or natural persons, there are also those which are operated as commercial companies by public authorities, which actually grants them the non-public status. This particular legal solution is a rather challenging notion to comprehend, as it accounts for a situation

in which one county hospital (run in the form of an autonomous public hospital) is classified as a public unit, whereas a neighbouring hospital (run as a commercial company) is classified as a non-public one. In fact, it is possible for some public bodies to own both types of such healthcare units at the same time, with both of them tasked with an identical scope of statutory duties.

The above-mentioned definition of a healthcare unit ("a group of personnel and assets established and maintained, with a view to providing a scope of healthcare services…") indicated that profit was not intended as the key objective of such an organisation, even though its coming into play at some stage was never ruled out, either. The very term "maintained" might well be construed as a form of discouragement against generating any profits whatsoever, or, in the most extreme case, as an actual incentive to operate at low efficiency, or even incur debts.

The reference to the Act on Healthcare Units, no longer in force, was made in view of the need to have a better appreciation of the challenge consisting in defining an entity subject to supervision, as well as considering the actual nomenclature used in naming respective hospitals, still retained, despite successive alterations in their legal status having been implemented. In 2011, the Act on Healthcare Units was superseded by the Act on Medical Activity (Ustawa, 2011). It defined "an entity pursuing a scope of medical activities" / "a medical entity" – as a health service provider. The Act on Medical Activity introduced several categories of such medical entities, differentiating between them in terms of the actual scope of the activities pursued. It also defined the very concept of medical activity.

Medical entities embrace the previously referenced autonomous public healthcare units and entrepreneurs, as construed in line with the provisions of the Act on Entrepreneurs (Ustawa, 2018), with the latter ones also comprising the above-referenced non-public hospital units owned by public bodies. The legislators stated directly (i.e. Article 6 of the Act at issue) that public authorities might manage a medical entity in the form of a commercial company, a state-owned unit, or an autonomous public healthcare unit[1].

It is worth mentioning that it was only the Act on Medical Activity which provided a definition of a hospital and (in its original wording) which stipulated that a hospital was an "enterprise of a medical entity, whereby that entity pursues a scope of medical activities such as hospital services" (Ustawa, 2011).

The wording of somewhat dubious intelligibility, i.e. "enterprise of a medical entity", has now been replaced by "a medicinal establishment in which a medical entity pursues therapeutic activities, e.g. a scope of hospital services". In turn, that medical establishment had been defined as "a set of material assets by means of which a medical entity pursues a specific type of therapeutic management". The latter definition is much clearer in terms of what a hospital unit actually is and where its specific prerogatives lay. It also repeals the provisions on "maintaining" (providing for the upkeep) such healthcare units, thus effectively dispelling any doubts about the need for such an entity to pursue prudent financial management. Therefore, despite the difference in nomenclature (enterprise/company; non-public vs. autonomous public units), the basic managing principle applicable to all such entities is the same. Both types of entities cover their operating expenses and settle liabilities out of their own resources and generated revenues. It seems only prudent, then, to have the legal status of the above-referenced organisations defined more precisely, as several different classifications of hospitals as public healthcare units can be encountered in Polish publications on the subject.

In his typology of organisations, Bielski (2004) distinguishes between economic, public utility, administrative, state-managed, and local-government, military and police, social, and

[1] In view of a smaller number of such entities, further on in the paper no references are made to the state-owned units, research institutes, or any units subordinate to the Ministry of Internal Affairs and the Ministry of National Defence.

religious organisations in terms of their specific functions. The key objective of commercial organisations consists in generating profit, while public utility organisations usually operate on a non-profit basis. Bielski puts hospitals in the latter category.

Lichtarski and Bąk-Grabowska (2017) defined public hospitals as public, non-profit organisations, juxtaposing them against private hospitals. In the latter case, the authors were most likely referring to the entities owned by companies/entrepreneurs from the private sector, and not to those that boast the status of non-public healthcare facilities and are owned by public bodies. The proposed legal status of private hospitals is not to be construed as the one precluding contracting their services with the public payer (which is, after all, an established practice in many countries). Hence, in specific areas of their activity, private hospitals also perform public functions. The above-referenced authors also defined the municipal enterprises – i.e. state-owned companies – as public commercial organisations. Applying these criteria of division, non-public hospital facilities owned by public bodies should be allocated to the latter category. This, however, would result in establishing, while twisting the logic, the two categories of entities differing in both their legal status and names, yet held within the same ownership structure, making use of the same resources, and pursuing the same functions within the public healthcare system.

Kocowski (2018) offers a clarification of the problem at issue, saying that state-owned entities invested with a corporate status are, *inter alia*, autonomous public healthcare units. Other state-owned, corporate entities, established in pursuance of separate legal acts with a view to pursuing a scope of public tasks – excluding, *inter alia*, commercial companies – are invested with a public corporate status, but are not state-owned entities, though.

When addressing the issue of defining what public hospitals as commercial companies actually are, one should also refer to the Polish Commercial Companies Code (Ustawa, 2000), in pursuance of whose provisions the above-referenced entities operate. Securing profit is essential for every company. On the other hand, commercial companies managed by public entities may also be construed as specific instruments meant to achieve certain public objectives as well as render a scope of public services. Consequently, they are not meant to generate profit for their holders. Excessive profit may even prompt a reduction in the prices of services offered by such companies (Klimek, 2018).

In the light of the differentiation proposed by Bielski, it seems that the best way to reflect what hospitals owned by the public owner have been established for is to have both types of entities allocated to the category of public organisations / public utility organisations. This would mean that (assuming that the entities in question pursue public functions/provide public services, being the publicly-owned entities) generating profit does not fall within their primary objectives. It can be assumed that public hospitals are what Saltman

Table 1. The characteristics of public hospitals

Key attribute	SPZOZ	NZOZ
Polish name	*Autonomous public healthcare unit*	*Non-public healthcare unit*
Scope of activities	identical (provision of medical services)	
The owner (i.e. founding entity)	identical (local government body, ministry, medical university)	
Applicable legislation regarding supervisory prerogatives	the Act on Medical Activity	the Act on Medical Activity and the Polish Commercial Companies Code

Source: own study

and von Otter (1992) called "public firms". They boast their own specifics, as well as may operate in line with different legal formulas. Nevertheless, they are establishments that have (public) owners and provide a scope of socially essential services, while their owners are legally bound to exercise proprietary supervision over them and required to take care of public property, as set by law (Ustawa, 2016).

The key attributes of public hospitals are presented in Table 1.

The definition of supervision

Irrespective of numerous definitions present in Polish publications on the subject, Kocowski (2018) claims that neither exercising supervision nor controlling prerogatives is rigidly (i.e. with due precision) defined in legal usage, legal parlance, or colloquial speech. In the available publications, though, supervision is commonly acknowledged as a concept broader than exercising control, which is also inclusive of a potential for imposing a certain influence over a subordinate entity through an occasional executive intervention. This is essential in the sense that pertinent legal acts regulating supervision seem to address such executive prerogatives (power) as a side issue. Whilst addressing the issues of supervision, they focus primarily on control prerogatives, even when they specifically make use of the term "supervision". Hence, the above-referenced Kocowski's assertion seems quite helpful in explaining problems with addressing the issue of supervision (see further below).

The above-referenced arguments regarding the problems faced when attempting to have public hospitals classified prompt the need to be clear as to which specific concepts should form the actual basis that the supervision of these entities should be structured around. As Kocowski (2018) points out, "The provisions of the Act of 27 August, 2009, on Public Finance (Ustawa, 2009) provided for the establishment of new, state-owned, corporate entities, with a view of carrying out a scope of public tasks when duly invested with a corporate status upon being entered into the National Court Register of Entrepreneurs, thus effectively becoming entrepreneurs in legal terms". Both public and non-public entities are included in the said Register of Entrepreneurs. This clearly indicates that even though only one of the two types of entities is formally construed as an enterprise (commercial company), it would seem only prudent to apply the concept of supervision intended specifically for the enterprises, whilst making a direct reference to a pertinent body of praxis. This is going to be done in terms of the agency theory.

In the light of the arguments set out above, supervision may be construed in terms of corporate governance. In line with the OECD (2005) definition, it is construed as "procedures and processes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making." The above-referenced term is addressed in the publications on the subject in terms of expanded theories of enterprise. Occasionally, the term "corporate governance" (Polish – *nadzór korporacyjny*) is used interchangeably with "ownership supervision" (Polish – *nadzór właścicielski*) (Walczak, 2014), even though some authors are quick to point out that corporate governance is an appreciably broader concept than ownership supervision. Corporate governance is exercised both by the shareholders and by other stakeholders, who are not owners, but are nevertheless keenly interested in the overall effectiveness of the company management. Ownership supervision is exercised either by the owners or by a group of them (shareholders, stockholders) (Wawrzyniak, 2000).

As the principal focus of the present paper rests on the Polish public entities, further on it would be expedient to refer to the concept of supervision as construed in line with the definition available

on the Polish Parliament's website, deriving from the study of Zalega (2003) and a group of other authors, i.e. Colley et al. (2005), limited exclusively to owner supervision. The cited source asserts that "Ownership supervision is a system of legal and economic institutions covering issues related to the rights of shareholders to their assets entrusted to the staff managing the company" (Smołkowska, n.d.).

The issues of supervision in Poland have not been addressed with sufficient precision in applicable legislation, suffering from excessively generalised treatment. The Ministry of Treasury recommends that public organisations apply the guidelines developed by the Organisation for Economic Cooperation and Development (OECD) – described in the OECD Principles of Corporate Governance (OECD, 2004), further developed in another study of 2019 (OECD, 2019). This document addresses the key prerogatives and objectives of exercising supervision, such as protection of the owners' interests, risk minimisation, and ensuring adequate returns on investment.

Problems of supervision in terms of the agency theory

The agency theory describes the contractual relationships between a company owner (principal) and an individual (agent) hired to perform a certain scope of services on behalf of the former, including the delegation of powers to make sovereign decisions (Jensen & Meckling, 1976).

Considering that a contract is concluded by two parties, there is a potential for some differences to arise between the objectives of the principal and the agent, as well as the ones pertaining to a notion of business risk (Eisenhardt, 1989) and its sharing. The delegation of prerogatives usually makes it difficult and expensive for the principal to monitor the agent's activities, causing asymmetry of pertinent information between the parties, especially when the shareholding structure is dispersed (Jeżak, 2012) (in the case of public hospitals, there is no such dispersion of shareholding structure). This informational asymmetry can account for multiple implications. For instance, an agent might undertake some activities that are not in line with the expectations or even business interests of the principal, including opportunistic endeavours aimed at pursuing one's own business interests (Eisenhardt, 1989). There is also some potential for moral hazard, construed as a failure to implement a specific scope of activities stipulated in the contract, or an insufficient diligence in pursuing them (Eisenhardt, 1989), and adverse selection, i.e. misleading the principal as to the actual scope of business skills possessed by the agent (Eisenhardt, 1989).

All of the above prompts the need to put in place some supervision instruments so that the principal can have a way of minimising the adverse effects of hiring an agent whilst maximising the attendant benefits (e.g. making use of the agent's body of knowledge and business prowess). The introduction of such instruments contributes to the emergence of supervision costs which cannot be avoided. The principal instrument consists in the contract itself (Postuła, 2013) comprising a set of specific mechanisms aimed at motivating the agent to act in line with the principal's business interests, as well as a process of monitoring their implementation with the aid of pertinent indicators. In order to put such instruments in place, however, the principal must define the expectations towards the organisation at issue (i.e. map out the key directions of its business development). Obviously, it is hard to foresee all possibilities that might take place during the agent's management of the organisation at issue, which means that the actually concluded contracts remain, in fact, incomplete (Mesjasz, 2000). Consequently, the principal is unable to fully protect their business against the agent's undesirable actions.

Supervision held over medical entities – the legal framework

A review of the legal regulations pertaining to the supervision of hospitals in Poland indicates that the legislators were primarily focused on securing control over them. None of the non-control aspects of supervision is addressed in much detail, though.

The provisions comprised in the chapter "Control and Supervision" of the Act on Medical Activity (Ustawa, 2011), referring to both public and non-public entities, relate primarily to control, which is exercised by the minister in charge of health (four out of five articles of the said chapter), and not by the hospital proprietor. The article (no. 121) addressing supervision also focuses to a large extent on the control issues. It stipulates that supervision is exercised by the so-called "founding entity" (the owner) and it is aimed at ensuring full compliance of a scope of activities pursued by a medical facility with the legislation in place, its articles of association, and organisational regulations, as well as its originally designated purpose, business efficacy, and overall reliability.

In line with the provisions of the above-referenced article, subject to control (in particular) are the following elements: implementation of tasks specified in the organisational regulations and in the articles of association, overall availability and quality of health services provided, effective property management, prudent use of public funds, and overall financial management. In the event of detecting any illegal activities pursued by the hospital's manager, the founding entity steps in and, within the scope of its authority, orders that any such activities be discontinued immediately, whilst at the same time obligating the manager to remedy the situation accordingly. In the event of the manager's failure to comply with the said instructions within an appointed time frame, the founding entity may resort to terminating the manager's employment or a management contract. The chapter at issue also stipulates that in the event of any control activities being pursued by government administrative agencies that happen to be the founding entities of the medical units, pertinent provisions on control in the government administration should prevail (Ustawa, 2011a).

As already mentioned, medical entities operating in the form of commercial companies are also subject to pertinent regulations governing commercial companies (Ustawa, 2000). Also in this case, the chapters addressing supervision in various types of companies (and entitled "Supervision") refer primarily to the issue of control, although in this particular instance the non-control components of supervision are given a little more attention. Only two out of sixteen articles – and three out of twelve articles in the above-referenced chapters (referring to limited liability companies and public limited companies, respectively) – are not limited to the control issues. These articles address the role and prerogatives of the supervisory boards, their potential for tangible influence, including e.g. the suspension of the members of management board and the delegation of own representatives to that board. In both chapters, the legislators also indicated that the company's articles of association may be instrumental in having the scope of their prerogatives expanded, as required.

The quality and effectiveness of the legal regulations may not be assessed by the number of articles referring to the notions at issue, but by the actual content of those articles instead. In both cases (public and non-public entities), it may be inferred that limited provisions on supervision address the potential for intervention invested in the supervisory boards/founding entities, although without offering more detailed guidelines as to how these objectives should be implemented. These guidelines, set forth at the ordinance level, address the control issues only (Rozporządzenie, 2012). This implies that the founding bodies need to map out their own ways of exercising supervision over their subordinate entities or, alternatively, try to have the existing arrangements in other sectors effectively adapted to suit their specific requirements, e.g. the OECD Recommendations. Bearing those in mind, they

should develop specific solutions that would allow them to have their subordinate entities not only effectively "controlled", but also "directed", to quote the OECD's definition of supervision again. These measures are intended to safeguard the "stockholders' rights to their assets", as defined by the Polish Parliament (Smołkowska, n.d.).

Supervision over medical entities in terms of applicable legislation – supervisory and advisory bodies

The supervisory boards operating in the non-public hospitals managed as commercial companies might actually offer a working solution, much in line with prevalent practice in other sectors of the national economy. On the other hand, in the case of the public hospital units (SPZOZ-es), trustee-like bodies are established, generally referred to as civic councils (Polish – *rada społeczna*). However, the actual prerogatives of a supervisory board (Polish – *rada nadzorcza*) operating within a hospital unit (NZOZ) are no different from the ones invested in such bodies exercising supervision over any other commercial companies. The supervisory board exercises permanent supervision over the company's activities in all areas of its activity. It may examine all documents of the company, demand reports and explanations, audit the company's assets, suspend management board members, and delegate a supervisory board member to the management board. A civic council is a body of rather limited prerogatives, more of a consultative/advisory nature. It presents the founding entity and the CEO of the public hospital with conclusions and opinions, analyses complaints and applications submitted by patients, and gives opinions on conclusions regarding the temporary cessation of medical activity.

There are also significant differences with regard to the personal spectrum of their respective membership. Admittedly, there are no studies available on who actually sits on the supervisory boards in the hospitals run as companies, although these individuals are subject to the very same statutory requirements as the ones imposed on the members of the supervisory boards of public commercial companies. The Act on Medical Activity (Ustawa, 2011) states that members of a supervisory board representing public bodies are appointed from among the individuals meeting the statutory requirements, as specifically set out in the provisions of Article 19 of the Act on the Principles of State Property Management (Ustawa, 2016), i.e. they must meet the requirements set out for board members in other sectors of the national economy, whereby the state holds shares in some commercial companies.

The scope of professional expertise that the members serving on such civic councils ought to have is not specified in any way, although the actual appointment process is clearly set. Potential candidates are nominated by the representatives of the founding body, but also, depending on the type of a particular hospital unit, by a district council of physicians, a district council of nurses and midwives, a university's senate, or a scientific council, government agency, a local government body, governor, municipal council / county council, the Supreme Medical Council, the Supreme Council of Nurses and Midwives. There are no specific regulations or guidelines, however, indicating what sort of professional qualifications the members of such civic councils should hold to their credit.

The very existence of such a broad representation of various interest groups within a civic council fits in well with the concept of corporate governance, which envisages that the relations between a commercial entity and a wide range of stakeholders should be subject to specific regulations, as referenced in the above-cited OECD document (OECD, 2004). That being said, such a broad representation of different interests may not be construed as fully representative of all the interest groups that could/should be represented within this body (e.g. hospital staff have no reps there). It is also far from clear what specific qualifications are held by the members; furthermore, the council itself is not invested with any specific discretionary powers.

Table 2. The characteristics of public hospitals' attendant supervisory structure

Key attribute	SPZOZ	NZOZ
Scope of non-control supervisory prerogatives	Practically none	Relatively minor
The body tasked with statutory oversight	Civic council	Supervisory board
Scope of prerogatives vested	Advisory	Supervisory
Requirements regarding members' professional expertise	None specified	Statutorily regulated, as is the case with all supervisory boards
Appointment of members	Multiple organisations and institutions, and the owner	Owner
Potential for the owner's direct intervention in routine management policies	None	Delegation of an owner-appointed member of the supervisory board to the hospital's management board

Source: own study.

The review of the way in which the supervisory boards and civic councils operate – in conjunction with addressing their overall relevance in hospital facilities – clearly indicates that a scope of activities pursued by the civic councils appears to offer appreciably less to hospitals in terms of attendant benefits than that of the supervisory boards. Moreover, the civic councils are rated appreciably worse by hospital managers than the supervisory boards (Kautsch, 2015).

The key issues of exercising supervision over hospital units by the bodies discussed here are comprehensively presented in Table 2.

Discussion

As stated above, the supervision of hospitals is of little interest to researchers. The problems related to the supervision of other public companies are indicated by documents related to the State Treasury or municipal enterprises (Mesjasz, 2000; Mesjasz 2007; Postuła, 2013; NIK, 2017). Due to the specificity of the sector, the above-mentioned problems are different from that of hospitals. The conducted research shows that the supervision of hospitals faces a number of problems of different nature, ranging from defining the objects which are to be supervised, different legal acts regulating the supervision of different legal forms of hospitals, or including significant differences concerning bodies which exercise this supervision. Additionally, the above-referenced legal acts regulating the issue of supervision do not precisely indicate the instruments which might be applied in the supervision of hospitals. On the other hand, they do differentiate the type of supervision exercised over the hospitals, depending on their respective legal status. Commercial companies are slightly better "centred for" in terms of available options for the purpose. Supervisory boards (as the representatives of the owner) boast a more direct way of exercising their prerogatives over non-public facilities (e.g. by delegating a representative to serve on the management board) than a founding entity (owner) with respect to its own public one. Civic councils, however, are not invested with any legal means whatsoever in this respect.

Therefore, the question arises about whether the legislators actually subscribed to the view that commercial companies (in comparison to the autonomous public hospital units) would be less efficiently managed as a rule and consequently exposed to much greater risks. Would this translate into the supervisory boards being invested with more prerogatives to be exercised with regard to overall functioning of hospitals boasting such a legal

status? The regulations in force seem to indicate that this is, actually, the belief of the legislators. It should also be noted at this juncture that hospitals managed as commercial companies are subject to a "double-edged supervision", as they are regulated both by the Act on Medical Activity, and the Polish Commercial Companies Code. Should this also be interpreted as the legislators' conviction that there is appreciably lesser potential for being plagued by problems / errors in judgement / non-compliance with applicable regulations in the case of an autonomous public healthcare unit? Again, the regulations in force seem to confirm such a belief of the legislators. Are the above-addressed differences to be interpreted as allocating excessive care to the non-public entities, or showing not enough prudence in handling the public ones in terms of attendant statutory instruments? The latter would readily be corroborated by the results yielded through the above-referenced research on both the civic councils and the supervisory boards operating in hospitals.

In view of the much criticised status of the civic councils, it would only seem prudent to give some consideration to having their role statutorily boosted in order to appreciably improve overall supervision exercised over the public hospitals, or, alternatively, to have such a supervision regulated to a much greater extent by means of introducing (putting in place) some other legal instruments. Should such a solution prove non-feasible, though, this would naturally beg a question as to whether there is any point whatsoever in retaining civic councils in public hospitals, or, following this reasoning a bit further on, whether it is at all reasonable to maintain autonomous public hospitals in their present legal status. Of course, such a decision could be made after a detailed analysis of the functioning and effectiveness of both of the legal forms of hospitals.

With regard to exercising supervision over hospital facilities, an even more pertinent question springs to mind, though. Is there any point in having them regulated? What could – and actually should – be subject to specific regulations, and what should merely be grounded in good practice, or governed by liberal application of common sense? This, in turn, gives rise to yet another question, i.e. a necessary level of legal regulations as such (i.e. what should actually be regulated by applicable legislation and to what extent?). Conclusions drawn from the theory of the firm clearly indicate appreciable potential for adversity when the "outsiders" (i.e. not company owners) are hired (outsourced) to manage the company. This actually highlights how essential it is to establish (regulate) a frictionless relationship between the managing executive and the company owner. It is not an easy task, altogether, as it is simply not feasible to safeguard against all circumstances that might potentially affect overall functioning of the organisation (cf. the already cited 'incompleteness' of management contracts). Since the issues of exercising supervision over different types of organisations are not – and may not – be subject to the central regulation, their owners must develop pertinent supervision instruments on their own, even though the specific OECD guidelines might be adapted for the purpose and aid them in their efforts effectively.

Nevertheless, it should be noted at this point that any adaptation of those guidelines to the specific requirements of a particular hospital of limited size (several hundred beds) should be carried out with due caution and plenty of common sense, never through thoughtless copying. While making a reference to the agency theory, it is worth highlighting that in view of the above-referenced informational asymmetry in favour of the agent, there is also an asymmetry of power; this time round, however, it is slanted in favour of the principal (Saam, 2007). Consequently, it is the principal that is in a position to put in place such contractual provisions that would ensure securing the most desirable results to their benefit, or at least to effectively secure their vital business interests. This, in turn, requires that a precise definition of what these business interests actually are – as well as what specific objectives are set forth with regard to the entity subject to supervision – be put in place. This should be presented by the owners of public

hospitals in their health strategies and translated into goals set by them for their subordinate hospitals.

Concluding remarks

Putting the Polish healthcare system under closer scrutiny makes it possible to realise that it is not so much the issue of supervision as a rather excessively developed control system that we are actually dealing with. It would appear that the legislators' rigid focus on the control issue – although without any allowances made for due appreciation of the actual commanding prerogatives of the principal – does not really work. It may seem a rather feeble excuse on the part of the owner's agencies for not implementing proper supervision over the entities entrusted to their care. Quite likely, the planning domain can also suffer some undue neglect as a result. The lack of a coherent, nationwide health strategy may also be instrumental in giving rise to a diversity of problems with supervision.

A control system alone, even an extensively developed one, cannot substitute other functions of management or governance. The establishment of a system of supervision is essential in that – as indicated throughout the present paper – in recent years the way a hospital unit is construed has been subject to fundamental alterations. There are ongoing debates on how the issue of public hospitals should be approached best. Two entities have been established, invested with different legal statuses and subject to differently structured regulations, yet pursuing the same scope of activities. Regulations concerning an autonomous public healthcare unit definitely seem to be insufficient, and civic councils turn out to be redundant. Therefore, the existing system of supervision over public hospitals in Poland indubitably requires a major boost.

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