
The Influence of Institutional and Legal Conditions on Ownership Transformations of Selected State-Owned Maritime Enterprises in Poland

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Abstract:

Purpose: The purpose of this paper is to analyze and evaluate the impact of state institutions on the process of ownership transformation of selected Polish state-owned maritime enterprises after 1989 and to show the relationship between legal solutions and the course of ownership changes of the studied entities.

Design/Methodology/Approach: The historical method was used to show the reasons for the transition from socialist to market economy. Thanks to the decision-making method, the reasons for and effects of decisions made by the Polish government regarding ownership transformations of selected state-owned maritime enterprises were presented. The institutional-legal method was used to illustrate the range of competencies of state institutions and to analyze the relationships that existed between them.

Findings: The ownership transformation of state-owned maritime enterprises was an important element of the system transformation in Poland that began in the late 1980s. Establishment of institutional-legal principles of functioning of a democratic state allowed cancelling legal acts applicable in the system of socialist economy. Laws adopted by the parliament created the legal basis for the establishment of public institutions participating in the process of ownership changes of selected economic entities.

Practical Implications: The policy of the Polish government regarding ownership transformations of state enterprises in the shipbuilding industry has not brought the intended results.. Currently, the reconstruction of manufacturing shipyards in Poland is impossible, which is due to the dominance of the Asian shipbuilding market on a global scale.

Originality/value: The conducted research allowed to present political, legal and economic factors conditioning the implementation of ownership changes of selected state enterprises of maritime economy.

Keywords: Maritime economy, shipbuilding industry, ownership transformations, Poland.

JEL classification: L50, L51, L52.

Paper Type: Research study.

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1. Introduction

In Poland, in the late 1940s, a centralized economic system, modeled on Soviet political solutions, was introduced. Aspects of political, economic and social life were subordinated to the communist power. The private sector was liquidated and the independence of state enterprises was limited. The system of centrally planned economy in Poland was not conducive to the rational use of means of production, reduction of their costs and development of human activity. Its disadvantages included low innovativeness, waste of economic resources and time and the production of economic surpluses. The impact on low innovativeness was due to the lack of competition, which caused a technological gap between the Eastern Bloc countries and the Western countries. The party leadership (the Polish United Workers' Party) made several attempts to reform the centrally planned economy. These took place in 1956-1958 and 1973-1975 (Bałtowski, 2020). These reforms did not change the essence of the centrally planned economy, but only modified it, which resulted from the fact that the Polish political system was not democratic. It was not possible to prevent crises, that appeared from time to time, in the sphere of political, economic and social life.

The change from a centrally planned economy to a market economy in Poland was closely related to the transformation of the political system. The collapse of the communist system in Poland was brought about by Gorbachev's "perestroika", which influenced the actions of the United States of America and Western European countries, resulting in the Autumn of Nations. The strong position of the Catholic Church was an important stimulus for the emergence of opposition against communist power. The Round Table Talks, the results of the partially free parliamentary elections of 1989 and the consequent appointment of the government of Tadeusz Mazowiecki, created an opportunity to change the political and economic system in Poland. One of the main directions of economic transformation was ownership transformations of state-owned enterprises and, with them, increasing the efficiency of the economy. The goal of the ownership transformations was to change state ownership into private ownership. The plan was to create an ownership structure in which the state sector would constitute a clear minority in relation to the private sector.

The purpose of this paper is to analyze and evaluate the impact of state institutions on the course of ownership transformations of selected Polish state-owned maritime enterprises after 1989. The aim was to analyse the legal basis on which the ownership transformations were made. Out of four maritime industries - shipbuilding (production and repair shipyards), fishery, sea ports and sea navigation, the author of this article has analysed the enterprises of the shipbuilding industry - production shipyards in Szczecin, Gdańsk and Gdynia. The choice of the production shipyards was not accidental. At the beginning of 1990, the three shipyards employed a total of about 20,000 workers (SNA, 1993a; NIK, 1997). These

enterprises had an impact on the level of economic development of the state and the region (Western Pomerania and Gdansk) and were symbols of political events.

Chronologically, the article covers the period 1989-2012. The initial caesura was related to the start of the systemic transformation process in Poland and the final caesura to the sale of the assets of Stocznia Szczecin and Stocznia Gdynia in accordance with the Act on Compensation Proceedings in Entities of Special Importance for the Polish Shipbuilding Industry (commonly referred to as the shipyard special act).

Analyzing the issues related to the ownership transformations of selected state-owned maritime companies, it is reasonable to pose the following research question: what were the institutional and legal changes that conditioned the ownership transformations of shipyards in Poland after 1989?

In order to find an answer, the following methods were used: historical, decision-making and institutional-legal ones. The research material used in this article was archival material retrieved from the State Archive in Szczecin, the State Archive in Gdańsk and the Company Archive of the Ministry of the Treasury, documents produced by the Supreme Chamber of Control, laws, studies and articles.

2. The Situation of State Enterprises in a Socialist Economy

The centralized economic system applied in People's Poland was characterized by a hierarchically developed structure of management by the state administration, which was subordinated to the party apparatus (the Polish United Workers' Party). The socialist economy was managed by means of a planning system, which constituted a hierarchical pyramid of plans. The central plan was superior to the plans of the departments and enterprises. It defined the basic tasks of the national economy and the tools with which it was to be carried out. Based on the criterion of time, plans were classified as: perspective (ten years), long-term (five years) and short-term (one year) ones (Kamola-Cieślik, 2007).

Economic decisions were made by the central party institutions of the Polish United Workers' Party, such as the Central Committee, the Political Bureau and the Secretarial Office of the Central Committee. The directives of the party authorities were implemented by state administration bodies (for example, through parliamentary laws, government regulations), which supervised the activities of state enterprises. A hierarchical structure of state administration bodies was created with a division into central, intermediate and basic bodies. At the central level there were the supreme bodies, such as the Council of Ministers (RM), committees (the Economic Committee of the Council of Ministers – functioning in 1945-1950, 1957-1969, since 1988), planning commissions (the Planning Commission at the Council of Ministers operating in 1957-1988).

The tasks of intermediate bodies were performed by unions, which grouped enterprises of the same line of business across the country (for example, shipyards were subordinated to the United Ship Industry Association). The associations supervised the activities of enterprises and had an influence on their economic plans. In the structure of state administration bodies, enterprises were the basic units whose task was to implement tasks from the national economic plan. Most of the enterprises' income was transferred to the state budget. Enterprises had a small amount of funds at their disposal, which they allocated for current production financing. Implementation of investment plans by enterprises required the approval of the state authorities. State administrative bodies also decided on the organizational structure of enterprises and on the appointment and dismissal of their directors.

The 1980s were the beginning of changes in the system of the Polish economy, which should be assessed as mature and constituting a step forward towards its reconstruction. The purpose of the economic reform was to ensure independence, self-governance and self-financing of enterprises. Employees were to have a say in the management of state enterprises, while the state was to indirectly influence their activities (interest rates on loans, tax policy), which was typical of a market economy (SPRL, 1981). The institutions of state administration were also reorganized, among others, by reducing the number of ministries. The implementation of the provisions of the economic reform in 1982-1985 did not bring the intended results, as it did not change the essence of a centrally planned economy.

The undemocratic political system, central planning, and control of state enterprises by the state administration were the factors that determined the failure of economic reforms in Poland in the first half of the 1980s (Grala, 2005). The turning point for the socialist economy was the adoption by the Sejm of the People's Republic of Poland of the Law on Economic Activity in 1988, which introduced simple rules for the establishment of new enterprises. These changes foreshadowed the systemic transformation that took place in 1989 in Poland.

The system transformation in Poland and in Central and Eastern Europe at the end of the 1980s was a change in the conditions under which business entities operated. The shipyards found themselves in a difficult financial situation as they lost the existing orders from the Soviet Union as well as the compensatory government subsidies for ship exports. The economic situation of the shipyards was also affected by the increase in interest rates on loans (Johnson et al., 1995; Lipton and Sachs, 1990).

3. The Institutional Dimension of the Ownership Transformation Process of the Shipyards

In October 1989, Tadeusz Mazowiecki's government adopted an economic program – Provisions and Directions of National Economic Policy, which aimed at

introducing a market system applicable in highly developed countries. The author of the program was Deputy Prime Minister and Minister of Finance - Leszek Balcerowicz. The document assumed the stabilization of the economy and ownership transformations of state enterprises. On January 1, 1990, ten laws (commonly referred to as the Balcerowicz Plan) came into force, which resulted in the implementation of the principles and mechanisms inherent in the market economy in a shocking (one-time, rapid) manner (Kieżun, 2012; Sachs, 1992).

The successful implementation of the government program was made possible by funds from the World Bank and the International Monetary Fund. In reality, the implementation of the Balcerowicz plan meant a drastic reduction in state spending, a sharp decline in wages and an increase in the unemployment rate. The Balcerowicz Plan did not provide for changes in ownership relations. The process of ownership transformation was to be carried out under a separate program and law (Ouanes and Thakur, 1997).

From 1990 to 2012, various state institutions were involved in the process of ownership changes of manufacturing shipyards. Parliament influenced the final form of government bills defining privatization methods. The manifestation of the parliamentary control over the government were parliamentary interpellations and questions. Parliamentary and Senate committees were involved in exercising the control function of the Sejm of the Republic of Poland over the government. On their orders, ministers were required to participate in committee meetings and provide information on the progress of ownership changes at shipyard production facilities and on finding an investor interested in purchasing the assets of shipyards in Szczecin, Gdańsk and Gdynia.

Apart from the legislature, the government had an impact on the course of ownership transformations in the shipbuilding industry. It prepared draft laws related to the ownership transformations and issued executive acts. In October 1989, the government of T. Mazowiecki created the Office of the Government Plenipotentiary for Ownership Transformation. The Office's task was to prepare a concept for the privatization of the Polish economy along with draft laws. The Office of the Government Plenipotentiary ceased its activities after the parliament adopted a law on privatization in 1990. Apart from the office, the government created the Economic Council, whose task was to provide opinions to the Prime Minister and the government on documents and prepare expert reports on ownership transformations. The Council was dissolved in January 1992 (Bałtowski, 2002).

The basic executive body defining the directions of ownership transformations of state enterprises and their implementation was the Minister of Ownership Transformations. The tasks of the Minister included giving consent for transformation of an enterprise into a company, sale of its shares and organizing activities aimed at increasing interest of foreign entities in purchasing shares in State Treasury companies. The Minister of Ownership Transformation had the right to

request the government to specify types of state enterprises of particular importance for the state economy, the privatization of which required state approval.

In November 1990, the government's list of state enterprises of particular significance for the state economy included Stocznia Szczecińska im. A. Warskiego and Stocznia Komuny Paryskiej in Gdynia (RRM, 1990). The list did not include Stocznia Gdańsk im. Lenina because several months earlier the government had created Stocznia Gdańska SA on its basis. The decision of T. Mazowiecki's government to create a State Treasury joint-stock company was supposed to stop the process of liquidation of the shipyard in Gdańsk started by Mieczysław Rakowski's government (GNA, 1993). The Minister of Ownership Transformation - Janusz Lewandowski, after talks with the management of shipyards in Szczecin and Gdynia, decided to transform these state enterprises into State Treasury units.

In September 1991, Stocznia Szczecińska im. A. Warskiego was transformed into State Treasury joint-stock company called Stocznia Szczecińska SA, and two months later the Stocznia Komuny Paryskiej in Gdynia was transformed into Stocznia Gdynia SA (CA MT, 1991). In the central government administration structure, ownership supervision of the commercialized production shipyards was exercised by the Ministry of Ownership Transformation.

The commercialization of shipyards was the initial stage of their privatization. In the early 1990s, difficulties in carrying out the privatization emerged. These were due to the lack of a government concept and program for privatizing the shipyards and the government's efforts to attract an investor. The increasing indebtedness of Stocznia Szczecińska SA and Stocznia Gdynia SA as well as the lack of government policy regarding their future, forced the management of Stocznia Szczecińska SA and Stocznia Gdynia SA to develop a restructuring program.

In 1991, the Ministry of Ownership Transformation approved Stocznia Szczecińska SA program and two years later the Stocznia Gdynia SA program. Stocznia Szczecińska SA program envisaged an arrangement between creditors (including banks, the State Treasury and enterprises) and the shipyard, organisational restructuring and employment reduction. The program resulted in a financial improvement of Stocznia Szczecińska SA (in 1993 the yard's net profit on sales of services amounted to PLN 11.1 million) and the acquisition of new markets (GNA, 1992).

In turn, the debt relief process at Stocznia Gdynia saved the company from bankruptcy but did not improve its economic situation. Stocznia Gdynia SA continued to incur high production costs due to a lack of organisational and employment restructuring. Among the three shipyards, the situation at Stocznia Gdańska SA was the worst as it was late in delivering vessels to ship owners. Between 1993 and 1995 the Minister for Ownership Transformation took no action regarding the Stocznia Gdańska SA, contrary to his obligations under the 1990

privatisation law. Nor did the shipyard's management take any steps to prepare a restructuring program.

In 1993 the improved financial situation of Stocznia Szczecińska SA allowed the management to draw up a privatisation program, which was accepted by the trade unions. The concept of privatizing the shipyard was adopted by Hanna Suchocka government. As a result of the privatization, the State Treasury held 9.65% of the yard's shares, while more than half was purchased by members of its management (SNA, 1993b). This was followed by an organizational restructuring of the shipyard, which resulted in a change of its name to Stocznia Szczecińska Porta Holding SA.

In 1996, as a result of a reform of the government's administrative and economic center, the Ministry for Ownership Transformation was abolished and replaced by the Ministry of State Treasury. The newly established ministry took over ownership rights over the shipyards. The Minister of the Treasury received a much broader range of powers than his predecessor, the Minister of Ownership Transformation. He could initiate the privatization process, keep records of assets and transform the State Treasury companies as well as dismiss and appoint their bodies. Government agencies performed an advisory function with respect to the government's chief administrative bodies. The Industrial Development Agency participated in the restructuring and privatization of shipyards.

When Stocznia Szczecińska was privatized, the operations of both the Stocznia Gdynia SA and Stocznia Gdańska SA were loss-making. In 1996 the Ministry of the Treasury adopted a program designed by the management of Stocznia Gdynia SA to improve the competitiveness of the shipyard. Implementation of the program improved the shipyard's situation and in 1998 it earned a net profit of PLN 114.6 million. Subsequently, the Ministry of the Treasury approved the privatisation of Stocznia Gdynia, with the State Treasury retaining 34% of the shipyard's shares. The shipyard's management took over 50% of ownership rights to the yard and appointed a bankruptcy trustee (NIK, 2000).

In the absence of a strategic investor and mounting losses from the operation of the Stocznia Gdańska SA, the government of Włodzimierz Cimoszewicz decided to declare it bankrupt. In December 1998, Stocznia Gdynia SA purchased the majority of shares in Stocznia Gdańska SA from the bankruptcy trustee. Together with accepting the shares of Stocznia Gdańska SA, the name of Stocznia Gdynia SA was changed to Stocznia Gdańska-Grupa Stocznia Gdynia SA (SG GSG SA). In the late 1990s SSPH SA and SG GSG SA made a profit on their activities.

Since 2000 the operations of the shipyards in Szczecin and Gdynia have been loss-making. The loss of liquidity was due to errors in the management of the shipyards, the occurrence of delays in the execution of shipbuilding contracts, and the persistently high exchange rate of the Polish zloty against the US dollar, which is commonly used to settle shipbuilding contracts (MSP, 2008). The influence on bad

financial situation of SSPH SA and SG GSG SA had offers of cheap ships produced in Asian shipyards. Analysis of the archival material allows us to conclude that the goal of the government was to maintain the shipbuilding industry in Szczecin and Gdynia. This was due to the influence of the companies on the economic development of the country, the situation of the cooperating companies and their role in the region.

In 2001, there were changes in the ownership structure of SG GSG SA. The majority of shares in Stocznia Gdynia SA were taken over by the State Treasury. The following year ARP SA bought shares in SSPH SA for a symbolic PLN 1 (CA MT, 2002). The debt of Stocznia Szczecińska amounted to around PLN 2 billion. In July 2002, an entity called Stocznia Szczecińska Nowa Sp. z o.o. (SSN) was established as a state-owned company. At the end of 2002 the shipyards in Szczecin, Gdynia and Gdańsk employed a total of 15,000 people and about 100,000 people in companies cooperating with them. At that time shipbuilding in the three analyzed centers was generating losses. Despite the restructuring programs implemented and public aid granted by the government in 2002-2005, the companies did not regain financial liquidity. The Polish government implemented only ad hoc solutions and did not prevent the causes of mismanagement (NIK, 2007).

In 2006, Stocznia Gdańsk was separated from Grupa Stocznia Gdynia, changing its name to Stocznia Gdańsk SA. The government's retention of unprofitable enterprises was due to fear of job cuts in the West Pomeranian and Pomeranian provinces and social protests. Between 2004 and 2008, the sale of the shipyards in Szczecin and Gdynia failed due to a failure to attract investors. Over the same period, state aid granted to the three shipyards amounted to PLN 8.58 billion (NIK, 2009). Finding an investor was supposed to guarantee the restructuring of SSN and Stocznia Gdańska SA without any support from public funds and ensure the shipyards' profitable operation on the competitive market. Only Stocznia Gdańsk SA was privatized in 2007. Poland's accession to the European Union (EU) forced the government to take steps to sell the shipyards.

4. Legal Regulations Determining Ownership Changes in the Shipbuilding Industry

Ownership changes of state-owned enterprises, which were one of the elements of Poland's political transformation, would not be possible without appropriate legal regulations. The first law which determined the procedures for ownership changes in Poland was the Act of 13 July 1990 on privatisation of state-owned enterprises (commonly referred to as the "Privatisation Act") and executive acts issued on its basis (Act, 1990). In March 1990, the Office of the Government Plenipotentiary for Ownership Transformation prepared a draft of the Privatization Act. A month later, during a session of the Sejm of the Republic of Poland, it was presented by Deputy Prime Minister and Minister of Finance - L. Balcerowicz.

The need to define legal standards for the privatization process made the work on its creation in the Sejm of the Republic of Poland proceed smoothly. The Privatization Act adopted by the Parliament in 1990 indicated that the purpose of ownership transformation was to be privatization. Commercialization was defined as a preliminary stage before the proper privatization. This document delineated the main types of privatization: capital and liquidation ones, as well as the methods of their implementation. The choice of the ownership transformation path depended on the size of the enterprise, its financial condition, as well as its strategic importance for the state economy. The ownership transformation process was supervised by a specially appointed state administration body -the Ministry of Ownership Transformation.

In 1996, the Act on Commercialization and Privatization of State Enterprises, adopted by the Parliament, broadened the previous scope of competencies of the Minister of Ownership Transformation. Compared to the 1996 Act on Commercialization and Privatization, the 1996 Act on Commercialization and Privatization introduced the principle of top-down transformation of an enterprise into an State Treasury unit (Act, 1996). Thus, the minister of State Treasury could commercialize an enterprise on their own initiative. In addition, in exceptional situations, the minister of State Treasury could commercialize (but government approval was required) a state-owned enterprise for a purpose other than privatization, i.e. without an intention of State Treasury to provide shares to third parties. The government was given power to designate enterprises of particular importance for the state economy, the privatization of which was subject to its consent.

The unsuccessful privatization of the shipyards and the failure to make a profit on the ships produced influenced the 2008 decision of the European Commission (EC) to sell the shipyard's assets (DK, 2008a; DK, 2008b). Following the EC's decision, State Treasury ministry drafted a compensation law for these entities (commonly referred to as the Shipyard Special Act). The government's draft law laid down the rules, conditions and procedures for the process of selling the shipyard's assets and for satisfying the shipyard's creditors and protecting workers' rights. The subjects of the compensation procedure were the Minister of the Treasury and the Chairman of the Industrial Development Agency.

The Minister of the Treasury supervised the compensation procedure. The Chairman of the Industrial Development Agency was responsible for initiating, discontinuing and terminating the compensation procedure and approving the plan for the sale of the shipyard's assets. When analyzing the provisions of the Shipbuilding Law, it should be noted that the creditors' meeting appointed and dismissed the compensation administrator, who was required to draw up a draft plan for the sale of the shipyard's assets (Act, 2008). The plan for the sale of the shipyard's assets was approved by the Chairman of the Industrial Development Agency after obtaining the opinion of the creditors' council and employees' representatives.

Protection of the rights of shipyard employees was one of the elements of the Shipbuilding Law. Among other things, a voluntary redundancy program was proposed. The employees were entitled to one-off cash compensation. As a result of the liquidation of the Szczecin and Gdynia shipyards, almost 10,000 shipyard workers lost their jobs. The amount of compensation depended on the length of service. In line with the EC decision, the assets of SSN and Stocznia Gdynia SA were divided and sold.

In 2011, the compensation proceedings of SSN, and a year later of Stocznia Gdynia SA were completed. The funds obtained from the sale of the shipyards' assets were used to settle their claims and implement an employee protection program. SSN received PLN 121 million from the sale of assets and Stocznia Gdynia received PLN 421.5 million (NIK, 2011).

5. Conclusions

Ownership transformation of state-owned enterprises initiated in 1990 was one of the elements of Poland's systemic transformation. They were new phenomena in the Polish economic reality. At the same time it was impossible to draw on the experience of Western countries in ownership transformations on such a large scale. Among other things, maritime enterprises, including shipyards, underwent ownership changes. These companies had to adapt to market conditions and the changing political situation in Central and Eastern Europe, which was significant for their sales markets. The assumptions of the government's ownership transformation policy and their subsequent implementation were possible under the legal standards characteristic of a democratic country with a market economy. The Privatization Act adopted by the Parliament in 1990 indicated that privatization was to be the goal of ownership transformations.

Answering the question posed in the introduction to this article, it is worth noting that the course of ownership transformation of state-owned enterprises was influenced by various institutions. Due to their scope of competence, they participated to varying degrees.

The body responsible for conducting the policy of ownership transformation of production shipyards was the Minister of Ownership Transformation, and since October 1996 - the Minister of the Treasury. Privatization of production shipyards, due to their special importance for the state economy, required government approval. The course of the ownership transformation process was significantly influenced, especially in the first years of the 1990s, by bodies operating alongside the government.

These institutions provided opinions and advice to the government, e.g. during the preparation of draft laws or matters related to the ownership transformation process. The Office of the Government Plenipotentiary for Ownership Transformations, the

Economic Council and the Industrial Development Agency were the most important institutions operating alongside the Council of Ministers. On the basis of the archival material examined, it can be concluded that in the 1990s in Poland the respective governments were indifferent to the ownership transformations of the shipyards and showed no particular interest in their economic situation. The subject responsible for preparing the shipyards for commercialisation and drawing up restructuring and privatisation programs was the management, with the participation of the trade unions.

The Polish government had problems in attracting investors interested in buying Stocznia Szczecin and Stocznia Gdynia with their own financial contribution. The decision of the EC that the aid was not compatible with EU law was a direct cause of the collapse of these entities. A major problem for Polish shipyards has been the policy of Asian countries towards the development of their shipbuilding industries. In the process of ownership transformations, the executive power was accompanied by the parliament, in particular the Sejm of the Republic of Poland, which performed a control function over the government.

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