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Understanding Water Service Dynamics: A Through Questionare?[2]

Abstract

This article presents a thorough examination of the contextual and legal framework governing access to water services, together with a consideration of the supplementary mechanisms available within this domain. Water services, as understood herein, are defined as services in the scope of water supply. The analysis traces the evolution of governance models, charting the progression from the state model to the local government model. Moreover, the article considers the provision of water services by private entities. Within the Polish legal system, it is the commune that bears primary responsibility for ensuring the delivery of such services.

Keywords: Water Services, Water Law, Water Supply, Local Government, Environmental Protection Law

Introduction

The ongoing transformations brought about by climate change are producing a range of diverse effects that also significantly impact human activity. One of the crucial effects of climate change is the alteration of hydrological conditions. As water constitutes the essential element of all life — human and otherwise — any shift in water dynamics inevitably bears upon the very functioning of living organisms, humankind included.

In this context, climate change and its consequences pose a challenge for a modern legislator. It becomes incumbent upon the lawmaker to ensure that legislative instruments, including those related to water supply, are crafted with due regard to these environmental shifts and their far-reaching implications.

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From the perspective of legal regulations, the classification of natural resources according to their renewability—namely as renewable, non-renewable, or slowly renewable—is of paramount importance. In law, this classification of natural resources, originally rooted in ecological and biological sciences, is linked to regulatory protection measures focusing either on quantitative or qualitative aspects.

In the case of non-renewable resources, such as mineral deposits, the law predominantly emphasises quantitative safeguards, aiming to preserve finite reserves. Conversely, renewable resources, such as atmospheric air, are typically protected through qualitative measures. Water occupies a unique position within this legal taxonomy, being most appropriately characterised as slowly renewable. While water has renewable properties, considering the natural water cycle, this cycle is increasingly destabilised by the advancing effects of climate change. Heightened rates of evaporation combined with declining levels of precipitation—phenomena well-documented within hydrological science—now imperil the availability of water suitable for human consumption.

Additionally, bodies of water also serve as natural habitats for certain species of flora and fauna. This means that, regarding water, both quantitative and qualitative protection are essential. Legal instruments must therefore attend to both the availability and purity of water resources. Among the most significant of these legal instruments is the regulation of water services.

This article sets out to analyse the concept of water services, appraising their significance, taking into account both the ecological perspective and in relation to the protection of human health and life. Central to this inquiry is an analysis of the prevailing models for the delivery of water services, with particular attention paid to the dynamics of changes within these models. In doing so, the article will explore the underlying drivers of such change and consider the likely trajectory of future developments in the governance and provision of water services[3].

The Concept of Water Services

No universally accepted definition of "water services" exists at either the international or European level. Indeed, while the Water Framework Directive employs the term 'water services', it does so solely in the context of specific uses of water—a context that does not align with the purposes of this article. Within European Union law, the subject matter of this article is principally governed by the European Directive of the 16 December 2020 on the quality of water intended for human consumption,[4] which will be examined in greater detail hereinafter.

3 | Szilágyi 2019, 255–275.

4 | Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (OJ EU L 435, 2020, p. 1).

For the purposes of this article, the concept of water services is understood to encompass a range of services provided by designated entities, the primary aim of which is the supply of water intended for human consumption. In this sense, water services are primarily regulated at the national level, constituting an essentially domestic issue for each country. Therefore, water services may bear different denominations across legal systems; for instance, what is understood *de lege lata* as collective water supply in some jurisdictions corresponds to la *fornitura dell'acqua* under Italian law. Thus, this article adopts a definition of water services that diverges from the legal interpretations set forth in the Directive on the quality of water intended for human consumption. Here, water services are construed broadly to include all activities related to the abstraction of water, its treatment, and its subsequent supply for human use.

Historical Context of Water Services

Water, as a subject of legal regulation, has captivated the attention of lawmakers since antiquity. Among the most illustrious ancient legal texts—the Code of Hammurabi—devotes as many as five paragraphs to water-related matters, chiefly addressing the regulation of water relations and the protection of dykes. Meanwhile, irrigation systems were devised both in ancient Egypt and ancient Mesopotamia; in essence, these constituted rudimentary water supply networks, though their primary purpose was not to serve the populace but to irrigate agricultural lands.

The earliest legal frameworks concerning water supply to the general population emerged within Roman law. In Roman law, water was recognised as a *res publica*—a public good—but crucially, it was not subject to private trade or commerce—*res extra commercium*. The remarkable feats of Roman architecture in supplying water to the inhabitants of Rome endure to this day.

However, the genesis of modern water supply systems should be traced back to the 19th-century advancements in sanitary engineering and hydrology. The 19th century saw a rapid and dynamic economic expansion, which led to a rapid urbanisation and city expansion. It was also an era marked by numerous inventions—many of which persist in application—particularly within the fields of sanitary and environmental engineering.

This rapid and dynamic development culminated in the enactment of the first legal acts, which, which, over time, have crystallised into the distinct branch of law now known as water law. The legal regulation of matters pertaining to the natural occurrence of water became intrinsically linked with the regulation of water supply itself.

In the latter half of the 19th century, water supply systems flourished within the confines of burgeoning urban centres. The establishment of water supply

systems within city boundaries engendered an imperative to ensure the maintenance of these facilities, particularly in terms of their durability, reliability, and uninterrupted service. Thus, the first entities responsible for water supply and the maintenance of the water supply systems were established.

It should be noted, however, that the original legal, economic, and organisational solutions regarding water supply were predominantly tied to the establishment of specialised entities within municipal structures. Municipal authorities were thus the primary actors in establishing these specialised entities responsible for water supply, rendering them essentially municipal bodies. There were also solutions where the city retained direct responsibility for supplying water.

Such development unfolded with remarkable uniformity across Europe, influenced less by political considerations than by the prevailing levels of engineering and technological progress. To this day, the architects of such systems—figures such as Lindley in Warsaw—are remembered and highly respected. Nevertheless, legal and organisational changes occurred in connection with political changes.

The revolution of 1917 heralded the advent of a completely new economic paradigm, predicated upon the nationalisation of property, including that held by municipalities, and the dissolution of local self-government. On a broader scale, this process, carried out across Central and Eastern Europe in the post-war period, gave rise to a legal and organisational model whereby water services were provided by the state solely through specialised organisational units. In contrast, the model adopted in Western Europe, particularly within the European Economic Community and now the European Union, largely retained a model in which responsibility for providing water services continued to rest with local authorities.

In the case of the Western European model, the internal structure of the state was also essential. For example, in the Federal Republic of Germany, the locus of authority predominantly resides within the system of national law rather than federal law. To this day, the solutions adopted in Germany remain at the level of the individual *Länder* (German federal states) rather than the federation as a whole.

Similarly, under Italian law, water services are firmly linked to a local government unit, that is, the municipality (in Italian, *comune*), despite the state's structure bearing certain federal characteristics. The equivalent of a *Land* in the Italian structure is the *regione* (region), albeit with considerably less autonomy than its German counterpart. Therefore, within Italian politics and legal practice, it has been far more feasible to anchor water services to the structure of local government. Reflecting the historical origins of water services dating back to the 19th century, two fundamental models of water service provision have emerged in Europe. The first, characteristic of Western Europe—particularly when considering the political divisions of Europe prior to the 1990s— is a model

closely aligned with local government responsibility. The second model, prevalent in Central and Eastern Europe, is predicated on the nationalisation of the sector[5].

The model characteristic of Western Europe treated water services as an expression of local self-governance. It was grounded in the assumption that matters relating to water supply fall within the competence of the local community, which should independently handle the matter of water supply. This approach was a natural continuation of the historical trajectory of water service regulation, which, as previously outlined, originated in the larger urban centres. Accordingly, the Western European model preserved and carried forward the municipal solutions adopted in the nascent stages of organised water service provision.

By contrast, the model characteristic of Central and Eastern Europe diverged markedly. In this region, water services came to be regarded as a prerogative of the state, to be administered through its institutional apparatus and under its authority. The solutions of nationalising water services formed part of a broader context of nationalising all sectors of public life and were not an exception in this regard. The state-centric model, which underpinned the economies and governance systems of Central and Eastern European countries, subsumed the provision of water services into its wider organisational and social schemes. Water service provision, therefore, were only a part of these assumptions related to the organisation of public life in Central and Eastern European countries.

Within this model, a fundamental prerequisite was the nationalisation—or, more precisely, the establishment of state ownership—of all property and infrastructure employed in the provision of water services. It primarily concerned a wide array of technical devices, such as pipelines, filtration systems, pumping stations, submersible pumps, and other related installations.

The collapse of this economic paradigm in the 1990s ushered in a profound transformation, compelling the nations of Central and Eastern Europe to confront a series of complex dilemmas concerning the organisation and governance of water services under an entirely new political and economic order. It is important to observe that the responses to this transformation were not uniform across the region; rather, individual states pursued divergent regulatory paths. In some cases, such as in Poland, water services went through a transition from nationalisation to their recommunalisation. In the Polish legal system, the responsibility for the collective supply of water is vested in the commune (*gmina*), which constitutes the primary unit of local self-government. Accordingly, it is the commune that now bears duty to ensure the delivery of water services within its territory.

Comparable regulatory frameworks have been adopted under Czech law. By contrast, the Hungarian legal system undergoing a gradual reversion towards the nationalisation of water supply services.

5 | Koncz 2019, 203–217.

The Polish model serves as an instructive example of the direction in which legal regulations concerning water supply evolved.

An inquiry into the evolution of any legal system—or a particular segment thereof—must necessarily commence with the delineation of a clear temporal framework. Of course, research can begin with antiquity; however, such an approach generally yields insights of a primarily historical-legal character. Where, however, the objective is to evaluate the contemporary state of the law through a comparative lens, juxtaposing its current form with that of an earlier period—as is the case in this study—it is imperative to define the temporal scope with precision.

Given the nature of this study, the period under examination here is demarcated by the operational lifespan of the Polish Waterworks Chamber of Commerce. The selected timeframe spans from 1 September 1992 to 1 September 2012.

This study seeks to elucidate the evolution of the normative framework governing collective water supply and collective sewage disposal, an evolution that resulted from the transformation of the Polish legal system initiated in 1990. The study will take into account the influence of general legislative trends on the concept of collective water supply and collective sewage disposal, as well as the notable influence of European Union legislation in shaping this domain.

Traditionally, the issue of collective water supply and sewage disposal has been situated within the ambit of Water Law. This classification was justified insofar as the natural factor common to both domains—water and its utilisation—formed a conceptual nexus between them. Consequently, collective water supply and sewage disposal came to be regarded as a specialised subset of Water Law. However, this association did not preclude the emergence of distinct legislative instruments addressing these matters in their own right.

The first legislative act regulating water supply in Polish law, excluding the normative legacy of the partitioning states, was the Regulation of the President of the Republic of Poland of 16 March 1928 on public water supply[6]. That legal act was subsequently repealed and replaced by the Act of 17 February 1960 on public water supply[7]. Further legal development occurred with the adoption of the Act of 10 December 1965 on the supply of water for agricultural purposes and to rural areas[8]. Finally, the codification of these issues was achieved in the Water Law Act of 24 October 1974, which repealed both the 1960 and the 1965 statutes. Articles 98 to 108 of the 1974 Act were dedicated specifically to matters of public water supply and public sewage disposal. Hence, while issues had long been connected to the broader body of Water Law by their very nature, they only became formally integrated into it through this legislative act.

6 | Dz. U. (Journal of Laws) No. 32, item 310, as amended
7 | Dz. U. (Journal of Laws) No. 11, item 72, as amended
8 | Dz. U. (Journal of Laws) No. 51, item 314, as amended

A natural consequence of subsuming the issue of collective water supply and sewage disposal within the broader framework of Water Law was the classification of these services under the domain of administrative law—consistent with the legal character of Water Law in its entirety. As Tarasiewicz aptly observed, "The Water Law of 1974 maintained the principle that the operation of water supply and sewage disposal systems in cities and rural areas, as well as state-owned agricultural enterprises, is the responsibility of the State, which carries out these tasks at its own expense."[9]

This legislative configuration had further ramifications: it resulted in the predominance of the method of regulating legal relationships according to administrative law over methods characteristic of civil law. The legal relationship between the service provider and the service recipient was accordingly marked by an imbalance of power, with the provider occupying a superior, authoritative position.

An administrative decision should be considered a predominant legal instrument in shaping these legal relationships. Moreover, planning elements so emblematic of the prior legal regime assumed a pivotal role in the structuring of the sector. The construction of water supply and sewage disposal infrastructure also remained firmly within the remit of the state administration, whose actions in this area were carried out using authoritative, top-down instruments. The responsibility for both the construction of water and sewage infrastructure and the provision of collective water supply and sewage disposal services rested solely with the state administration.

The first change in the legislator's approach to the concept described above can be observed in the Act of 8 March 1990 on Municipal Government[10] (at the time of its adoption titled the Act on Local Government). While the regulation of collective water supply and sewage disposal id not constitute the act's primary objective, it nonetheless formed an element of a much broader and more profound transformation—namely, the reorganisation of public administration and the re-establishment of local self-government.

The establishment of local government necessitated the assignment of specific responsibilities thereto, distinct from those of state administration. It was also imperative to define, regulate, and determine the legal nature of these tasks. The legislator addressed this matter in the initial provisions of the Act on Municipal Local Government, with particular reference to Article 7 thereof.

According to the theory of administrative law, public tasks arise only where an individual is unable to meet their needs independently—whether individually, within the family unit, or, as appropriate, through other higher institutions of civil

9 | Tarasiewicz 1981, 163.
10 | Dz. U. (Journal of Laws) of 2001, No. 142, item 1591, as amended

society[11]. In such instances, it falls to the state to assume certain obligations, with local serving as the primary vehicle for discharging these duties, primarily at the lowest level, which is the commune[12].

The legislator employed the notions of the 'own task' (*zadanie własne*) and the 'public utility task' (*zadanie użyteczności publicznej*). The fundamental element of an 'own task' is that it is discharged at the expense, on behalf, and at the responsibility and risk of the commune. By contrast, a public utility task is a specific category of own task—distinguished by its aim of satisfying the collective needs of the local community. The latest literature on administrative law defines own tasks as "local government tasks, which, in accordance with the principle of subsidiarity, ought to be carried out by self-governing communities of residents rather than by hierarchical administrative structures subordinate to central state authorities".[13]

The provision of collective water supply and collective sewage disposal is explicitly specified in Article 7(1)(3) of the Act on Municipal Local Government. Notably, the legislator did not limit the scope of the commune's responsibilities merely to water supply and sewage disposal alone. Rather, distinct emphasis was placed on the necessity of developing the requisite infrastructure for water supply and sewage disposal.

With the entry into force of the Act on Municipal Local Government, collective water supply and collective sewage disposal were linked to the commune as an own task of a public utility nature. This legal characterisation has endured to the present day, as is confirmed, inter alia, by Article 3 of the Act of 7 June 2001 on Collective Water Supply and Collective Sewage Disposal[14], which provides that:

"1. Collective water supply and collective sewage disposal shall constitute own tasks of the commune.

2. Where communes undertake the performance of the task referred to in paragraph 1 jointly, the rights and obligations of the commune bodies, as set forth in the relevant legislation, shall be exercised by the competent bodies of:

1) the inter-communal association; or

2) the commune designated in the inter-communal agreement.

3. The commune shall determine the directions for the development of the network in the study of conditions and directions of spatial development of the commune and the local spatial development plan"[15].

The entry into force of the Act of 28 July 1990 amending the Civil Code exerted an indirect yet notable influence on the concept of collective water supply and

11 | Izdebski 2009, 131.
12 | Ibid. 131.
13 | Chmielnicki 2010, 943.
14 | Dz. U. (Journal of Laws) of 2006, No. 123, item 858, as amended
15 | See, i.a. Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Krzyszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

collective sewage disposal[16]. This major amendment to the Civil Code fundamentally changed the role of civil law instruments in shaping legal relations, elevating civil law mechanisms to the position of primary regulatory tools, whilst correspondingly diminishing the prominence of instruments rooted in administrative law. This shift eventually found expression within the normative concept of collective water supply and collective sewage disposal, albeit with a delay of eleven years, as shall be addressed in due course.

Therefore, following the two significant changes in the legal system in 1990, it could be said that collective water supply and collective sewage disposal became categorised as an own task of a public utility nature incumbent upon the commune. Notwithstanding this reassignment of institutional responsibility from the central state to the local self-government unit, legal relations in this domain remained, at that stage, subject to the prevailing regulatory paradigm of administrative law. Nevertheless, a gradual erosion of the administrative model in favour of one grounded in civil law principles became discernible.

Another significant milestone in the evolution of the concept of collective water supply and collective sewage disposal was the enactment of the Act of 23 December 1996 on Municipal Management[17]. While this piece of legislation did not directly govern matters pertaining to collective water supply and collective sewage disposal, it exerted a significant influence on the implementation of municipal management, within which such public utility tasks are subsumed.

The primary focus of the Act on Municipal Management lies in the subjective dimension of municipal activity. It is principally concerned with regulating issues related to organisational and legal forms through which a commune may undertake municipal management[18]. The legislative solutions embedded in this Act have a direct bearing on the admissibility of organisational and legal forms recognised under the Act on Collective Water Supply and Collective Sewage Disposal.

The most extensive restructuring of the model governing collective water supply and collective sewage disposal occurred in the year 2001. The impetus for this transformation, however, did not arise directly from concerns relating to water supply and sewage disposal, but rather stemmed from broader developments in the field of environmental protection law. In the same year, on 27 April 2001, the Environmental Protection Law was enacted,[19] establishing a foundational statute for the Polish environmental legal framework. In consequence of the adoption of this cornerstone legislative act, a new Water Law was subsequently promulgated on 18 July 2001.[20]

16 | Dz. U. (Journal of Laws) No. 55, item 321
17 | Dz. U. (Journal of Laws) of 2011, No. 45, item 236, as amended
18 | See, i.a. Banasiński & Kulesza 2002; Gonet 2007; Szydło 2008; Gonet 2010.
19 | Dz. U. (Journal of Laws) of 2008, No. 25, item 150, as amended
20 | Dz. U. (Journal of Laws) of 2012, item 145

Equally consequential in assessing the evolution of the underlying concept was the enactment of the Act of 27 April 2001 on Waste[21], which, when read in conjunction with the earlier Act of 13 September 1996 on Maintaining Cleanliness and Order in the Commune[22], laid the groundwork for a comprehensive regulatory framework governing waste management. The issue of waste is inextricably linked to that of wastewater, rendering it essential to reference these two legislative instruments, both of which exerted a considerable influence on the conceptual development in question.

The most momentous reform, however, was the adoption of the new Act on Collective Water Supply and Collective Sewage Disposal, to which the Chamber of Commerce Polish Waterworks made a substantial contribution.

As aptly noted by A. Rozwadowska-Palarz and H. Palarz, "the need for adopting the Act on collective water supply and collective sewage disposal [...] arose from the absence of regulations specifying the rules for the operation of water supply and sewage disposal enterprises, as the obligations of these enterprises towards consumers and the detailed principles for setting and verifying tariffs were not defined"[23].

Wiśniewski further noted that "the Act on Collective Water Supply and Collective Sewage Disposal fills the legal gap that emerged in this field following the transformation of water supply and sewage disposal infrastructure from state ownership into municipal self-government property"[24].

However, Dziadkiewicz highlighted that "the regulation aimed to ensure the security of services—understood as guaranteeing continuity of supply and adequate water quality, reliable sewage disposal and treatment, and the development of these services—to create opportunities for complying with increasingly stringent environmental protection requirements and to improve the economic efficiency of water supply and sewage disposal enterprises"[25].

The enactment of the Act on Collective Water Supply and Collective Sewage Disposal triggered radical and profound changes in the normative framework for regulating collective water supply and collective sewage disposal. However, the legislator did not effect a complete departure from the pre-existing regulatory framework. For the first time, matters pertaining to collective water supply and collective sewage disposal were consolidated within a single legislative instrument.

This legislative development also signified a redefinition of the axiological foundations for regulating collective water supply and collective sewage disposal, with the legislator according precedence to a set of values distinct from those previously foregrounded. The shift in axiological emphasis rendered it not only

21 | Dz. U. (Journal of Laws) of 2010, No. 185, item 1243, as amended
22 | Dz. U. (Journal of Laws) of 2012, item 391
23 | Rozwadowska – Palarz & Palarz 2002, 7.
24 | Wiśniewski 2001, 7.
25 | Dziadkiewicz 2011.

possible but arguably imperative to regulate matters concerning collective water supply and collective sewage disposal by means of a separate legal act.

First and foremost, it should be noted that the legislator has designated the contract as the primary legal instrument regulating relations in the sphere of water supply and sewage disposal. As a result, the legislator abandoned the authoritative method of regulating legal relations, which was characteristic of the previous concept. This is not to suggest, however, that enterprises engaged in water supply and sewage disposal have been entirely divested of their authoritative influence over the counterparty to the legal relationship. Rather, the exercise of such authority has become peripheral and largely symbolic, rather than central or prevailing[26].

Under the current legal framework, an enterprise engaged in the provision of water supply and sewage disposal services is no longer vested with the power to issue authoritative administrative decisions defining the legal situation of the other party to the legal relationship. Nonetheless, the residual authoritative character of such enterprises is reflected, inter alia, in their capacity to issue technical conditions for connection, unilaterally specifying the obligations of a potential service recipient.

The contract, as the principal legal instrument governing water supply and sewage disposal, assumes a position of primacy not only in the legal relations between the water supply and sewage disposal enterprise and the end recipient of the service, but equally in the legal relations between the enterprise and any other entity from which the enterprise procures water or to which it discharges sewage—commonly referred to as wholesale water purchase or wholesale sewage disposal).

As a consequence of the legislator's decision to accord primacy to the contract as the primary instrument regulating water supply and sewage disposal, it became necessary to delineate more precisely the legal position of the commune within the framework of collective water supply and collective sewage disposal.

Despite the profound transformation of the normative concept, the legislator did not abandon the fundamental premise that collective water supply and collective sewage disposal constitute an own task of the commune. Nevertheless, the new emphasis placed upon the contractual basis of legal relations in this sphere necessitated a redefinition of the commune's role therein.

In undertaking this redefinition, the legislator encountered certain difficulties. As a result, the legal status of the commune under the Act on Collective Water Supply and Collective Sewage Disposal lacks clarity and precision. The commune may, therefore, find itself party to a range of legal relations—both public and private in nature—depending on the particular legal context in which it acts.

26 | Rakoczy 2007.

The emergence of the new normative concept of water supply and sewage disposal compelled the legislator to address the legal status of the entity entrusted with the provision of such services. During the era in which water supply and sewage disposal fell under the remit of the state administration, it was of relatively little consequence to determine precisely which specialised entity was to execute these functions. Accordingly, the Water Law of 1974, along with its legislative predecessors, afforded scant attention to issues concerning the entity providing the services. However, with the elevation of the contract to the position of principal legal instrument governing these relations, it became imperative to regulate the subjective—or personal—dimension of the legal framework[27].

While the conclusion of a civil law contract may, in certain respects, still be regarded as an expression of public administrative activity, this role is now secondary and peripheral. As a result, the issue of water supply and sewage disposal has assumed a tripartite structure. The commune remains the entity responsible for the performance of this own task, as reaffirmed by Article 3 of the Act on Collective Water Supply and Collective Sewage Disposal, which has already been referenced[28]. The commune may discharge this responsibility directly; alternatively, it may do so through the establishment of a municipal budgetary institution. Lastly, the commune may either found or accede to a commercial company for the purpose of executing these services.[29]

Ultimately, the commune may commission this task to an organisationally independent entity, provided such delegation is effected in a manner prescribed by law. A key element of the collective water supply and collective sewage disposal concept lies in the explicit distinction maintained between these two spheres of activity as undertaken by the relevant service enterprise. While the consolidation of water supply and sewage disposal under a single statutory instrument may, at first glance, appear somewhat artificial or counterintuitive, there exist persuasive justifications for addressing both sectors of municipal management within the framework of one legislative enactment, notwithstanding the substantive divergences that characterise them.

Chief among these justifications is the shared feature of the specialised nature of the service provider. As indicated in Articles 16 et seq. of the Act on Collective Water Supply and Collective Sewage Disposal, the entity must have the appropriate technical and organisational capacity.[30] Accordingly, it is both feasible and lawful

27 | Rakoczy 2012a.
28 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.
29 | Rakoczy 2009, 182–191.
30 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

for a single entity to be simultaneously responsible for the supply of water and the disposal of sewage.

Both water supply and sewage disposal necessarily depend upon the existence of specialised infrastructure. Such services may be rendered solely by an entity equipped with the requisite technical facilities dedicated to water supply and sewage disposal, regardless of the nature of its legal title to those facilities.

In the Act on Collective Water Supply and Collective Sewage Disposal, however, the legislator appears to have underestimated the critical importance of such infrastructure, without which the proper delivery of these essential public services cannot be ensured. The statutory regulations concerning the status of water supply and sewage disposal facilities remain disjointed and incomplete. It is equally unclear why the legislator opted to regulate certain issues in the Act, while leaving other equally significant matters unaddressed.

This legislative inconsistency has given rise to considerable uncertainty in both scholarly commentary and judicial decisions, particularly in relation to the statutory definitions of "network" and of "connections" for water supply and sewage disposal. In this regard, the legal status of such infrastructure is instead governed by the general provisions of the Civil Code, with particular reference to Article 49 thereof.

This provision reads as follows: "§ 1. Transmission installations intended for the conveyance or discharge of liquids, steam, gas, electricity, or similar utilities shall not be deemed fixtures of the real estate if they constitute part of an enterprise.

§ 2. A party who has borne the costs of constructing such transmission installations as referred to in § 1 and holds title to them may require the entrepreneur, whose network the installations have been connected to, to acquire ownership thereof against appropriate remuneration, unless the parties have agreed otherwise. The entrepreneur may likewise demand the transfer the ownership of such installations."

The concept of collective water supply and collective sewage disposal—inseparably connected with the existence and operation of appropriate water supply and sewage disposal infrastructure—is influenced by the provisions of the Civil Code, which regulate the legal status of transmission apparatus. The evolution of these provisions evidences the legislator's growing appreciation of the critical role such infrastructure plays in the delivery of public utility services. Equally, the legislator acknowledged the legal claims of property owners—be they for remuneration, compensation, or demands for the removal of installations—as matters warranting due attention. Thus, the Polish legislator, with the active engagement and support of the Chamber of Commerce Polish Waterworks (*Izba Gospodarcza Wodociągi Polskie*, IGWP), undertook legislative reform aimed at ensuring the stability of the existence of transmission infrastructure—including water supply and sewage disposal installations—situated upon land belonging to third parties.

The culmination of these efforts was the adoption of the Act of 30 May 2008, amending the Civil Code and certain other statutes[31], through which a wholly new legal construct—the transmission easement—was introduced into the Polish legal order.

The general appraisal of this legislative approach reveals that the legislative direction is appropriate. First and foremost, the legislator achieved the result of ensuring a stable legal title, enabling the siting of transmission infrastructure on third-party land—this legal title taking the form of a limited real right, the legal certainty and durability of which must be regarded as a matter of paramount importance.

Further to this, the legislator explicitly aimed to maximally dissociate, as far as practicable, the continued existence of this legal title from the position of the property owner. As practice shows, such a position is often unstable and changeable, influenced by an array of extraneous circumstances. It would be wholly unrealistic to expect that a water supply and sewage disposal enterprise, or more broadly, a transmission system operator, could prudently base decisions regarding the siting and development of infrastructure solely based on individual consent or bilateral agreements with landowners. Such arrangements fall short of providing the legal stability that the legislator sought to secure.

Finally, at the heart of the legislator's approach lies the imperative of safeguarding legal certainty in civil transactions. To this end, the transmission easement is recorded in the land and mortgage register, ensuring that any future acquirer of the affected property is bound by and must take account of its existence.[32]

The conceptual evolution of collective water supply and collective sewage disposal has also been strongly influenced by European legislation , which has, in many respects, become the principal point of reference for the domestic legislator. However, in accordance with the principle of subsidiarity, the European legislator does not aspire to regulate all issues related to collective water supply and sewage disposal. Its intervention is both selective and purposive, primarily addressing two key concerns: first, proper sewage management, within the broader context of waste and environmental protection; and second, the maintenance of suitable quality standards for water intended for human consumption.

In the domain of wastewater management, the European legislator's principal interventions are embodied in three key directives: Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment[33], Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption[34],

31 | Dz. U. (Journal of Laws) No. 116, item 731
32 | Rakoczy 2012, 23.
33 | (OJ EU L 135, 30.05.1991),
34 | (OJ EU L 330, 05.12.1998),

and finally, Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy.[35]

The ongoing reconfiguration of the concept of restructuring of the concept of collective water supply and collective sewage disposal in Poland—which entails a gradual transition from regulatory methodologies characteristic of administrative law to those anchored in civil law—remains an unfinished project. As Rotko aptly observed, however, "the Act [on Water Supply – author's note] culminates the developmental trajectory of Polish regulations governing the activities of the water and sewage sector"[36].

While this conceptual framework now rests substantially upon private law foundations, the legislator has yet to find a solution regarding the role to be assigned to public entities—most notably, communes—in collective water supply and collective sewage disposal. The position of the commune in the Act on Collective Water Supply and Collective Sewage Disposal is inherently complex and at times contradictory, with certain elements of its role overlapping or even mutually excluding one another. The legislator must, and does, respond to changes across the entire legal system, such as the recent strengthening of consumer legal protection.

Moreover, changes in European law continue to exert considerable influence. Of particular concern to the Chamber of Commerce Polish Waterworks are recent and prospective changes related to the regulation of the legal status of water supply and sewage disposal facilities, especially insofar as these changes intersect with complex historical and legal considerations.

The Chamber of Commerce Polish Waterworks appears acutely aware of these manifold circumstances and has assumed an active role in the legislative field—whether by joining initiatives spearheaded by other entities or by independently advocating for legislative reform.

The eleven years during which the Act on Collective Water Supply and Collective Sewage Disposal has remained in force have afforded sufficient temporal perspective to appraise both its merits and its deficiencies. This evaluation led to the position that the legal framework governing this vital sector requires not only immediate and targeted amendments but also far-reaching, structural reform. The ultimate aim is the enactment of a contemporary and coherent statute, befitting the modern demands of water supply and sewage disposal.

35 | (OJ EU L 327, 22.12.2000).
36 | Rotko 2011, 11.

Water Services in the Polish Legal System

As previously observed, a characteristic feature of the historical evolution of legal regulations concerning water services has been the legislator's shifting approach to the placement of such provisions—oscillating, in response to various extra-legal influences, between their integration into general water law and their articulation in distinct, autonomous legislative instruments. As noted in Polish legal literature, the adopted solutions depended on whether the legislator expanded the scope of state control over water services or whether this regime was more lenient. Under current law, the issue of water services is regulated in a separate legal act, namely the Act of 7 June 2001 on Collective Water Supply and Collective Sewage Disposal[37].

Within the Polish legal order, this statute stands apart from the Act of 20 July 2017 – Water Law.[38]

While there undoubtedly exists a substantive nexus between, they do not form a monolithic body of legal solutions.

In addition to these two acts concerning water and water supply, the broader legal architecture of the water services sector is also regulated by additional legal acts. One such act is the Act of 8 March 1990 on Municipal Local Government,[39] which lays down the organisational structure and delineates the responsibilities of the local government unit—specifically, the commune—entrusted with the provision of water services under Polish law. The general principles of municipal management, including those applicable to water supply, are in turn regulated by the Act of 20 December 1996 on Municipal Management.[40]

The provisions of civil law, primarily the Act of 23 April 1964, the Civil Code[41], and the Act of 17 November 1964, the Code of Civil Procedure,[42] occupy a position of considerable importance in the regulation of water supply. These statutes are so essential that, within the Polish legal system, the primary legal instrument governing the provision of water services is a contract, a construct firmly situated within the domain of private law.

37 | Act of 7 June 2001 on Collective Water Supply and Collective Sewage Disposal (consolidated text Dz. U. (Journal of Laws) of 2024, item 757).
38 | Act of 20 July 2017 – Water Law (consolidated text Dz.U. (Journl of Laws) of 2024, item 1087 as amended).
39 | Act of 8 March 1990 on Municipal Local Government (consolidated text: Dz.U. (Journal of Laws) of 2024, item 1465 as amended).
40 | Act of 20 December 1996 on Municipal Management (consolidated text: Dz.U. (Journal of Laws) of 2021, item 679).
41 | Act of 23 April 1964 – Civil Code (consolidated text Dz.U. (Journal of Laws) of 2024, item 1061 as amended).
42 | Act of 17 November 1964 – Code of Civil Procedure (consolidated text Dz.U. (Journal of Laws) of 2024, item 1568 as amended).

Moreover, one must not overlook the statutory instruments that govern the supervision of water supply activities. Chief among these is the Act of 14 March 1985 on Sanitary Inspection. In Polish law, which designates the sanitary inspection authority as the competent body responsible for overseeing the quality of water intended for human consumption within the Polish legal system.

The Polish legislator has adopted a decentralised model whereby the provision of water services falls within the tasks and responsibilities of the lowest tier of local government, namely the commune. This is expressly affirmed in Article 3(1) of the Act on Collective Water Supply and Collective Sewage Disposal, which reads: "Collective water supply and collective sewage disposal are the commune's own tasks".[43]

Polish law characteristically incorporates collective water supply and collective sewage disposal within a single legal act. It is, however, imperative to underscore that there exists no substantive interdependence between these two spheres of activity. Each may be performed independently; nevertheless, it has been deemed expedient to vest both functions in a single entity—typically a public undertaking, namely a water supply and sewage disposal enterprise—as the prevailing model of effective service delivery.

It must be acknowledged that certain entities engage exclusively in the provision of water supply or sewage disposal services. This bifurcation of functions is not, in itself, detrimental to the efficacy of the overall system.

Under Polish law, collective water supply constitutes one of the commune's own task. This designation is of critical legal significance. An "own task" is one that the commune undertakes at its own expense, on its own account, under its own responsibility, and at its own risk. It is further characterised as a mandatory task—one from which the commune may not lawfully withdraw.

In Polish law, the attribution of responsibility for water services to the commune does not entail that the commune must perform the task personally or in isolation. Rather, the model adopted under Polish law includes three groups of entities involved in providing water services: the commune, the water supply and sewage disposal enterprise, and the individual service recipient. These three groups of entities are bound together by a web of legal relations, encompassing both public and private law dimensions. Foremost among these is the contractual relationship between the water supply and sewage disposal enterprise and the service recipient. Despite this, the commune remains the central figure in this legal and organisational framework.

The legal situation of the commune has already been described above. As previously elaborated, the provision of water services is an own task of the commune, for

43 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

which it bears ultimate responsibility. While it does not function as a supervisory or regulatory authority in the strict administrative sense, its involvement imparts a public law character to the market for water services. Even where private entities serve as the immediate providers of such services, the commune retains an active and decisive role in structuring and ensuring the availability of water services to the population.

The prominent role accorded to the commune is a clear expression of the legislator's intent to preserve the provision of water services within the domain of public law, rather than surrendering it entirely to the dynamics of private law and market forces. The commune stands as a guarantor of the proper provision of water services.

In its capacity as the principal organiser of the water services market, the commune is engaged in specific legal relationships both with the water supply and sewage disposal enterprise and with the service recipients. This legal entanglement is wholly appropriate, given that the commune is carrying out its designated own task through these interactions. To this end, the legislator has endowed the commune with specific powers that enable it to determine how water services are provided.

The principal normative instrument through which the commune performs its tasks related to water supply is the regulation on water supply and sewage disposal. This regulation has the status of a local act of law, and is thus legally binding. It is adopted by the commune's legislative body, namely the local council. The statutory content of this regulation is outlined in Article 19(5) of the Act on Collective Water Supply and Collective Sewage Disposal[44], which provides as follows:

"The regulation on water supply and sewage disposal shall define the rights and obligations of the water supply and sewage disposal enterprise as well as the service recipients, including:

1) the minimum standard of water supply and sewage disposal services to be provided by the enterprise;
2) the terms and procedure for concluding contracts with service recipients;
3) the billing method based on the prices and fees set specified in the applicable tariffs;
4) the conditions for connecting to the network;
5) the technical requirements governing access to water supply and sewage disposal services;
6) the method of acceptance of network connections by the enterprise;
7) the steps to be taken in the event of service interruptions or failure to meet the required standards of supplied water and discharged sewage;

44 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

8) service standards applicable to users, including the handling of complaints and the exchange of information, particularly regarding interruptions in service provision; and
9) the conditions for supplying water for fire-fighting purposes."

Another legal instrument at the commune's disposal in the governance of water supply management its competence to grant permits for conducting such activity. Pursuant to Article 16(2) of the Act on Collective Water Supply and Collective Sewage Disposal,

"A permit may be issued upon the request of a water supply and sewage disposal enterprise which:

1) possesses a registered office and address, branch, or representative office within the territory of the Republic of Poland, as defined in the Act of 6 March 2018 on the Rules for the Participation of Foreign Entrepreneurs and Other Foreigners in Economic Transactions in the Republic of Poland [Dz.U. (Journal of Laws) of 2022, item 470];
2) has the requisite financial resources or furnishes documented evidence of its capacity to secure funding in an amount necessary for the proper performance of collective water supply and collective sewage disposal services;
3) possesses technical resources commensurate with the scope of activities referred to in par. 1."

The commune is authorised to issue such permits solely to an entity that meets the statutory criteria. Should an applicant fail to satisfy these conditions, the commune's authority may lawfully refuse to issue the permit. This authorisation procedure thus functions as an initial safeguard, ensuring that entities directly providing water services to recipients comply with all prescribed legal and technical standards.

In addition to this permitting competence, the commune is further equipped with a strategic planning instrument that underpins its long-term engagement in the water services sector. Of particular relevance here is the obligation to adopt a long-term development and modernisation plan. Under Article 21(2) of the Act on Collective Water Supply and Collective Sewage Disposal, "The water supply and sewage disposal enterprise prepares a long-term plan for the development and modernisation of the water supply and sewage disposal facilities in its possession, hereinafter referred to as the 'plan'."

The long-term development and modernisation plan does not possess the character of a generally binding legal act; nevertheless, it constitutes a vital policy instrument through which the commune directs the strategic development, expansion, and upgrading of the water supply and sewage infrastructure.

An essential legal instrument through which the commune performs its duties regarding the collective water supply task lies in its competence to approve tariffs.

From the effective date of the Act on Collective Water Supply and Collective Sewage Disposal, this competence was vested in the representative body of the commune—that is, the local council. Pursuant to Article 12(8) of the Act on Collective Water Supply and Collective Sewage Disposal, a tariff is defined as "a table of publicly announced prices and charges for collective water supply and collective sewage disposal, and the conditions for their application".[45]

The process of tariff approval, understood as the formal ratification of an official price list, is entirely consistent with the legislative framework wherein collective water supply constitutes the commune's own task. The Polish legislator rightly recognised that the proper execution of this task by the commune must also include the commune's competence to establish the financial terms under which water services are provided.

Therefore, it was assumed that their approval would fall under the responsibilities of the commune's representative body.

In 2017, a significant legislative shift occurred with the amendment to the Act on Collective Water Supply and Collective Sewage Disposal, whereby the Polish legislator completely changed the model for approving tariffs. The competence to approve tariffs for collective water supply and collective sewage disposal, was transferred from the commune's representative body to a state authority—namely, the director of a regional water management board. This transition effectively removed the approval process from the domain of local self-government, vesting it in a state body independent of the commune. This change, however, gave rise to a number of undesirable consequences. Chief among these were concerns that, in the course of approving tariffs, the state authorities frequently failed to take into adequate account the actual costs associated with water production. Moreover, the approval procedures themselves became unduly protracted.

Currently, legislative efforts are underway to restore the pre-2017 model, thereby reassigning the competence to approve tariffs to the local council. This direction of change should certainly be assessed positively. If the commune is to be responsible for collective water supply, it should have a genuine influence on the proposed rates and charges applied. To deprive the commune of this competence is, in effect, to render it incapable of fulfilling its statutory task in any effective sense.

In summary, regarding the legal instruments through which the commune shapes the execution of its own task—namely, the provision of collective water supply—it should be noted that the key instruments include the ability to adopt regulations on water supply and sewage disposal, as well as the approval of tariffs.

45 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

A supporting element here is an operating permit granted to a water supply and sewage disposal enterprise, and adopting a long-term development and modernisation plan. It is beyond discussion that the commune is an important, if not the most important, entity in shaping collective water supply in practice.

The second group comprises entities that directly supply water, which the legislator refers to as water supply and sewage disposal enterprises. The definition of such an enterprise is set forth in Article 2(6) of the Act on Collective Water Supply and Collective Sewage Disposal, in the following terms: "A water supply and sewage disposal enterprise is an entrepreneur within the meaning of the Act of 6 March 2018 on Entrepreneurs (Dz. U. [Journal of Laws] of 2024, 236), if it conducts business activities in the field of collective water supply or collective sewage disposal, as well as municipal organisational units without legal personality, involved in such activities".[46]

As shown in the definition presented above, a 'water supply and sewage disposal enterprise' encompasses two groups of entities. The first consists of entrepreneurs as defined by a separate law, namely the Act on Entrepreneurs. The second includes municipal organisational units which, though lacking legal personality, are nevertheless engaged in the provision of water services.

The term 'entrepreneur' is defined in Article 4 of the Act on Entrepreneurs, which reads: "1. An entrepreneur is a natural person, a legal entity, or an organisational unit that is not a legal entity, to which a separate statute grants legal capacity, and which is involved in business activity. 2. Entrepreneurs also include the partners of a civil law partnership in the scope of their business activity. 3. The rules governing the commencement, conduct, and cessation of business activities by foreigners are defined by separate legislation".

In contrast, the term "municipal organisational unit without legal personality" refers to an entity that is legally and organisationally subordinate to the commune. Such an entity does not possess the capacity to act independently in legal transactions.

Within the Polish legal system, a water supply and sewage disposal enterprise is not a distinct type of legal entity. This is because the legislator assigns the term 'water supply and sewage disposal enterprise' to legal entities engaged in legal and economic activities. The recognition of a legal entity as a water supply and sewage disposal enterprise is contingent upon the issuance of an operating permit issued by the commune, as previously mentioned. A specific entity may obtain the status of a water supply and sewage disposal enterprise only if it meets the conditions prescribed by law.

46 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

One of the fundamental deficiencies with the Polish model of collective water supply and water services lies in the conspicuous absence of statutory regulation governing the legal relations between the commune and the water supply and sewage disposal enterprise. The Polish legislator remains completely silent on the matter, failing to delineate the normative framework within which these two pivotal entities. This legislative omission is especially problematic given that Polish law imposes an obligation on the commune to provide water services, while simultaneously adopting a solution where these services are, in practice, provided by an entity referred to as a water supply and sewage disposal enterprise. In this situation, it seems entirely obvious that the Polish legislator should regulate the legal relations between a commune, which is responsible for providing water services, and a water supply and sewage disposal enterprise, which carries out these services for the service recipients.

The lack of regulation by the legislator means that three different models for regulating the legal relations between a commune and a water supply and sewage disposal enterprise could be adopted. The legal foundations for these three model solutions should not be sought so much in the Act on Collective Water Supply and Collective Sewage Disposal, but rather in other statutes, such as the Act on Municipal Management, the Act on Municipal Local Government, or even the Code of Commercial Companies and Partnerships.

The statutory definition of a water supply and sewage disposal enterprise, previously cited, is also helpful in reconstructing these three models , as it makes clear that such enterprises may take one of two forms: they may be either entrepreneurs as defined under the Act on Entrepreneurs or municipal organisational units lacking legal personality.

The principal criterion for distinguishing the three models is, in fact, the degree of organisational and economic dependence on the commune. An auxiliary criterion lies in the method of establishing the legal relationship and the sources of that relationship.

The first and most frequently encountered model is one in which the commune either establishes or becomes a partner in a commercial law company, which subsequently obtains the status of a water supply and sewage disposal enterprise from the commune. This model relies predominantly upon mechanisms and instruments characteristic of commercial law. The enterprise in this model assumes the organisational form of a commercial company. The commune, in turn, participates in the enterprise solely in the capacity of a shareholder, with its influence over the company's operations being confined to the corporate rights and instruments available to it.

Where the water supply and sewage disposal takes the form of a commercial company, it constitutes an organisationally and legally independent legal entity with its own legal personality. Within this model, the commune may either enter into an agreement with such a company to perform the task of providing water

services or directly assign the task in the company's founding deed. A distinguishing hallmark of this model is that the primary legal instruments regulating the relationship between the commune and the water supply and sewage disposal enterprise are civil law instruments.

The second model, by contrast, does not involve the creation of a company but instead creating an organisational unit without legal personality. The defining feature of this model is that the commune merely establishes a specialised organisational unit, which, however, cannot participate independently in legal transactions. Consequently, it cannot, in its own name, enter into contracts, hold title to water infrastructure, or otherwise act in law. The legal entity authorised to participate in legal transactions is the commune itself. In this model, the commune carries out the water supply task independently. It only employs a specialised organisational unit to perform this task, which does not have a legal personality.

The third model dispenses with both the formation of a company and the establishment of an organisational unit. Here, the commune independently performs all the tasks and duties assigned to a water supply and sewage disposal enterprise. Such an option does not arise directly from the provisions of the law. As previously indicated, a water supply and sewage disposal enterprise can only be a legal entity that is either an entrepreneur (including a company) or a municipal organisational unit without legal personality. However, the definition of a water supply and sewage disposal enterprise cited above does not explicitly provide that the commune may perform this task individually and autonomously. However, such a possibility arises from the case law of Polish courts, primarily administrative courts.

These three models differ not only in the degree of control or influence retained by the commune over the water supply and sewage disposal enterprise but also in their legal underpinnings.

In the first model, the basis for the performance of water supply and sewage disposal tasks by a company established by the commune is the articles of association or the founding deed of the company—documents governed by private law. The second model arises exclusively where the commune assumes the role of sole shareholder in the commercial company. In such circumstances, the commune's influence on the water supply and sewage disposal enterprise, or, more precisely, the degree to which the enterprise depends on the commune, is limited solely to contractual obligations. Despite the commune's ownership, the enterprise retains full organisational and economic autonomy, operating as an independent legal entity.

This arrangement must be distinguished from the situation in which the commune creates an organisational unit without legal personality. In that case, the basis for the relationship between the commune and such a unit is not a contract or a private law instrument, but a unilateral administrative act issued by the commune. A water supply and sewage disposal enterprise, a non-personified municipal unit, therefore operates solely within the framework of administrative

law. Its dependence upon the commune is therefore significantly greater—being, in effect, total—spanning organisational, economic, and legal dimensions.

In the third model, the commune itself assumes the role of the water supply and sewage disposal enterprise, discharging the relevant duties directly. Given that the task remains legally vested in the commune, the question of dependence is rendered moot. Here, the legal basis lies in the provision of the Act on Collective Water Supply and Collective Sewage Disposal which unequivocally designates the provision of such services as a task falling within the commune's own remit, as its own task.

A distinct scenario must be considered in which a water supply and sewage disposal enterprise is neither established nor appointed, nor in any way organisationally or economically dependent on the public sector. Under Polish law, there are no legal impediments preventing a water supply and sewage disposal enterprise from being a private entity. Indeed, the statutory definition expressly provides that any entrepreneur engaged in the business of collective water supply or sewage disposal may qualify as a water supply and sewage disposal enterprise.

There is no requirement that the entity be public in nature. Nevertheless, such a private entity must, as a condition precedent to operation, obtain the requisite permit issued pursuant to the provisions previously discussed. Yet the mere possession of a permit is insufficient: there must exist a legal instrument under which the entity is both authorised and obliged to perform the commune's own statutory duties. This is ordinarily achieved through the conclusion of a contract between the commune and the private enterprise, conferring upon the latter the mandate to perform collective water supply services. The conclusion of such a contract is governed by with public procurement law.

In this case, the contract itself serves as the basis for the operation of such an entity. However, the degree of legal, organisational, and economic dependence on the commune is negligible, being confined strictly to the performance of contractual obligations.

As indicated above, a water supply and sewage disposal enterprise is the entity which directly supplies water to the service recipient, regardless of its legal form or structural affiliation. The degree of dependence on the commune is of no material consequence—nor is it of relevance whether the commune itself discharges this function in the capacity of a water supply and sewage disposal enterprise.

The legal instrument through that governs the delivery of water services in the area of collective water supply is the water supply agreement. This agreement is largely regulated within the Act on Collective Water Supply and Collective Sewage Disposal. According to Article 6(1) and (3) of this Act:

"1. The supply of water or disposal of sewage shall be effected on the basis of a written water supply or sewage disposal services agreement concluded between the water supply and sewage disposal enterprise and the service recipient."

"3. The agreement referred to in paragraph 1 shall, in particular, include provisions concerning:

1) the quantity and quality of water supply or sewage services provided and the conditions for their provision;
2) the method and timing of mutual financial settlements;
3) the rights and obligations of the parties to the agreement;
3a) the conditions for removing failures of water supply connections or sewage connections owned by the service recipient;
4) procedures and conditions for the inspection of water supply and sewage disposal facilities;
5) the arrangements set out in the permit referred to in Article 18;
6) the term of the agreement and the parties' responsibility for failing to meet the conditions of the agreement, including the conditions for its termination".[47]

As is evident from the provisions cited above, the water supply agreement is highly formalised, the content of which is largely predetermined by statute. Consequently, the principle of freedom of contract is significantly limited here. The water supply and sewage disposal enterprise is not at liberty to refuse to enter into such an agreement where the service recipient has made a written request for it and their property is connected to the network.

The final category of entities to which the water services system in Polish law applies comprises the service recipients. Pursuant to Article 2(3) of the Act on Collective Water Supply and Collective Sewage Disposal:

"Article 2. For the purposes of this Act, the terms used shall mean:

3) service recipient – any person who avails themselves of water supply and sewage disposal services in the scope of collective water supply and collective sewage disposal under a written agreement with a water supply and sewage disposal enterprise."

Under Polish law, a service recipient is any legal entity, without distinction as to type or circumstance. The Act draws no distinction between natural persons and entrepreneurs; all recipients of the service are to be treated on an equal footing. In practical terms, however, the contractual relationships between the enterprise and a service recipient who is a business undertaking may differ from those involving a natural person not engaged in economic activity. Such distinctions, nonetheless, do not arise under the Act in question, but rather flow from separate legal regimes – such as the Code of Civil Procedure or the relevant provisions of tax law.

47 | Wiśniewski 2001, 11; Gałabuda 2003, 25; Woryna 2003, 109; Kryszczak 2005, 61; Wierzbowski 2006, 50; Dziadkiewicz 2011, 147; Pawełczyk 2014, 64; Michalski, 2022, 23; Rozwadowska-Palarz & Palarz 2002, 74.

Prospects for the Development of Water Services

The regulatory framework governing water services cannot be regarded as immutable or impervious to change. The possible causes for the changes in this area should not be ascribed solely to a change in the legal model, but rather to the evolving conditions in the surrounding environment. From a legal perspective, the existing models, including the Polish model, have become relatively well established. The legislator has recognised that collective water supply is a domain that must remain within the ambit of public law with a strong and active involvement of public entities. In accordance with the principle of subsidiarity, as interpreted within the context of Polish law and governance, the public entity involved in water services provision is the commune, that is, the local government. This model enjoys widespread acceptance and is, in practice, uncontested. Collective water supply is such an essential element of public services that it should remain within the competence of public entities. This imperative is underpinned by the indispensable role water plays in sustaining human life and the broader biosphere.

The aforementioned Directive of 16 December 2020 concerning the quality of water intended for human consumption introduces a new element, namely, the elimination of social exclusion due to lack of access to water. This development lends further support to the direction, which is based on leaving the water supply in the hands of public entities.

At present, no sweeping proposals exist within the legal sciences for a radical overhaul of the water services system. However, future transformations may well be precipitated by forces beyond the scope of law—most notably, environmental dynamics.

Foremost among these external influences is climate change, a phenomenon that already presents a formidable challenge to the European Union. The repercussions of climate change are manifold, but one of the most consequential is the disruption it causes to global water management systems, particularly in relation to the availability of water suitable for human consumption. Rising global temperatures are disrupting natural hydrological cycles, thereby diminishing the volume of potable water.

In tandem with these environmental concerns are demographic pressures, including the steady growth of the human population. Looking ahead, the twin challenges of dwindling consumable water resources and a burgeoning global population will exert increasing pressure on the architecture of water services provision. In this light, the Directive of 16 December 2020 may be seen as a legislative response to these converging threats. The European legislator appears intent on addressing both the quantitative decline in available water and the demographic surge in demand. As potable water becomes more scarce, access

becomes correspondingly restricted. Moreover, the rising number of individuals dependent on these limited resources compounds the strain. Thus, the stark reality emerges: water resources are diminishing, even as the demand for them continues to grow.

The legal category of *social exclusion arising from inadequate access to water* has been established in an attempt to reconcile both phenomena. The basis for such solutions lies in the adopted priority that in the 21st century, all people should enjoy access to water—a resource essential not only for human sustenance but also for the exercise of basic personal and social functions.

The normative framework of this assumption is related to the fact that there is less water for consumption while the number of consumers is growing. Hence, the European legislator has sensitised member states to the fact that access to water is no longer solely a private matter for the citizens of member states but also a task and duty of public entities. The emerging normative framework signals a discernible shift in direction—one that envisages the involvement of public authorities not merely in the provision of water services, but in ensuring that every person receives such access as a matter of legal entitlement.

The implementation of this Directive within the Polish legal system means that water supply is no longer merely a public service but also an element of social and welfare law. In legal terms, water is not only regarded as a commodity. It is also linked to human dignity and fundamental existential needs. The visible direction of legal evolution will thus move towards strengthening the social aspect at the expense of the economic aspect.

In Polish law, communes are involved in social welfare and collective water supply. Organisational, legal, and economic connections between these two areas has not, to date, occasioned any significant systemic difficulty within the Polish legal system. Nevertheless, it is likely that the legal instruments employed in these areas will require adaptation, for the normative structures that underpin welfare provision and those governing public utilities are not interchangeable. As the "socialisation" of the water supply regime deepens, one may expect a concomitant expansion in the use of instruments characteristic of social welfare law. However, the legislator must exercise caution in this area, as it is impossible to address the water supply solely through the lens of social welfare. It is also necessary to define organisational and even systemic frameworks.

A foreseeable trend in the coming years is the consolidation of the public sector's role in the governance of water services. It should be emphasised that in Poland, this sector has never been privatised, nor has it undergone re-privatisation. It has, in essence, remained consistently in public hands. Nevertheless, notwithstanding the predominantly public character of water and sewage enterprises, the scope and intensity of public administration's involvement in the sector are steadily increasing.

Summary

Within the framework of the modern state, water services rank among the most essential functions of providing public utility services. This is not only due to the mounting scarcity of water resources, but also to the fundamental role of water in sustaining human life. Simultaneously, a marked decline in both the quantity of water available for human consumption and its qualitative parameters may be observed. These factors, taken together, present a significant challenge for the modern state.

Water services have been regulated by law since the 19th century. It is worthy of note that, since their inception, water supply systems have been considered municipal responsibilities. Post-war Central and Eastern European countries replaced this model with one where the state carried out these tasks. Therefore, in the 1990s, the restoration of these tasks to local governments became evident. The evolution of the Polish model presented in this article is the best example of the phenomena observed in this area.

The current solutions in the Polish legal system are based on a separate act, which specifies that water supply is a task of the commune, with the commune being able to perform it in various organisational and legal forms. These forms differ regarding organisational, legal, and economic dependence on the commune and the legal basis for the relationship between the commune and the water supply and sewage disposal enterprise. Such models may operate on the basis of either private law or public law instruments, with the choice of model resting with the commune.

Under the Polish model, the key entity providing water services is the water supply and sewage disposal enterprise. This entity delivers services directly to the service recipient, and the legal basis of such service provision is a contract which incorporates elements of consumer protection.

Looking ahead, the future development of the water supply model must reckon with two fundamental trends: the steadily growing number of service recipients, and the simultaneous diminution and degradation of water resources. European legal developments already reflect a discernible shift towards eliminating what is known as social exclusion due to lack of access to water. It is therefore foreseeable that, in light of values deemed to warrant heightened protection, the role of public institutions in this sphere will further expand.

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