



The Share as a Security¹

Zsolt FEGYVERESI

PhD candidate

University of Debrecen, Marton Géza Doctoral School

E-mail: fegyveresi@gmail.com

Professor Emőd Veress has recently published a very compelling work entitled ‘The Share as a Security’. The book comprises three main parts.

Firstly, we are presented with a detailed overview of the historical development of the joint-stock company as a form of economic organization, and of shares issued by such corporations. This is an analysis in context because the author highlights the historical and economic circumstances which shaped the evolution of the joint-stock company. The purpose of joint-stock companies was to pool capital in the large amounts necessary to set up the most extensive and most risky enterprises. One fundamental legal innovation – we might go so far as to say a veritable invention – comparable to others which made the Industrial Revolution possible was the expansion of limited liability to all members of the corporation (i.e. the shareholders). Otherwise, the urge to invest would have been significantly reduced and therefore could not have created the required high capital concentration necessary to fulfil the economic purpose of the first joint-stock companies: to finance the trade on the routes opened by the great geographical discoveries which underpinned later colonization.

A detailed analysis is devoted by the author to the British East India Company and its Dutch counterpart, the Vereenigde Oost-Indische Compagnie. The author examines their legal history and organization, their monopoly on trade, their internal crises, their ability to adapt, and ultimately their distortion to colonial administrative bodies having a public law nature. The bankruptcy scandals and stock exchange bubbles of the Mississippi Company and of the South Sea Company compromised the idea of the joint-stock company. In the 18th and 19th centuries, many people thought that the age of joint-stock companies had expired. The same would be announced in the 20th century in the context of Soviet-type dictatorships that condemn private enterprise and especially the joint-stock company as a means of capitalist exploitation. Both opinions proved

1 Veress, E., *A részvény, mint értékpapír* [The Share as a Security]. Forum Iuris Publishing House, Cluj-Napoca, 2018, ISBN 978-606-94372-0-9.

to be wrong. In the first case, the industrial revolution demanded the legal doctrine and practice to create a structure capable of ensuring adequate capital concentration and organizational efficiency to operate factories. The answer given by the law was not the creation of a new organizational form because the appropriate organizational structure was exactly the joint-stock company. Instead of corporations established under the formal authorization given by the monarch or by the state, the codified, regulated, formalized but freely-founded joint-stock company became very popular, qualified by the author as a legal mass product. In the case of Soviet-type dictatorships, the alternative offered, the state-owned enterprise, an economic structure integrated into the state administration, which functioned within the framework of a planned economy, proved to perform on a much lower level of efficiency than joint-stock companies.² Professor Veress identifies a very interesting breakthrough in the development of the regulation of joint-stock companies in Hungary. In the first decades of the 19th century, entrepreneurs were attempting to establish joint-stock companies based on the classic model (a charter granted by the monarch), followed in 1840 by the first modern regulation and by 1875 the re-regulation of joint-stock companies. The historical analysis is led up to the present regulation of joint-stock companies, highlighting the current problems such as the protection of minority shareholders, creditor protection, shareholder control, conflicts of interest, and corporate governance.

The second part of the book is devoted to the concept and to the typology of shares in the context of the Hungarian Civil Code (Act no V of 2013). The registered share identifies the shareholder, while the bearer share is a security entirely owned by whoever holds the physical share certificate at any given time. According to Professor Ödön Kuncz (1884–1965), the economic substance of the joint-stock company corresponds to the bearer's share because it has the highest circulation capacity. But the Hungarian law totally excluded the bearer's share starting from 2006. By contrast, in Romania, Companies Act no 31/1990 still allows the issuance of bearer's share. The basic principle of the Hungarian company regulation in the present is the dispositive character of this legislation; there arises the question whether it is possible to issue bearer's shares after the entry into force of the Hungarian Civil Code. The author's answer is negative. In this part of the book, we will find complex questions very carefully analysed, such as the acquisition of own shares by the company. The most important part is the detailed inquiry into the matter of preference shares. Also, a short chapter is committed to the problem of golden shares, and another interesting train of thought traces the issue of redeemable shares (redeemable by the shareholder, by the company, or by both).

2 The same author has several publications on the issues raised by state-owned enterprises in the context of the Soviet-type dictatorships. For more details, see: Veress 2018a, 2015.

The third part is dedicated to the circulation of shares. There are unavailable shares, owned by the state and declared non-transferable by law. According to Professor Veress, this non-transferable character of shares can be based only on law. The founding charter cannot create absolutely non-transferable shares. A conventional ban – absolute and unlimited in time – on share transferability is incompatible with the essence and the nature of the share. But there are several techniques of limitations of share transferability, and those can serve various aims. In my opinion, the third part of the book, especially the chapters devoted to limitation techniques of share transferability based on the founding charter or on contracts, represents the most interesting section of the volume. One can easily observe that the author regards the general theory of obligations and in particular creditor protection as his main field of research.³ This is notably reflected in the analysis dedicated to the circulation of shares.

The book extensively utilizes the tools of legal history, often invokes classical authors of commercial law, utilizes the relevant court practice, and critically views the regulation and the proposed interpretations of legal texts. The legal literature has become richer by this book. The author also indicated that this volume contains the current state of the research he has carried out, and so we are looking forward to new research findings – primarily, the challenging examination of court cases, which will facilitate the application of the Hungarian Civil Code as a living law.

References

- VERESS, E. 2018a. A szovjet típusú diktatúra és a magánjogi viszonyok (1945–1989) [Private Law Relationships in the Soviet-Type Dictatorship (1945–1989)]. In: *Erdély jogtörténete* [Legal History of Transylvania]. Cluj-Napoca, 470–478.
- 2018b. *Drept civil. Teoria generală a obligațiilor* [Civil Law. General Theory of Obligations]. Bucharest.
- 2018c. *Román polgári jog. A kötelmek általános elmélete* [Romanian Civil Law. General Theory of Obligations]. Cluj-Napoca.
2015. From Capitalism to Utopia. Communist Nationalization of Companies in Central and Eastern Europe. *Acta Universitatis Sapientiae Legal Studies* 2015/1: 125–137.

3 See: Veress 2018b, 2018c.