SHARE TRANSFER. THE LEGAL NATURE OF THE SHAREHOLDERS' REGISTER

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Abstract
This paper analyses the legal regime of share transfer within joint-stock companies, with particular emphasis on the moment at which ownership of shares is transferred, the legal nature of the shareholders' register, and the legal effects of entries made therein. The study is prompted by a specific case pending before the courts, in which the legality of amendments made by a company director in the shareholders' register was challenged, following the registration of a share transfer and a subsequent reversal of that operation.
Starting from the interpretation of Article 98 of Law no. 31/1990, read in conjunction with the provisions of the Civil Code and the regulations governing shareholder records, the paper examines the two doctrinal and jurisprudential approaches concerning the effects of recording a share transfer in the shareholders' register: the view that such registration has an exclusively declaratory, opposability effect, and the view that it has a constitutive or translative effect.
It is submitted that, in the case of registered shares, particularly dematerialised shares, entry in the shareholders' register constitutes the legal condition for the transfer of ownership, producing constitutive and translative effects, without excluding its function of publicity and opposability. In this context, the provisions of Law no. 31/1990, the Civil Code, Government Decision no. 885/1995, as well as relevant doctrinal opinions and case-law solutions are analysed.
Furthermore, the paper argues that the shareholders' register and the operations carried out therein have the legal nature of civil law acts, rather than mere legal facts, which justifies their subjection to judicial review and the application of civil law sanctions in case of breach of legal provisions. The conclusions aim to contribute to the clarification of a controversial and current issue within company law and commercial law.
Keywords: *transfer of shares, assignment, legal nature, shareholders' register, commercial law*

Introduction

This paper originates from a legal issue identified in judicial practice, concerning the legal effects of the transfer of shares issued by a joint-stock company, as well as the legal nature of the shareholders' register and of the operations carried out therein.

Practical experience shows that, although the transfer of shares is a well-established institution in Romanian company law, numerous aspects relating to the moment of transfer of ownership over shares, the effects of entries in the shareholders' register, and the legal nature of this record continue to generate doctrinal controversy and

divergent case-law solutions. In such situations, the difficulty lies not so much in identifying the applicable legal rule, but rather in determining its true normative content and the effects that the legislator intended to attach to the mechanisms of publicity and record-keeping specific to joint-stock companies.

The relevance of the topic extends beyond the particular dispute that triggered this analysis. The question of whether entries in the shareholders' register have a constitutive effect or, on the contrary, merely a declaratory effect of opposability concerns the very legal structure of share circulation and the relationship between general rules of private law and the special provisions of company law. At the same time, the legal qualification of the shareholders' register and of the operations carried out therein directly influences the legal regime of the remedies available to persons allegedly harmed by unlawful entries.

This analysis is also prompted by a judicial trend which tends to attribute to entries in the shareholders' register an exclusively publicity and opposability function, thereby diminishing the significance of the mandatory provision contained in Article 98 of Law no. 31/1990. In our view, such an interpretation calls for a careful reassessment both from the perspective of the applicable legal provisions and in light of the internal logic of the legal mechanisms governing the circulation of securities.

The present study does not aim merely to examine a specific judicial solution, but rather seeks to contribute to the clarification of a legal issue of relevance for the entire field of company law. At the same time, it represents a first step in a broader research endeavour devoted to the relationship between legal publicity mechanisms and the constitutive effects of certain legal operations in private law.

To the extent that the arguments developed herein contribute to the deepening of doctrinal reflection and to the consolidation of a coherent judicial practice, the purpose of this study may be considered achieved.

1. The issue of share transfer and the transfer of ownership rights

A primary issue that arises is how and when the transfer of ownership of shares issued by a joint-stock company established in accordance with the provisions of Law No. 31/1990 and the applicable legal provisions takes place.

Clearly, the analysis must begin with the provisions of Article 98 of Law No. 31/1990, which uses the terms “transferor” and “transferee”, a reference to the provisions of Article 1566 et seq. of the Civil Code governing the assignment of claims and, more specifically, Articles 1587 et seq. of the Civil Code, which govern the assignment of a claim evidenced by a registered instrument to order or to bearer and which, in accordance with the provisions of Article 1566 (2) (b) of the Civil Code, have the character of a special rule.

The transfer of securities is carried out in accordance with the provisions of Article 1588 of the Civil Code, which distinguishes between registered securities, for which the transfer is recorded both on the instrument itself and in the register maintained for their record-keeping, order securities, for which endorsement is required, carried out in accordance with the applicable provisions regarding bills of exchange, and bearer securities, which are transferred by the physical delivery of the security.

In examining the issue of share transfers, the transfer of title to shares from the transferor to the transferee, as well as the legal nature of the shareholders’ register and of the entries recorded therein, we started from a dispute pending before the Constanța Tribunal (Romania), Commercial Case nr. 8167/118/2022, one of the county-level courts within the Romanian judicial system. The facts of the case reveal that two share transfer agreements were concluded between two shareholders acting as transferors and the same transferee, only one of those agreements being disputed. Under the terms of the agreements, title to the shares was to pass upon payment of the purchase price. The price was transferred immediately after the conclusion of the share transfer agreements into an escrow account and could be withdrawn by the transferor-beneficiary upon submission of the documents stipulated in the escrow agreement within the contractual deadline.

Following the deposit of the purchase price into the escrow account, the sole director of the company whose shares had been transferred, considering that title to the shares had passed from the transferors to the transferee, recorded the share transfer agreements and the transferee’s status as shareholder in the shareholders’ register, in accordance with Article 98(1) of Law No. 31/1990. Furthermore, although under no legal obligation to do so, the sole director also carried out the formalities required for the

registration of the relevant particulars with the Trade Register, and such registration became final.

Subsequently, one of the transferors, despite the fulfilment of all conditions necessary to withdraw the funds from the escrow account, reconsidered the transaction and refused to collect the purchase price for the shares. Upon expiry of the term stipulated in the escrow agreement, the amount was consequently returned to the transferee's account. In these circumstances, the sole director of the company, acting without any request from the transferor and taking the view that title to the shares had not been transferred due to non-payment of the purchase price, amended the shareholders' register, invoking an alleged error, and re-entered the transferor as shareholder. The same sole director subsequently requested the rectification of the alleged "error" before the Trade Register, and that request was granted.

In the present dispute, the claimant, as transferee of a significant block of shares in the joint-stock company, sought a judicial declaration of the absolute nullity, or alternatively the annulment on the grounds of relative nullity, of the amendments entered in the shareholders' register concerning the number and proportion of shares held. The claimant also sought restoration of the parties to their previous legal position, by reinstating the number and proportion of shares recorded in the shareholders' register prior to the unlawful amendments made by the company's sole director.

The claim was dismissed as inadmissible. The court held that nullity, as a sanction under civil law, cannot apply to the shareholders' register or to the entries made therein, since such entries do not constitute civil legal acts but rather legal facts. Consequently, they produce only a declaratory effect in terms of enforceability against third parties (opposability) and cannot give rise to any constitutive or proprietary transfer effect.

A first issue that arises concerns the manner and moment at which the transfer of title to shares issued by a joint-stock company incorporated under the provisions of Law No. 31/1990, as well as the applicable legal provisions, takes place.

Evidently, the analysis must begin with the provisions of Article 98 of Law No. 31/1990, which employ the terms "transferor" and "transferee," thereby referring to Articles 1566 et seq. of the Civil Code governing assignment of claims, and more specifically to Articles 1587 et seq. of the Civil Code, which regulate the assignment of a

claim evidenced by a nominative, order, or bearer instrument, and which, pursuant to Article 1566(2)(b) of the Civil Code, constitute special rules.

The transfer of negotiable instruments is governed by Article 1588 of the Civil Code, which distinguishes between nominative instruments, in which case the transfer must be recorded both on the instrument itself and in the register kept for their record-keeping; order instruments, for which endorsement is required in accordance with the provisions applicable to bills of exchange; and bearer instruments, which are transferred by mere delivery of the instrument.

The solution to determining the moment at which the transfer of title occurs in the cases governed by Article 98 of Law No. 31/1990 is intrinsically linked to the constitutive (translative) and/or declaratory nature, or alternatively the enforceability (opposability) against the company and third parties, of the entries in the shareholders' register.

2. Entries in the shareholders' register

According to a minority opinion, entries in the shareholders' register are not constitutive in nature but merely declaratory, serving purposes of opposability, and the moment of transfer of ownership of shares is governed by the general rules of law.

Thus, it is argued that: "In essence, a share purchase agreement gives rise to at least two obligations on the part of the seller-transferor. In the first phase, an obligation to transfer arises in the seller's patrimony, namely, the obligation to transfer title to the shares. It is considered that, in the absence of modalities (conditions or terms), this obligation is deemed fulfilled at the moment of signing the share purchase agreement. Similarly, it is considered that this obligation is also fulfilled at the moment the relevant modality is achieved (fulfilment of a suspensive condition or arrival of a suspensive term), or upon the parties' waiver of such modalities. Thus, at the aforementioned moments, from a legal standpoint, title leaves the seller's patrimony and enters the buyer's patrimony. In the second phase, and subsidiary to the obligation to transfer, an obligation to do arises, namely, to ensure, from a material standpoint, the formalities required for the registration of the share transfer. It is considered that this is the element governed by the provisions of Article 98(1), the obligation to act being deemed fulfilled at the moment the transferor signs the declaration in the shareholders' register. However, non-performance

of this obligation does not affect, from a substantive perspective, the existence of ownership rights in the transferee-buyer's patrimony" [1], [2].

In the same sense, Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in case file No. 8167/118/2022, referred to above, relies on the normative act regulating the shareholders' register, namely Government Decision No. 885/1995, which provides that the register serves to ensure the record-keeping and publicity of issued shares. It is argued that the shareholders' register is an internal document kept up to date, containing the information set out in Annex No. 1, and that the records therein are subject to updating operations carried out on the basis of the list of shareholders existing at the beginning of the relevant period, taking into account the balance of securities resulting from all share transfers recorded in the register during the period concerned.

Consequently, under Government Decision No. 885/1995, the shareholders' register functions as a ledger for the record-keeping of shareholders and their shareholdings, in which changes occurring in share ownership are recorded, irrespective of the legal nature of the transfer, and which ensures annual publicity of the situation of issued shares, as this information must be published together with the annual financial statements, as required by Article 71 of Law No. 31/1990.

It is further reasoned, with reference to Article 177(1)(a) and (2) and Article 178(1) of Law No. 31/1990, that "the text does not indicate any ad validitatem nature of the register, insofar as it does not condition its public character on the verification of the validity of share acquisition by the shareholders entered in the register," and that "the registers referred to in Article 177 (1) (a) of Law No. 31/1990 are evidentiary legal instruments (instrumentum) required by the legislator ad probationem, the accuracy of which may be examined only through evidentiary means, under Articles 303–304 of the Romanian Code of Civil Procedure."

3. Case-law and the effects of the publicity of rights, legal acts, and legal facts

Another textual argument relied upon in the aforementioned civil judgment concerns the provisions of Article 20 (1)–(3) of the Civil Code regarding the effects of publicity [3].

Furthermore, the effect of opposability of the registration of the transfer of ownership over shares in the shareholders' register is even more evident in the case of bearer

shares, in respect of which, without any doubt, ownership is transferred by mere delivery, as in the case of other bearer instruments. In such a case, the company recognizes as shareholder the person in physical possession of the shares, which means that, for the exercise of the rights conferred by such shares, the holder must deposit them with the company in order to prove entitlement to exercise those rights.

Reference is also made to the case law of the supreme court, namely Decisions No. 2436/2009 and No. 1386/2014 of the High Court of Cassation and Justice.

Decision No. 2436/2009 – "from the economy of this provision it does not result that the law prohibits other forms of transfer of ownership over nominative shares issued in dematerialized form than by declaration made in the Shareholders' Register. Accordingly, such transfer may also be made by a share transfer agreement. In the present case, this latter method of transfer was used by the claimant and the two defendants."

Decision No. 1386/2014 – "(...) the failure of the parties to register the transfer in the shareholders' register is not capable of attracting the nullity of the contract. Registration in the shareholders' register concerns only the establishment of ownership vis-à-vis the company and third parties, not the contractual relationship between the parties. The lack of formal notification to the company produces the same effects as in general law, namely unenforceability against the company. The declaration signed by the transferor and transferee and the endorsement made on the certificate must be qualified merely as evidentiary requirements (ad probationem), and the obligation to register in the shareholders' register must be regarded solely as a legal publicity requirement" (www.scj.ro).

Another author supporting this view argues that "the lack of formal notification to the company, respectively to the Trade Register, produces the same effects as in general law, namely the unenforceability against the company and third parties of the transfer; otherwise, the transfer is fully valid between the parties from the moment of the agreement of will, according to general civil law. The registration formalities of the assignment are prescribed for the purpose of establishing ownership vis-à-vis the company and third parties, ownership otherwise being determined under general law" [4].

However, this view entirely disregards the provisions of Article 98 of Law No. 31/1990 and the distinctions drawn therein, while, in our view, it misinterprets the aforementioned case law.

First, Article 98 of Law No. 31/1990 distinguishes between shares issued in material form and shares issued in dematerialized form, as defined in Article 91 of the same law. Article 91 of Law No. 31/1990: (1) In a joint-stock company, share capital is represented by nominative shares issued by the company. (2) The type of shares is determined by the articles of incorporation. Nominative shares may be issued in material form, on paper support, or in dematerialized form, in which case they are registered in the shareholders' register.

Where shares are materialized, they exist in a tangible form and contain the elements provided by Article 93 of Law No. 31/1990, constituting securities that incorporate and evidence the rights and obligations arising from shareholder status.

As regards dematerialized shares, these have no material existence and, as civil legal instruments, cannot exist outside the shareholders' register, given their dematerialized nature, which implies that the shareholders' register itself functions as an abstract legal instrument.

Thus, Article 177(1)(a) of Law No. 31/1990 provides, in mandatory terms for dematerialized shares, the content of the shareholders' register, namely the surname and name, personal numerical code, denomination, domicile or registered office of shareholders holding nominative shares, as well as payments made in respect of the shares.

All changes in share ownership are recorded in chronological order in the shareholders' register, regardless of the legal nature of the transfer—assignment, succession, and others.

The content of the shareholders' register is further regulated by Government Decision No. 885/1995, and pursuant to Article 5 thereof: "(1) Upon registration in the shareholders' register, as well as in the share register, of changes in ownership of shares, the following shall be taken into account: (a) in the case of assignment carried out in the situations provided for in Article 43 of Law No. 52/1994, the signature in the share register

of both transferor and transferee or their representatives is mandatory, as well as the submission of documents proving compliance with legal provisions."

Ownership over shares issued in material form is transferred by a statement made in the shareholders' register and by the endorsement on the share certificate, signed by the transferor and transferee or their authorized representatives, the wording being almost identical to the provisions of Article 1588(1) of the Civil Code. As regards ownership over dematerialized shares, it is transferred by a statement made in the shareholders' register, signed by the transferor and transferee or their authorized representatives.

It should be noted that, in both cases, the legal text conditions the transfer of ownership over shares upon the registration of the operation in the shareholders' register.

It therefore follows that, in this case, registration in the shareholders' register has a translative effect, and consequently the moment at which ownership over shares is transferred from transferor to transferee is the moment of registration in the shareholders' register, even where the parties have concluded a written share transfer agreement providing for a different moment of transfer.

Such a clause is evidently affected by absolute nullity, as it contravenes the mandatory rule set out in Article 98 of Law No. 31/1990.

The negotiable character of shares is an essential element in configuring the legal regime of this type of security.

The transferability of the instrument is explicitly governed by company law (Article 98 of Law No. 31/1990), whereby the formal requirement of registration in the shareholders' register prevails over the parties' agreement, thereby departing from the civil law principle of consensualism.

Specifically, the corporate regime governing the circulation of shares, as set out in Article 98 of the Companies Law, establishes the rule that ownership over nominative shares issued in dematerialized form is transferred by a declaration in the shareholders' register signed by the contracting parties. The moment of registration in the shareholders' register marks the change of shareholder, with the consequence of transferring all rights deriving from this status.

In conclusion, the rule of company law is that, prior to registration in the shareholders' register, no person, including a contractual transferee, is considered owner of the share and may not exercise the rights attached thereto.

An analogy may be drawn with Article 885 of the Civil Code, which enshrines the constitutive effect of registration in the land register. The current Civil Code maintains the principle of consensualism in the formation of contracts; however, in the case of agreements concerning immovable property, it provides that rights over such assets are constituted or transferred only through registration in the land register. In other words, the mere conclusion of a contract is not sufficient for acquiring rights over immovable property, registration being additionally required [5].

Registration in the land register of real rights over immovable property is based on documents evidencing the legal act or fact giving rise to those rights. In order to serve as a basis for registration, such documents must be valid, the land register officer being empowered to verify their formal legality.

In the present case, the sole director of the company whose shares were transferred may be assimilated to the land register officer, pursuant to Article 177 (2) of Law No. 31/1990.

In the same sense, there are express legal provisions referring to the constitutive effect of certain entries in publicity registers, an effect provided for in the Civil Code, such as Article 20 concerning the effects of publicity and Article 22 (1) concerning the absence of publicity and sanctions.

4. The constitutive (translative) effect of the registration of certain acts in the shareholders' register

Against these legal provisions, the court of first instance, by Civil Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in Case No. 8167/118/2022, held that "the Shareholders' Register does not play a validating role in respect of acts subject to registration, insofar as the registration procedure in this register is purely administrative (…)".

The constitutive (translative) effect of the registration of share transfers in the shareholders' register, from transferor to transferee, pursuant to Article 98 of Law No. 31/1990, represents a majority opinion in legal doctrine [6].

A relevant application of Article 98 of Law No. 31/1990 [7] occurred in Case No. 230/1285/2008 [8], finally adjudicated by the High Court of Cassation and Justice, which held that it was wrongly considered by the first-instance court and the court of appeal that the provisions of Article 98 of the Companies Law would, in a specific case, produce only effects of opposability against third parties, even though they generally produce constitutive effects; such a conclusion cannot be accepted in the sense that the legal provision would produce general effects in principle and more limited or different effects in particular cases.

This constitutive character of the registration of share transfers in the shareholders' register does not exclude its declaratory function and its effect of opposability, notwithstanding all the textual arguments invoked in Civil Judgment No. 1422/27.12.2023 of the Constanța Tribunal in Case No. 8167/118/2022.

In addition to the shareholders' register, the certificate of shareholder also has the nature of a probative instrument (instrumentum probationis), in accordance with Article 7 of Government Decision No. 885/1995.

Given that Article 98(1), third sentence, of Law No. 31/1990 provides that the articles of incorporation may stipulate other forms of transfer of ownership over shares, the provisions of Article 98 have a supplementary (default) character [9].

As regards "other forms of transfer of ownership over shares," these may evidently only be those governed by general civil law, namely sale, exchange, donation, etc.

It therefore follows that, where the company's articles of incorporation expressly derogate from Article 98 of Law No. 31/1990 and provide that the transfer of ownership over shares may be carried out through a share transfer agreement, the rules of general civil law become applicable with regard to the conditions of validity thereof, both as to substance and form, as well as those concerning the moment of transfer of ownership, which occurs in accordance with Article 1674 of the Civil Code, in the matter of sale, as expressly provided by the reference norm in Article 567(2) of the Civil Code.

We consider that, in this context, the case law of the Supreme Court, namely Decisions No. 2436/2009 and No. 1386/2014 of the High Court of Cassation and Justice, cited above, must be analysed. A separate issue may arise if the analysis were extended to the sphere of publicity of administrative acts [10]; however, this aspect falls outside the scope of the present paper and will be addressed in a separate study.

As regards the legal nature of the shareholders' register and of the entries therein, the court of first instance, in Civil Judgment No. 1422/27.12.2023 of the Constanța Tribunal in Case No. 8167/118/2022, qualifies the registration operations in the shareholders' register as "legal facts" to which Government Decision No. 885/1995 and Law No. 31/1990 attach certain legal effects.

In legal doctrine [11], legal facts are regarded as sources of concrete civil legal relationships, namely circumstances (acts or events) to which civil law attaches the birth of a concrete civil legal relationship. It should be emphasized that the act or event constituting the source of a concrete civil legal relationship simultaneously constitutes the source of the subjective civil rights and civil obligations forming the content of that legal relationship.

A civil legal act is defined as a manifestation of will made with the intention of producing legal effects, namely to give rise to, modify, or extinguish a civil legal relationship. A licit or illicit legal fact is defined as an event performed without the intention of producing legal effects (although legal effects nevertheless arise, as the law attaches such effects to its occurrence), similarly to natural events which occur independently of any manifestation of will by a legal subject. Such non-intentional facts are also capable of producing legal effects as determined by the legislator.

Licit civil legal facts are expressly and exhaustively provided by law, in the current regulation under *Chapter III. The Licit Legal Fact, Title II. Sources of Obligations*, namely management of affairs, undue payment, and unjust enrichment.

A first line of arguments supporting the view that both the shareholders' register and the entries therein constitute civil legal acts is grounded in the theory of the civil legal act.

Thus, Professor Gheorghe Beleiu shows that from the definition of the civil legal act the following constitutive elements arise:

- the existence of a manifestation of will originating from a subject of civil law (the electronic shareholders' register represents the manifestation of will of the company and its shareholders who have chosen this method of keeping the register; entries in the register are made through the manifestation of will of the company's director, Petre Nicolau);
- the manifestation of will must be expressed with the intention of producing civil legal effects (both the shareholders' register and the entries therein may only be made with the intention of producing legal effects, these entries having a constitutive character with respect to ownership over shares – this aspect will be further developed when presenting doctrinal opinions regarding the shareholders' register from the perspective of commercial law);
- the intended legal effects may consist in giving rise to, modifying, or extinguishing a concrete civil legal relationship (both the shareholders' register and the entries therein give rise to, modify, or extinguish legal relationships between shareholders or between shareholders and the company).

Therefore, if both the shareholders' register and the entries therein meet all constitutive elements of a civil legal act in the sense of negotium iuris, it follows that they are civil legal acts.

In doctrine, it is stated that "analysing the legal nature of the shareholders' register as a legal act (negotium iuris), it follows from the corroboration of Article 73(1)(c) and Article 98 of Law No. 31/1990 that the shareholders' register is a unilateral legal act, drawn up by a joint-stock company, which includes the entirety of entries concerning the issuance, transfer, and, where applicable, cancellation of shares of the company, respectively the constitution, transfer, or extinction of ownership rights over the company's shares."

It is observed that both the shareholders' register and the operations related to its drafting, amendment, updating, etc., represent manifestations of will, since, on the one hand, they are carried out through voluntary, express, and conscious acts of the company, its shareholders, or its director (as in the present case), and, on the other hand, they

cannot be qualified as legal facts, as they do not occur either unintentionally or naturally, without the intervention of a legal subject.

The fact that the shareholders' register constitutes a record of shares, shareholders, security interests over shares, etc., does not deprive it of its nature as a civil legal act. Likewise, entries and amendments in the shareholders' register are legal acts, since the company's director performs a manifestation of will aimed at producing legal effects, namely the modification of the shareholding structure and/or proportions.

Commercial law doctrine, in relation to the transfer of shares, observes that, in our view, the law currently adopts a different solution. The former Article 171 of the Commercial Code provided that ownership over nominative shares "is established" by registration in the register, which clearly indicated that the matter concerned proof of rights and their opposability towards the company and third parties. Article 98 of the Companies Law, however, states just as clearly that registration constitutes a condition for the transfer of ownership. The wording does not allow any other interpretation [12].

In light of these clarifications, namely that the registration of share transfers in the shareholders' register constitutes a condition for the transfer of ownership, it follows that the entries in the register produce the effect of giving rise to, modifying, or extinguishing a concrete civil legal relationship.

A further argument supporting the view that the shareholders' register is a civil legal act in the sense of negotium iuris derives from the classification of legal acts into causal and abstract civil legal acts, the latter being those embodied in negotiable instruments. Commercial law [13] further clarifies that a share is a security; it incorporates and evidences the rights and obligations arising from shareholder status. Shares issued by companies are instruments that incorporate patrimonial value and are therefore considered securities or credit instruments and are referred to as transferable securities.

It is further noted that there is a shift in the legislator's conception of the share, which is no longer regarded solely (or primarily) as a fraction of share capital. Instead, the modern conception prevails, according to which the share is regulated as a transferable security conferring upon its holder a series of rights against the issuer, primarily a claim right. Given that shares, as securities, have an autonomous character, the rights and obligations arising from them are independent from the legal act from which they

originated, so that the acquirer, as holder of an independent right, does not lose this status except under the conditions provided by law.

In conclusion, shares are securities which constitute abstract legal acts, and which, in turn, are a subcategory of civil legal acts.

Dematerialized shares, as civil legal acts, cannot exist outside the shareholders' register precisely because of their dematerialized nature, which implies that the register itself is a civil legal act, and, for identical reasons, the entries therein are also civil legal acts.

In Civil Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in Case No. 8167/118/2022, the court of first instance reaches an incorrect conclusion, namely that the sanction of nullity "concerns only legal acts." The sanction of nullity as a civil law remedy does not concern only legal acts, but has a much broader scope of application. An example in this respect is provided by Section II – Chapter II – Title IV of the Civil Code, which regulates the nullity of legal persons. It therefore follows that the sanction of nullity is not specific exclusively to civil legal acts, and it is not inadmissible to request before a court the absolute or relative nullity of unlawful entries in the shareholders' register made by the sole director of a company.

Conclusions

The analysis carried out allows for the conclusion that the issue of share transfer and the legal effects of entries made in the shareholders' register cannot be reduced to a mere matter of administrative record-keeping or opposability vis-à-vis the company and third parties. An examination of the provisions of Article 98 of Law no. 31/1990, in conjunction with the legal regime of shares as securities and the special rules governing their circulation, leads to the conclusion that entry in the shareholders' register constitutes, in principle, the legal condition for the transfer of ownership over shares, thus producing constitutive and translative effects.

Within the same legal logic lies the qualification of the shareholders' register and of the operations carried out therein. Beyond their function of record-keeping and publicity, these operations produce direct legal effects on the relationships between shareholders and on the structure of ownership rights over shares, a circumstance that justifies their

analysis through the conceptual tools of the general theory of civil legal acts and company law.

The opposing view, which reduces the role of the shareholders' register to a mere formal reflection of legal operations completed prior to and independently of it, does not appear to adequately reflect the specific nature of the regulatory framework established by the legislator, nor the special character of the rules governing share transfers within joint-stock companies.

As regards the case that gave rise to this study, it is submitted that the arguments developed lead to the conclusion that the subsequent amendments made to the shareholders' register raise serious issues of legality and require an effective judicial review, which is incompatible with a finding of inadmissibility of the action. For this reason, the legal position advocated in this paper will continue to be promoted and relied upon in the appeal proceedings in the case, in order to submit it to the scrutiny of the higher courts.

Beyond the specific outcome to be rendered in the dispute under analysis, the issues examined remain open to doctrinal development. The complexity of the relationship between the transfer of ownership over shares, legal publicity, and the legal nature of the shareholders' register justifies further in-depth analysis, both from the perspective of company law and from that of the general theory of legal acts and civil publicity mechanisms.

This paper does not aim to provide the final word on these matters, but rather to contribute to a necessary legal debate, generated by a specific case, yet whose implications extend beyond the private interests of the parties and affect the interpretation and application of fundamental institutions of contemporary commercial law.

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