NATIONAL UNIVERSITY OF PUBLIC SERVICE
Doctoral School of Public Administration Sciences

dr. Zóra Zsófia Lehoczki:

Organizational and financial specifications of publicly owned enterprises

Doctoral (PhD) thesis

THESIS BOOKLET

Supervisor:

Prof. Dr. Tekla Papp

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1. PURPOSE OF CHOOSING THE TOPIC AND PRESENTATION OF THE TOPIC OF THE DISSERTATION

At the time of the submission of our petition to admission to the Doctoral School, the title of our chosen research topic was „*The examination of the assets of business associations in light of state and municipal ownership*". The reason for providing such a broad topic was that at the time of the beginning the research it was not foreseeable what main directions the research may follow or what is focuses on, thus it would have been unfortunate to shrunken the research topic by providing a specific title for no particular reason before beginning the actual research. After the beginning of the research, the main outlines of the above-referred topic and its partial sections and questions started to become more outlined and these questions are thoroughly reviewed in the dissertation as well.

Generally, it shall be emphasized that the dissertation examines a special legal institution, the so-called publicly owned enterprises, which are located in the intersection of company law and state asset management by primarily analysing the available legal background, academic literature and case law. With respect to the fact that these organizations have a number of different aspects from the economic, public administration and legal point of view that are worth to be thoroughly researched, it is recommended to shrunken the focus of the researches concerning the said legal institution in order to make sure that the dissertation is able to present the chosen topic in the detail and depth expected from it and justified. With respect to the above, the dissertation concerns the two main aspects of publicly owned enterprises being their organizational structure and their financial features by reviewing those primarily from a legal point of view. In order to emphasize the special nature of these legal persons examined, we aim to compare the publicly owned enterprises to the traditional business associations operating on the market.

The main reason behind the choice of topic is to fill a gap existing in this area. Having reviewed the domestic academic literature it can be stated that in connection with the period prior to privatisation a number of outstanding authors examined the operational, organizational and asset management specifications of state-owned enterprises and certain authors reviewed the specifications and the privatization of these legal persons in connection with the era before privatization and the era of the political regime change and the privatization itself in a number of articles and books. However, after the conclusion of the regime change period and in particular in the last couple of years, no such work has been published that reviews the specifications of publicly owned enterprises with comprehensive detail. At the same time, we

note that the Hungarian academic literature in the field of corporate law abounds in high-quality books, doctoral dissertations and articles examining their subject in detail. These sources of academic literature provided an irreplaceable basis for the elaboration and laying of the corporate law bases of the present dissertation. At the same time, however, we note that the mentioned literature often focuses on the classical companies owned by market participants, their operational, organizational and economic peculiarities and does not cover the examination of publicly owned companies.

In view of the above, in our opinion, the topic of the present dissertation, its study period and the scope of the study are of a filling nature. The peculiarities of the examined legal institution, period and area are detailed in the subsections below.

1.1. PUBLICLY OWNED ENTERPRISES

The state and municipalities perform their public functions in many cases through publicly owned enterprises. These organizations are of great importance from the point of view of the national economy, considering, among other things, that these companies produce a significant part of the Hungarian GDP, manage national assets, employ many people,[1] and typically perform public tasks, such as providing public services.

The title of the dissertation includes the term publicly owned enterprise that is defined by Act CXXII of 2009 on The More Economical Operation of Publicly Owned Enterprises (hereinafter: „**MEO Act**").[2] Criticism of the term should be taken from a dogmatic point of view, given that, under our effective private law, no ownership shall exist over legal entities and companies are legal entities with absolute legal capacity.[3] Nevertheless, in the dissertation we want to consistently use the term publicly owned enterprises, the primary reason for which is the fact that is has a legal definition: the primary focus of the dissertation are organizations complying with the definition of the MEO Act with the proviso that in certain cases the research is extended to those companies, in which the voting rights of the state or municipality do not exceed 50%, hence they do not qualify as publicly owned enterprises, despite the participation of the state or municipality. The reason for choosing the term is also that it includes both state-owned and municipality-owned companies, and many of our findings apply to both groups of legal entities. In the case of chapters or points that are specifically applicable only to companies

[1] Ádám AUER –Tekla PAPP: The importance of corporate governance in publicly owned enterprises. In.: *Jogtudományi Közlöny*, 2017/5., pp. 210-219.
[2] §1(a) MEO Act
[3] See: Tekla PAPP: Some private law issues in relation to state/municipal companies. In.: Ádám AUER –Anita BOROS –Eszter SZÓLIK: *Current issues of municipal asset management*, Budapest, Dialóg Campus, 2018. pp. 123-132.

with state or municipality participation - e.g. the examination of the justification for the application of the holding structure in Section 10 of the dissertation - this will be highlighted separately.

A significant part of the findings in the dissertation are related to two types of companies, the limited liability company and the joint stock company, the reason being that the state and municipalities are not allowed participate as shareholders in a company in which their liability exceeds their contribution.[4]

1.2. THE REVIEWED PERIOD

The dissertation reviews the legal environment effective at the conclusion of the manuscript of the dissertation. In order to present the main changes in the regulatory environment, occasionally the previously effective legal provisions are also processed therein. The academic literature sources and court decisions examined in the course of the research, which are specifically related to publicly owned companies, come from the period after the change of regime. It is not the aim of the dissertation to review state-owned companies operating before the change of regime. One reason for this is that due to the many significant differences between publicly owned enterprises and state-owned enterprises, we do not consider a state-owned enterprise to be the "legal predecessor" of publicly owned enterprises. Another reason is that many authors dealt with state-owned enterprises in detail during their research, so Gyula Eörsi[5] and Tamás Sárközy,[6] among others, prepared detailed analyzes of these organizations, and Péter Mihályi[7] also dealt with state-owned companies in many of his works in connection with privatization. Accordingly, in the dissertation, court decisions and literature sources can typically be dated from the second half of the 1990s to the present day. In analyzing case law,

[4] §29(1) Act CVI of 2007 on State Assets (hereinafter: „**SA Act**"); §90(1) Act CLXXXIX of 2011 on The Municipalities of Hungary

[5] See inter alia: Gyula EÖRSI: *On the law to switch to a new system of economic governance*. Budapest, Közgazdasági és Jogi Könyvkiadó, 1968.; Gyula EÖRSI: *State property – state-owned enterprises.* Budapest, Eötvös Loránd Tudományegyetem, 1970.; Gyula EÖRSI: External and internal complexity. *Gazdaság és Jogtudomány*, 1972/1-2., pp. 81-101.

[6] See inter alia: Tamás SÁRKÖZY – László SÓLYOM: The state-owned enterprise in the developed capitalist states. In.: *Gazdaság és Jogtudomány*, 1976/1-2., pp. 135-213.; Tamás SÁRKÖZY: *From early privatization to the late Assets Act: The evolution of state property Law*, Budapest, HVG-ORAC, 2009.; Tamás SÁRKÖZY: Is the state-owned enterprise a public body? In.: *Jogtudományi Közlöny*, 1971/3-4., pp. 125-138.; Tamás SÁRKÖZY: Status of the state-owned enterprise in the system of Hungarian civil law between 1948 and 1998 (with an outlook on the general rules of legal persons and property rights contained in the Civil Code). In.: Tamás SÁRKÖZY (ed.): *Volume of studies on the preparation, basic institutions and development of the 1959 Civil Code 2nd volume*, Budapest, Magyar Közlöny Lap- és Könyvkiadó Kft., 2018., pp. 7-104.; Tamás SÁRKÖZY: Legal history of the legal institution of the state-owned enterprise in Hungary. In.: Zsolt HALÁSZ (ed.): *Magistra et fautrix – In memory of Halustyik Anna*, Budapest, Pázmány Press, 2019, pp. 331-342.

[7] See inter alia: Péter MIHÁLYI: *Encyclopaedia of the Hungarian privatisation*. Veszprém-Budapest, Pannon Egyetemi Kiadó – MTA Közgazdaságtudományi Intézet, 2010.; Péter MIHÁLYI: *Chronicle of Hungarian Privatization - 1989-1997*, Közgazdasági és Jogi Könyvkiadó, Budapest, 1998.; Péter MIHÁLYI: The situation of state-owned enterprises in the midst of regime change. In.: *Külgazdaság*, 1996/10., pp. 14-28.

we take into account that many of the decisions resolved in the early 1990s still concern state-owned enterprises, so these are not the subject of research for the reasons described above.

It is also worth emphasizing that a significant part of the legal sources containing provisions for publicly owned enterprises have been promulgated in the last 10-15 years,[8] so the findings in the dissertation are also in line with the date of entry into force of said laws.

1.3. THE REVIEWED AREA

In the dissertation, we primarily examine companies founded and operating in Hungary, owned by Hungarian municipalities or the Hungarian State. The sources of law examined are primarily the relevant domestic laws, the decisions of the Hungarian courts and the Constitutional Court of Hungary, and a significant part of the literature processed was also written by Hungarian authors.

The reasons for geographical narrowing are manifold. The primary reason is that, to our knowledge, no doctoral thesis has been written since the regime change, which examines publicly owned enterprises from a legal and public administration-sciences point of view, so the present thesis may be considered ground-breaking in this regard. At the same time, however, the peculiarity is that we were unable to rely on the detailed opinions of other authors on aspects specifically related to the publicly owned status of companies when writing the thesis. Thus, we had to develop our own concept, examining each aspect in detail. This in itself has resulted in a paper of such scope in relation to publicly owned enterprises seated in Hungary that only the examination of domestic companies occupies the scope of the dissertation in itself, and we note that there are some details that we have not examined, among other things, in view of the limitations of content.

The second reason for the territorial narrowing is the lack of resources, more specifically the limited resources available in English. In the course of researching the international literature on publicly owned (state-owned) companies, we found that a significant proportion of the literature available in English relates to state-owned enterprises established and operating in the People's Republic of China. We are convinced that, despite the political, historical, social and cultural differences, comparing the publicly owned enterprises of the two countries would produce rather interesting and complex results, but we took the view that the content and structure of this doctoral thesis would be completely stretched by the aforementioned

[8] Thus, SA Act was published by the Hungarian Gazette dd. September 17, 2007, the MOE Act was published by the Hungarian Gazette dd. November 26, 2009 and Act CXCVI of 2011 on National Assets was published by the Hungarian Gazette dd. December 30, 2011.

differences furthermore, the examination and comparison of the legal systems of the two countries is likely to take much longer than the duration of doctoral training.

Furthermore, we would like to dispense with the detailed examination of international aspects, in view of the fact that in recent years two professional publications have been published outlining the main provisions governing publicly owned enterprises and the specificities of these organisations in a European and specifically Central and Eastern European context. The studies, written by the speakers of the international conference "Corporate Governance of State-Owned Enterprises in CEE" organized by Tekla Papp and Ádám Auer, are summarised in the 2017/1 special edition of Pro Publico Bono – Hungarian public administration, which presents, in addition to Hungary, the provisions related to corporate governance for publicly owned enterprises in Romania, Serbia, the Czech Republic and Poland. Even more broadly, the volume of studies entitled State Enterprises in International Comparison, edited by Veronika Szikora and dissecting theoretical issues in addition to country descriptions, summarises the rules governing state-owned companies in 18 European countries and the United States of America. In view of the fact that these publications summarise the rules of the countries they examine, we do not consider it appropriate to repeat the provisions contained therein.

In addition, in the context of the lack of resources referred to in the preceding paragraph, it is also worth mentioning that, in relation to companies operating primarily in the CEE region, which are likely to be comparable to the regulation of publicly owned enterprises in Hungary, we did not have sufficient English literature to enable us to carry out a well-founded comparative examination of the regulatory structures of each of the countries concerned.

In view of the above, the present dissertation examines the organization and operation of Hungarian publicly owned enterprises by seeking to fill the gap that, to our knowledge, no comprehensive examination of the organizational and financial characteristics of publicly owned companies has been made in a scientific manner after the regime change.

1.4. RESEARCH METHODS

Among the research methods used in writing the thesis, the most prominent and significant was document analysis with a dogmatic approach, including, inter alia, relevant legislation, case law and available academic literature sources. These documents were subjected to a critical examination, in case of the applicable legislation their coherence was examined, and comparative investigations were carried out, including the texts of nine different laws on the definition of corporate assets, initial capital and equity.

We also used the comparative method to compare the text of the legislation with the judicial jurisprudence interpreting it, as well as to compare individual court decisions with each other. The comparative method was also used in the comparison and conflicting of academic literature positions.

In the course of the comparative examination mentioned in the previous paragraph, we sought to establish and explain our own subjective views on the topics, questions and problematic points, in addition to presenting the individual positions and the different statements.

Comparative methods also mean a temporal comparison in some parts of the thesis, and in the context of the presentation of the provisions of Act V of 2013 on the Civil Code, we occasionally refer back, in the necessary cases and to the extent necessary, to the related provisions of the former company act, Act IV of 2006 on Business Associations, describing the changes that occurred at the same time as the change in the law.

In addition to the above, the dogmatic comparison is most pronounced in those parts of the thesis – we think in particular of the chapters presenting the organizational characteristics – where market-type companies are compared with publicly owned enterprises on certain characteristics, illustrating and at the same time emphasizing the differences between them, despite the fact that they exist in the same forms of operation.

In conclusion, the research methods used in the preparation of the dissertation are primarily based on the dogmatic examination of related documents and their comparison with each other.

2. HYPOTHESES OF THE DISSERTATION

- It is assumed that the assets of publicly owned enterprises are part of the national assets. **(H1)**
- It is assumed that the company's equity, not the initial capital, is of decisive importance in the operation of the companies and in the protection of creditors. **(H2)**
- It is assumed that the asset management of publicly owned enterprises is governed by special asset management requirements. **(H3)**
- It is assumed that special asset management requirements impose additional obligations and increased liability on the executive officer of the companies and the members of the supervisory board. **(H4)**
- It is assumed that local governments that own at least 6-8 companies are recommended to establish a municipal holding company. **(H5)**

3. OBJECTIVES OF THE RESEARCH

- Extensive research, including the legal background, related case law and relevant literature, on the effective operation, asset management and organisational characteristics of publicly owned enterprises, which summarises the organisational and financial characteristics of these legal entities, while at the same time establishing the most significant differences between market-type companies and publicly owned enterprises.
- Critical examination of the source material set out in the preceding indent, mapping and identifying possible contradictions, discrepancies, regulatory uncertainties and deficiencies, and at the same time formulating a subjective position, which may contribute to minimising or eliminating the uncertainties that may be experienced in the regulation and operation of publicly owned enterprises.

4. STRUCTURE OF THE DISSERTATION

The dissertation consists of a total of 11 sections, with the first section summarizing the introductory thoughts and the hypotheses of the thesis, and the last section summarizing the summing thoughts and the main conclusions of the research. Accordingly, the substantive findings of the thesis were recorded in the intermediate 9 sections in a well-followed, logical and interdependent order.

As the starting point of the research, we accept as an axiom the finding that publicly owned enterprises are of paramount importance from the point of view of the national economy, given that these organizations manage public funds, produce a significant part of GDP, play a decisive role in employment policy and typically perform public tasks, such as providing a public service.

As the starting point of the dissertation, in the *second section* we review the range of assets belonging to national assets and state assets, with an outlook on the presentation of the related case law. The primary purpose of the investigation is to prove our hypothesis that not only the shares of companies belonging to the State and the municipality belong to national assets, but also the assets of publicly owned enterprises belong thereto. In order to prove the validity of our first hypothesis, we review the applicable legislation and the court decisions available to us.

After examining the elements of national assets, in the *third section* we review how and with what content the terms of corporate assets and related terms of assets, such as initial capital and

equity, appear in the legislation relating to publicly owned enterprises. The purpose of comparative analysis is to examine the extent to which the concept system applied by each relevant law can be considered coherent.

In the *fourth section* we examine the role of corporate assets in the operation of the company. The purpose of this section is to demonstrate our hypothesis that equity, not initial capital, plays the really essential role in the operation of companies and the protection of creditors.

Both the Fundamental Law and other laws governing national and state assets lay down specific, principled requirements for the management of national assets. In the *fifth section* of the thesis, we examine in detail these special asset management requirements, their contents, and their relationship to each other.

In the *sixth section*, we examine in detail the requirement for transparent management of assets by analysing in detail the increased data disclosure requirements imposed on publicly owned enterprises. Our hypothesis related to the requirements governing asset management is that these requirements have a significant impact on the operation of publicly owned enterprises and impose special additional obligations on the executive officers and supervisory board members of these organizations.

The following chapters focus on the examination of the organisational characteristics of publicly owned enterprises. In the *seventh section* of the dissertation, we describe the provisions on management by summarizing the general provisions of the Civil Code and related legislation on the liability of executive officers in the first half of the section, and then analysing the specificities of the management of publicly owned enterprises in the second half of the section.

In the *eighth section* of the dissertation, we focus on the supervisory board, and, like the structure of the previous section, after presenting the general rules governing the internal audit body and the related case law and literature, we examine the specifics of the supervisory board of publicly owned enterprises, in particular specialities concerning the size, remuneration and liability of the body.

The *ninth section* of the thesis consists of two main parts, in the first half of the section we examine the rules governing auditors and the role of the auditor in companies. In the second half of this section, we focus on a specific organizational unit of publicly owned enterprises, the internal control system. The latter section is particularly topical, given that the provisions of the government decree containing the relevant detailed rules will apply from January 1, 2021.

After presenting the organizational characteristics, in the *tenth section* of the thesis we focus on the companies owned by municipalities, with special regard to a specific form of operation and management, the municipal holding company. Our related hypothesis is that local governments that own at least 6-8 companies should establish a municipal holding company that coordinates and manages individual companies in a uniform way and ensures a management approach that the local administration may not be able to provide.

The aim of the thesis is to examine the issues summarized above in a comprehensive and detailed way in each section and to draw the appropriate conclusions. In order to examine them in an appropriate depth, we examine a number of sources of literature, as well as a number of court decisions, and compare their findings with each other. In addition to the conclusions drawn from the scientific sources and court case law, we also strive to record our subjective position and insights.

5. SUMMARIZED CONCLUSIONS OF THE DISSERTATION

5.1. VERIFICATION OF H1 HYPOTHESIS

Our first hypothesis relates to the fundamental question and dilemma of whether or not the assets of publicly owned companies constitute national assets. Act CXCVI of 2011 on National Assets (hereinafter: „**NA Act**") stipulates that company shares owned by the State and the municipality are part of national assets, but neither the NA Act nor any other legislation organically related to the subject determines whether the assets of publicly owned enterprises constitute national assets. The resolution on this issue is of decisive importance in relation to the research topic and represents a pre-question for the later sections of the thesis.

In examining our hypothesis, we found that neither the NA Act nor the SA Act provides for whether the assets of publicly owned companies fall under the category of national assets. On the basis of an examination of the related academic literature and case law, it was found that the listings of assets contained in those laws cannot be considered exhaustive, and therefore there is a possibility that assets that are not named by the said sources of law may also belong to national or state assets.

We then found that the relevant judicial jurisprudence is consistent in that it classifies the assets of publicly owned enterprises as national assets. These court decisions have consistently taken the view that the source of the assets allocated to publicly owned companies at the time of the establishment or possibly during the operation is public money, i.e. national assets and the

assets of companies do not lose their national assets feature with the moment that they are transferred to the legal person.

After a detailed examination of the related case law and the formulation of subjective critical observations, we found that we consider our first hypothesis to be justified, despite the fact that there is no clear support for our conclusion in a specific legal provision, and mostly theoretical and conceptual questions also arise. The assets of publicly owned enterprises are part of national assets. **(T1)**

5.2. VERIFICATION OF H2 HYPOTHESIS

Our second hypothesis focuses on the assets of companies and their role. In our hypothesis, we hypothesized that equity and its extent, not initial capital, are of decisive importance in the operation of business associations and in the protection of creditors.

As a first step of the research, we found that the concepts of corporate assets, equity and initial capital have essentially the same content in legislation of decisive importance for publicly owned enterprises. The terms equity and initial capital are typically defined by reference to the relevant provisions of Act C of 2000 on Accounting.

In confirming the hypothesis, we fixed the background of the issue as a source of law, including the relevant provisions of the Accounting Act and the Civil Code, and also looked at the related EU directive.

We found that, despite the widespread position in the scientific literature, initial capital alone is not capable of protecting creditors' interests. We have stated that the amount of this is typically so low that it is not suitable for the satisfaction of all claims against the company. Furthermore, we found that the initial capital is not a separate amount in the company's assets and is therefore used and utilised by the company in its operations.

We found that the initial capital is suitable for performing other functions, including the amount of initial capital necessary for the start-up of the company's operation and is also capable of increasing the confidence of business partners.

Looking at the functions of capital, we have come to the conclusion that equity is in fact the one that plays a creditor protection role in the operation of the companies and that this amount is capable of covering the satisfaction of creditors' claims to the extent specified.

We found that the assets of publicly owned companies are considered special, as these legal entities manage public funds and national assets. We concluded that in the case of state-owned enterprises, there may be an increased possibility that the State supports the operation of the company directly or indirectly, but we found that this can only be allowed to the owner (the quotaholder / shareholder) in exceptional cases and within strict limits.

On the basis of an examination of the relevant academic literature sources, we have confirmed our hypothesis that the primary determining factor in the operation and management of companies, including publicly owned enterprise, and in the protection of the financial interests of creditors who do business with these entities, is not the initial capital, but equity. **(T2)**

5.3. VERIFICATION OF H3 HYPOTHESIS

The third hypothesis of the thesis goes beyond the general financial issues, but essentially builds on the first and second hypotheses, related to the peculiarities of the property management of publicly owned companies. The hypothesis can be summarised as such that there are a number of additional requirements for the asset management of publicly owned enterprises compared to market-oriented companies.

We found that even the Fundamental Law of Hungary sets out certain basic requirements for the management of national assets. In addition to these requirements of the Fundamental Law, both the NA Act and the SA Act contain additional requirements, partly by repeating them and partly by naming additional requirements.

We have stated that in addition to the special requirements that significantly affect the asset management of publicly owned enterprises, the general provisions set out in the First Book of the Civil Code, as well as the principles of company law, are also important.

We found that the named asset management requirements are primarily complementary, theoretical categories, the exact content of which is difficult to determine, but the legislative objective was clear by their formulation: the efficient, successful, cost-saving operation of national assets.

As a conclusion, we have concluded that these asset management principles essentially permeate the entire operation and management of publicly owned enterprises, with the fact that it is difficult to verify the exact observance or breach of these principles. We found that consistent and full compliance with certain relevant legal provisions actually may lead to these principled requirements being met.

We found that the requirements imposed by the Fundamental Law, the NA Act and the SA Act are considered special, since the principles set out in the Introductory Provisions of the Civil Code and the principles of company law apply to all companies, but the special asset management requirements must only apply in the operation of companies with national assets.

One of the fundamental requirements, transparency, was examined in an independent section, especially considering that in recent years and in the present, numerous court cases have focused on the publication of public interest data or public data related to the operation and asset management of publicly owned enterprises, so the high-profile topicality of this issue justified a thorough analysis in particular. We found that case law can also be considered uniform in this respect and that companies can only effectively rely on the refusal to disclose the requested data for various reasons.

As a result of the comparison of the relevant legal provisions and literature positions and the simultaneous formulation of our subjective position, we confirmed our third hypothesis and found it proven that the operation and asset management of publicly owned enterprises are governed by special, principled asset management requirements. **(T3)**

5.4. VERIFICATION OF H4 HYPOTHESIS

It is assumed that special asset management requirements impose additional obligations and increased liability on the executive officer of the companies and the members of the supervisory board. **(H4)**

Our fourth hypothesis is closely linked to the third hypothesis, more precisely, the justification of the third hypothesis is a pre-question of the fourth hypothesis. By finding that the operation and asset management of publicly owned enterprises are governed by specific, principled asset management requirements, we have moved on to examine the exact impact of these requirements on the organisation and operation of these companies.

In order to examine the impact of asset management requirements on the organisation, we have primarily mapped the legal provisions relating to the organisation (such as management, the supervisory board and the auditor) of companies and, within them, publicly owned companies the related literature and case law.

We found that there are specific rules apply to both executive officers and the supervisory board of publicly owned enterprises. We have stated that these specific rules are explicitly primarily

relevant to the number of the members of the given organizational unit and the level of remuneration that can be granted to the members of the department.

In addition to the explicit legal provisions, we have concluded that compliance with the asset management requirements and the monitoring of compliance with these requirements impose an ongoing additional obligation on the management and supervisory board of publicly owned enterprises.

We have stated that the additional obligations and the specific nature of the company should result in increased liability for both the management and the supervisory board. We analysed in detail the forms of liability and the related judicial practice. We found that there is no explicit legal provision imposing enhanced liability rules for executives and supervisory board members of publicly owned enterprises. Nevertheless, we have come to the conclusion that increased liability can be deduced from special asset management requirements.

We also examined the provisions and regulations for auditors, who also play a particularly important role in supporting the credibility of companies' asset management data and annual accounts.

We also analysed the legal provisions governing the internal control system of publicly owned enterprises. We found that the management of publicly owned enterprises – at least its number one manager, which is difficult to define conceptually – also has a number of tasks in relation to the establishment of this internal control system, but the legislator failed to draw up the related liability provisions.

In examining the complex issue, we have generally found that the liability provisions related to the management and supervisory board of publicly owned enterprises are unregulated and unsettled, which can be the source of many problems. By highlighting these problems and emphasizing shortcomings and contradictions, we have sought to formulate proposals that can fill these gaps over time and contribute to the development of comprehensive, coherent regulation.

As a result of the comprehensive examinations outlined above, we found that, despite possible regulatory deficiencies and question marks, the management of national assets and the related asset management requirements impose a number of additional obligations on the xecutive officers of publicly owned enterprises as well as on the supervisory board. We found that these additional obligations also result in increased liability for persons holding positions in these

legal entities. This may be of particular importance in the selection of individual officials. We would also like to draw attention to the fact that, in our view, the remuneration of executives and supervisory board members does not reflect the weight of the responsibility and responsibility involved in filling these positions. The asset management requirements, their observance and control impose an additional obligation on the company officials, accordingly we have confirmed our fourth hypothesis. **(T4)**

5.5. VERIFICATION OF H5 HYPOTHESIS

The fifth hypothesis of the thesis relates to a group of publicly owned enterprises, municipality-owned companies. We established that the operation and asset management of these legal entities are regularly monitored by the State Audit Office. A study summarising the results of these audits shows that there are a number of problems, deficiencies and irregularities in the operation and asset management of municipality-owned enterprises. The study makes various recommendations to eliminate these problems.

We have identified that these proposals do not include the possibility of setting up a municipal holding company and do not examine the advantages and disadvantages of the establishment of such organization.

We found that one of the resultants of the operational problems of municipality-owned companies is the contradiction between the approach of the public administration and the business sector, which can be summed up as follows that– following Zoltán Magyary – the public administration is for the people, but the business sector, which includes business associations, focuses primarily not on individual people, but on maximizing profits. We have noted that this difference in perspective results, inter alia, in the problems and shortcomings of companies owned by municipalities.

We found that in order for enterprises owned by municipalities to function effectively and serve the interests of the community effectively, municipalities should establish holding companies. These holding companies are wedged between the local government and the individual companies and are suitable for the establishment of the unified operation and management of the individual companies, which serves the interests of the municipality and the citizens concerned.

We have noted that the establishment of holding companies has many advantages for municipalities that have shares in several - at least 6-8 - companies. By considering the advantages that can be obtained by setting up a holding company, we have established the

usefulness of them, thus confirming our hypothesis that municipalities that own at least 6-8 companies should establish a municipal holding company. **(T5)**

On the basis of the hypotheses confirmed above, we conclude that publicly owned enterprises, despite being existed in the forms of companies regulated in the Third Book of the Civil Code and seemingly governed by a small number of special provisions, are in fact dissiposed to companies of a market nature in their significant aspects. As a result of the research work, some of these characteristics, in particular the property and organisational characteristics, have been given greater emphasis than before and are capable of drawing even more attention to publicly owned enterprises and to highlighting them somewhat from the set of companies.

6. NEW SCIENTIFIC RESULTS

The thesis is a niche work: it presents the organizational and financial characteristics of publicly owned enterprises on the basis of the relevant legal provisions, the related case law and the available literature. Publicly owned enterprises can be examined from many aspects, besides the organizational and financial characteristics, the public service provided by these legal entities is noteworthy, there are state-owned and high-priority companies that deserve special attention and investigation in themselves. Furthermore, in the context of the management of public funds and public assets, the examination of these legal entities from the point of view of criminal law also presents a number of scientific challenges.

In this dissertation, however, we have sought to examine and present the topics we want to analyse with due diligence, thus, instead of a work covering all aspects of publicly owned enterprises, we prepared a thesis examining the organizational and property characteristics in detail and comprehensively on the basis of the research results revealed.

In the thesis, we established in detail that these companies manage national assets, which requires compliance with special asset management requirements on the one hand, and on the other hand imposes additional liability on certain officers of the companies, such as management and supervisory board members.

During the course of each section, we also formulated our subjective insights and positions, which provided an opportunity to draw attention to certain regulatory issues, shortcomings and contradictions. We regard these subjective findings and their related proposals for the amendment and supplementation of the regulation as new scientific findings, which can serve as a kind of guidance, or at least a thought-provoking, for legislators.

We are convinced that a significant part of the questions arising in the course of the operation of publicly owned enterprises can be answered on the basis of the rules of the Civil Code governing legal persons and companies and in accordance with the legal interpretations of the related case law. At the same time, in the course of the research, we found that publicly owned companies have a number of characteristics that go beyond this, the legal background of which is mostly fragmented and sometimes incomplete, so in our opinion it would be justified to develop a uniform and complex set of rules regarding the specificities of publicly owned enterprises, reflecting the characteristics of property, organisation and liability. In the event that the legislator does not consider it justified to establish such a comprehensive regulatory regime, we consider it necessary to eliminate the errors, shortcomings and contradictions of the current legislative provisions. In writing this thesis, we sought to explore these disharmonies and develop proposals.

DR. ZÓRA ZSÓFIA LEHOCZKI

Publications

1. Zóra Zsófia Lehoczki: The special requirements applicable to the management of national assets, with a special respect to the requirement of transparency. In.: Debreceni Jogi Műhely, 2020/3-4., pp. 85-96.

2. János Dúl - Zóra Zsófia Lehoczki - Tekla Papp - Emőd Veress (eds.): Company law encyclopaedia. Budapest, Dialóg Campus Kiadó, 2019.

3. Zóra Zsófia Lehoczki: Some damage responsibility issues arising in connection with MNV Zrt. In.: Jog-Állam-Politika, 2019/3., pp. 119-133.

4. Zóra Zsófia Lehoczki: Characteristics of municipally owned companies. Pro Publico Bono – Public Administration, 2019/3., pp. 112-129.

5. Zóra Zsófia Lehoczki: Specific asset management requirements governing the management of national assets. In.: Opuscula Civilia, 2019/6., pp. 1-18.

6. Zóra Zsófia Lehoczki: The municipal holding company. In.: Csaba Erdős (ed.): Doctoral Working Papers 2019, Budapest, Gondolat Kiadó, 2019. pp. 159-172.

7. Zóra Zsófia Lehoczki – Judit Szakos - Viktória Pató (eds.): Critical rethinking of Public Administration. Budapest, Doktoranduszok Országos Szövetsége, Közgazdaságtudományi Osztály, 2019.

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15. Zóra Zsófia Lehoczki: Group of companies. In.: Tímea Barzó - Tekla Papp (eds.): Civilistics I. General studies, Rights of persons, Right of intellectual property. Budapest, Dialóg Campus Kiadó, 2018. pp. 339-347.

16. Zóra Zsófia Lehoczki: Specificities of the management of publicly owned enterprises. In.: Miskolci Jogi Szemle, 2018/2., 2nd volume, pp. 148-162.

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21. Zóra Zsófia Lehoczki: Oasis or mirage? - Reflections on the role of the minimum share capital in protecting creditors I. In.: Gazdaság és Jog, 2017/10., pp. 7-12.

22. Zóra Zsófia Lehoczki: Oasis or mirage? - Reflections on the role of the minimum share capital in protecting creditors II. In.: Gazdaság és Jog, 2017/11., pp. 20-25.

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27. Zóra Zsófia Lehoczki: Questions about the apportability of know-how have arisen in the light of judicial practice in recent years and the regulation of the new Civil Code. In.: Céghírnök, 2016/5., pp. 6-10.

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Professional curriculum vitae

Dr. Zsófia Lehoczki Zóra is a student of the Doctoral School of Public Administration Sciences of the National University of Public Service who obtained an absolution in August 2020 and is currently a junior associate at Nagy and Trócsányi Ügyvédi Iroda.

The doctoral candidate was born in Makó in the spring of 1993, after finishing primary school she continued her secondary and university studies in Szeged, and in 2016 she obtained a diploma in law from the Faculty of Law and Political Sciences of the University of Szeged, with a summa laude qualification. She wrote her thesis on the topic of corporate law, examining the issue of contribution in-kind, and her thesis supervisor was Professor Tekla Papp. In recognition of the best academic achievement among law graduate students, she received the Diploma Prima Award.

She started her doctoral studies in 2016 at the Doctoral School of Public Administration Sciences of the National University of Public Service, her research area is the examination of the assets and property management of state and municipality-owned companies. The doctoral candidate has a higher level of English proficiency.

During the doctoral training, she published several scientific publications – more than 20 pieces – related to her research topic in Hungarian and English. As editor and author, she participated in the production of such significant and pioneering publications as the Corporate Law Encyclopaedia published by Dialóg Campus KIadó. Shee has given numerous lectures in Hungarian and English at scientific conferences and workshops independently and together with her consultant Prof. Dr. Tekla Papp.

She participated in several scientific research projects, including the Ludovika Priority Research Workshop ("Corporate Governance – Publicly Owned Enterprises" operated within the framework of the subproject "Public service development on the basis of good governance", "Impact assessment and research foundation of fact-based public service development aimed at good governance" and was a researcher of the group preparing the special report on the judiciary related to the Good State Report, which was re-established in the framework of the project KÖFOP-2.1.2.-VEKOP-15-2016-00001 entitled "Public service development underpinning good governance".

She also participated in the talent management and tutoring activities of the Department of Civilistics, so in 2019 she was temporarily deputy head teacher of the Civil Law Science

Student Circle, before that, and from 2017 she was the teaching secretary of the Civil Law Science Student Group. She also participated in preparing students for National Civil Law Case Solving and Activity competitions.