LEGAL ISSUES AND PRACTICAL PROBLEMS IN THE MANAGEMENT OF THE SECURITIES PORTFOLIO IN SLOVAKIA

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Abstract: Securities are an integral part of the basic instruments of the capital market not only in the conditions of the Slovak Republic. In practice, several contractual types contained in the Securities and Investment Services Act are used in securities trading. It is primarily an agreement on the sorting of the securities portfolio, which is used by securities traders. However, this contract consists of several types of contract, which address the issue of procuring the purchase or sale of a security, its safekeeping and administration. In this article, we focus on the examination of individual contract types / activities, which together as a whole represent a contract on the management of a securities portfolio by a securities trader. With the help of scientific research methods as well as with the use of scientific and doctrinal interpretation in Slovak but also foreign professional literature and as case law, answers will be provided to selected application problems from practice. A comprehensive legal examination of the agreement on the management of the securities portfolio in the conditions of the Slovak Republic is the main goal of this paper, which belongs to the area of business and financial law with certain overlaps in economics and financial management.

Keywords: contract, financial and business law, portfolio management, securities,

1 Introduction

The capital market is understood as a system of institutions and instruments ensuring the movement of medium and long-term capital between economic entities through various forms of securities. Unlike the monetary market, the circle of entities operating on the capital market is wider and the organization of the market is also more diverse (Dermine, 2015). An integral part are stock exchange trades as special trading contracts. The key feature of these contracts is that they are traded on a stock exchange that differs from other markets by its high formal organization. The transfer of capital in the form of securities which are concluded on behalf of clients by securities traders as a result of portfolio management agreements. The portfolio of economic literature (Chovancová and Árendaš, 2016) is understood as a combination of investment opportunities in which the investor invested his capital. A portfolio investment is an investment in a combination of assets and, according to (Macíková et al., 2018), may be a combination in both the primary market and the secondary market.

Securities trading in the Slovak Republic has never met with the interest of the population. The lack of interest of the public as well as the vagueness of the legal regulation may result in a lack of interest of lawyers to examine this issue in more depth, despite its undoubted importance in business practice. The issue of financial markets is addressed by several experts, especially in the field of economic theory. This issue is a legal prism, and it is the legislative framework that determines the rules of the game. For this reason the article seeks to contribute to the presentation of the legal status of the management of the portfolio of securities agreement. Therefore, a comprehensive of review the issue of contractual management of the securities portfolio from the point of view of valid and effective Slovak legislation would be an important addition to the legal literature. The article is divided into four chapters, each of which comprehensively examines one of the activities of a securities trader within the management of the client's portfolio.

2 Aim of the paper and methodology

The main goal of this scientific article is to examine its legal regulation in the legal order of the Slovak Republic and to identify the agreement on the management of the securities portfolio. In addition to the main goal, we have chosen two sub-goals, which are:

- confirm or reject the hypothesis that the securities portfolio management agreement represents separate contractual types in Slovak commercial law.
- assess the legislation as a whole and, if appropriate, make proposals *de lege ferenda.*

According to the nature of the article, we use several scientific methods of knowledge. For the knowledge of the law, we consider it appropriate to use the method of logical analysis to examine the legal status and legislation as well as abstraction. Using the comparative method, we make available the different opinions of theorists, whether on the appropriateness of legislation or on the interpretation of individual legal institutes. Due to the experience from the practice of law in some parts, we also use a doctrinal interpretation. The primary source from which we draw ideas are legal regulations as generally binding formal sources of law in the Slovak Republic. We supplement these sources with the secondary source, which is the decision-making activity of Slovak and Czech courts. It aims to unify the interpretation of the disputed legal institutes. Within the source apparatus, scientific and professional literature occupies a special place.

3 Securities portfolio management agreement in general

The contract on portfolio management as the last contractual type is contained in § 43, Section 1 to 6 of Act No. 566/2001 Coll. on Securities and Investment Services, as amended (hereinafter referred to as the "Securities Act"). The indirect object is a portfolio consisting of investment instruments, other securities or cash intended for the purchase of investment instruments. Other professional literature (Bajus, 2011) defines a portfolio of securities as a stock of various securities held by an investor. The aim of creating a portfolio of securities is to diversify risk, because holding securities allows the investor to obtain an adequate rate of return on the capital invested at a relatively low risk and obtain the highest possible rate of return on invested capital.

As per § 43 Part 1 of the Securities Act, a portfolio management contract, which can only be undertaken by a securities trader, manages the client's portfolio based on the manager's decision within the scope of the contract for which the client undertakes to pay remuneration. A formal condition for the validity of a portfolio management agreement is its written copy. However, if an agreement were an oral contract, it would be affected by a defect of the absolute invalidity of the legal act. The rights and obligations arising from the concluded portfolio management agreement are outlined only by the legislator, which leaves unlimited freedom to the parties with a vague reference to the agreement on the purchase of securities, mandate and commission agreement on the purchase or sale of securities, and contracts and custody of documents securities and the securities administration contract. In this connection, Eliáš (1999) states that the Paragraphs from § 30 to § 53f of the Securities Act regulating the issue of securities contracts constitute a *lex specialis* in relation to Act No. 40/1964 Coll. The Civil Code as amended (hereinafter referred to as the "Civil Code") and Act No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the "Commercial Code"). These two codes therefore apply ancillary to all securities contracts.

3.1 Commission method of buying or selling a security

Arranging the purchase or sale of a security is the basic activity of a securities trader as a manager within the scope of portfolio management. He may perform this activity primarily in a commission manner. In this way, the manager, as a commission agent, undertakes to arrange for the purchase or sale of a security for his client in his own name as a client on his own account or to act to achieve this result and the client undertakes to pay him remuneration. In practice, this means that the objective of the contract will be met if the manager succeeds in selling or buying the security. The second possibility when the contract expires upon fulfillment is also the situation when the purchase or sale

of the security did not take place, but the manager performed the contractual activity with professional care (Judgement of the Supreme Court of the Czech Republic No. 32 Cdo 3464/2008).

The Securities Act dispositively determines the written form for the client's instruction, on the basis of which the manager is to procure the sale or purchase of a security. According to Čižo et al. (2020) this obligation can be modified by deviation on the basis of the contract, but only if the client's instruction was not given in writing.

According to Lachlan (2014), if the subject of the contract is the obligation of the manager to arrange the sale of a security, he has the right to request the client to hand over the security to him, in the case of a paper security. When selling a book-entry security, it is necessary to ensure the suspension of the right to dispose of the sold security in the records of the Central Securities Depository or in other separate records. It follows from the substance of the case that during this time the client is not entitled to dispose of the security (Judgement of the Supreme Court of the Czech Republic, No. 29 Cdo 5239/2008). In this context, however, the manager can also fulfill his obligation in such a way that he sells a security from his property to the client, or otherwise buys it from him. However, this can only be done if the portfolio management agreement allows it. In the literature, such a procedure is called (Polišenská, 2016) as “self-entry of the manager.”

It is assumed that the price of the security is determined by agreement of the parties in the contract or in the given instruction. However, if the manager has the opportunity to sell the security at a higher price than agreed, he is obliged to do so without the client's consent. The same applies to the possibility of buying a security at a price lower than agreed. If he did not do so, he would bear the risk of liability for the damage caused to the client. In general, however, the manager's obligation to buy or sell a security for the client at the most advantageous price that could be achieved with the required professional care applies.

The provisions of § 34 and § 35 of the Securities Act address the issue of the transfer of ownership of a security. It follows that the securities entrusted to the manager for sale are the property of the client until they are acquired by a third party. Documentary securities acquired for the client on the basis of a contract by the manager are transferred to his property on the day of the endorsement, provided that their subsequent handover to the client is also required. In the case of dematerialized securities, the decisive event is their entry in the account of the holder or the holding account of the manager

Among the other managerial duties of the manager, we include in particular the procedure with the necessary professional care according to the client's instructions. It is especially important to protect the interests of the client, notifying all circumstances that may affect the change of orders. In certain cases, it is also recommended to take out insurance, but only if specified in the contract.

It follows from § 580 paragraph 1 of the Commercial Code, which also applies to this activity in support, that if the contract does not specify something else, if he cannot fulfill the content of the contract, the manager is obliged to use a third party to fulfill the contract. According to Peráček et al. (2018) however, the contract may exclude the possibility of using the services of a third party. The following § 580 paragraph 2 stipulates that if he uses another person to fulfill the obligation, he is liable as if he had procured the matter himself.

The client does not create any rights or obligations in relation to third parties as a result of the activities of the manager, because in this case the manager acts in his own name. However, the Securities Act allows the client to directly demand from a third party the issue of a thing or the fulfillment of an obligation procured for him by the manager. However, this only applies if the manager cannot do so for reasons on his part.

In the case of these activities, the Securities Act does not specifically address the issue of remuneration for the manager. The obligatory part of the contract is only the determination of the client's obligation to pay compensation for this activity. The determination of its amount, maturity and other conditions is left to the agreement of the contracting parties within the optional requirements of the contract. In the event that the contract does not contain them, § 587 and § 588 of the Commercial Code the method of determining remuneration shall apply in the alternative. It is generally assumed that the manager is entitled to remuneration that is proportionate to the activity performed and the result achieved, considering the remuneration normally provided for a similar activity at the time of the conclusion of the contract. The concept of ordinary remuneration must therefore be interpreted in the light of existing economic practice, which is respected in this area (Nosková, 2019).

Final payment of remuneration resp. the right to its payment belongs to the manager only after he has fulfilled his obligations and submitted a report on the result of the installation and billing. However, the remuneration includes two components, the costs of the manager and the remuneration itself. In particular, the law addresses the issue of reimbursement of costs that are part of the commissioner's fee and are paid together with remuneration. As Gavurova et al. (2019) these are costs that the manager has inevitably and efficiently incurred in carrying out the agreed activities, such as travel, telephone, etc. Overall, therefore, the remuneration comprises two components, which consist of remuneration and reimbursement of the operator's costs.

3.2 Mandatory method of procuring the purchase or sale of a security

As part of portfolio management, the manager may arrange for the purchase or sale of a security in a mandated manner. This is a specific procedure contained in Section 36, Paragraphs 1 and 2 of the Securities Act within the framework of a mandate agreement on the procurement of the purchase or sale of a security. In such a case, the manager undertakes to buy or sell the security on behalf of and for the account of the client in accordance with his instructions or to act to achieve this result, and the client undertakes to pay him remuneration. Their mutual rights and obligations are governed by § 33 of the Securities Act and § 566 to § 576 of the Commercial Code on the Mandate Agreement. Not only those provisions that contravene the Securities Act apply (Horecký, 2018).

Like the commission, the activity of the manager can be linked to the result t. j. as his obligation to arrange for the purchase or sale of a security on behalf of the client and on his behalf. The second possibility is that the subject of the contractual relationship will only be the performance of activities aimed at the sale or purchase of a security. Therefore, the purpose of the contract will be fulfilled if the security can be sold or bought; respectively the purpose of the contract will be fulfilled even if the purchase or sale of the security has not taken place, but the manager has performed the agreed activity with professional care (Haentjens, 2015).
The task of the manager is therefore to arrange on behalf of the client to procure the purchase or sale of securities, or only to carry out such an activity for a certain fee. Of course, the manager is professionalism as well as proceeding with professional care, as this is the main content of his business activities. His other responsibilities include following the client's instructions and acting in accordance with his interests. The manager should know and communicate to the client all information found in connection with the procurement of purchase or sale of securities. However, he should only communicate to him the information that has at least a potential impact on the change of instructions already given.

The expression of confidence in the professionalism of the manager results from the possibility to deviate from the client's instructions, if necessary (Kral et al., 2019). In practice, these will be situations where it is not possible to connect the parties in

time. Even in such an exceptional case, however, it is forbidden to deviate from the client's instructions if this follows from the concluded contract or from previously stored instructions. In particular, it is necessary to support § 33 paragraphs 2 and 3 of the Securities Act. According to him, if the manager has the option, he is obliged to sell the security at a higher price or buy the security at a lower price than stated in the instruction, even without the client's consent. According to Judgement of the Supreme court of the Slovak Republic No. 3 Obo 186/2007, otherwise, as in the commissioned manner, he would be liable for the damage he would cause to the client. In the absence of a price determination in the client's order, the law imposes, as in the case of a commission to buy or sell a security for the client's client, at the most advantageous price that could be achieved with professional care.

According to Hajduova et al. (2019) in this case, the legislator allows the manager to be represented by a third party, but with the risk of being held liable for any damage caused by the third party. The possibility to be represented cannot be used only in the case of a contractual prohibition.

The client's obligations primarily follow from the Commercial Code and the Securities Act. In the first place, it provides the manager with all the necessary things and information necessary for the implementation of the subject of the contract in time, except for those which he has to procure himself. However, the performance of certain legal acts cannot be carried out without a power of attorney (Koleva, 2019). The client is obliged to issue this immediately in writing. Despite the fact that the power of attorney essentially follows from the content of the securities portfolio management agreement, it is directed against third parties and legally has the legitimacy of the manager to act on behalf of the client. The provisions of the Commercial Code governing the mandate agreement do not address the consequences of exceeding the authorization. As follows from Judgement of the Supreme Court of the Czech Republic No. 33 Cdo 4385/2007, for this reason, it is necessary to proceed from the general legal regulation of representation on the basis of the power of attorney contained in the Civil Code.

Given the considerable variety of activities that a trustee must perform when procuring the purchase or sale of securities for a trustee, it cannot be ruled out that he will take over other things for him than just paper securities, such as contracts and the like. Subsequently, however, it is the agent's obligation to issue them to the client without undue delay.

In this case, the Commercial Code resolves the issue of the damage caused in the same way as in the case of the Securities Commission, with liability for damage to items taken over. It is also possible to eliminate the risk by optional insurance, while compulsory insurance is required only if required by the contract or if the client so requests, but always only on his account Grancay et al. (2015).

In the commission or mandated method of procuring a purchase or sale, the manager is obliged to proceed with the necessary professional care. In the case of procuring the sale of a security that has certain defects, its role is more demanding, as the other party would not have to show interest in such a security. However, the Commercial Code also provides for a situation where the buyer would be aware of the existence of defects in the security at the time of concluding the contract for its purchase and would still be interested in it. In such a case, this would be a special reason to exclude the manager's liability for this lack of security. However, it is also true that the buyer's liability for defects is not excluded if the security should have had certain properties, but in fact did not. In this situation, in the opinion of the Supreme Court of the Slovak Republic No. 3 Obo 55/2010, the knowledge of the buyer is no longer examined with regard to professional care, but only with regard to care appropriate to the situation. The law of the Slovak Republic allows a contract that transfers ownership of a security to contain a *tel quel* clause (as it is), resp. “Accepted and approved”. Its application relieves the manager of liability for defects in the security sold and the acquirer can no longer claim liability for the defects of the security.

Within the management of the securities portfolio, it is possible to negotiate remuneration as a whole for all activities, or even in part. Should the parties agree on remuneration for such procurement of the purchase or sale of a security, the Securities Act presupposes an agreement on the amount of remuneration. In the event of an omission, its amount shall be determined in accordance with custom at the time of concluding the contract for procuring the purchase or sale of the security. The right to payment would arise for the manager after the proper performance of the agreed activity, regardless of whether it brought the expected result or not. However, in terms of § 571 paragraph 1 of the Commercial Code, the right to the payment of the agreed remuneration may be conditioned by the result.

If, in connection with the purchase or sale of securities, significant costs are expected to arise, the manager is entitled to a reasonable advance immediately after the conclusion of the contract (Masood et al., 2020). When subsequently determining the amount of remuneration, the parties should agree on whether the remuneration also includes necessary or purposefully incurred expenses necessary to procure the client's affairs. In the absence of this arrangement, there is a legal rebuttable presumption that they are already included in the remuneration. Section 573 of the Commercial Code limits the content of the manager's liability by excluding his liability for breach of the obligation of the person with whom he has entered into a contract for the purchase or sale of securities. An exception may only occur if the contract has guaranteed in writing that the other parties will have fulfilled the obligations to procure the purchase or sale of the securities.

3.3 Custody of securities

As part of the management of the securities portfolio, the Securities Act also allows the manager to deposit paper securities. As Duľová – Spišáková et al. (2017) the negotiation of the rights and obligations of the contracting parties is based on the agreement on custody of paper securities contained in § 39 and § 40 of the Securities Act. It is worth noting that in this case there is no direct reference to the supporting application of the Commercial Code or the Civil Code. However, as this is a remunerated type of contract, it is subject to the provisions of Part Three of the Commercial Code on Commercial Obligations in matters that are not specifically regulated by the Securities Act.

As part of the custody of paper securities, the manager, in the position of custodian, undertakes to take over the paper security for safekeeping in separate or collective custody and the client, as the depositor, undertakes to pay him remuneration. However, the contract must include the identification of the persons who are authorized to handle the certificated security deposited.

As the name implies, only paper securities can be deposited. As part of the harmonization of Slovak law with the law of the European Union, two types of custody of paper securities were introduced. It is a separate storage and a bulk storage (Dumitru and Tomescu, 2020). Collective custody is essential for securities trading, as, (Pauly, 2017), as it makes it possible to speed up transfers of securities, thereby reducing the cost of transactions in these securities. In general, a substitutable paper security is deposited in collective custody and an irreplaceable paper security in separate custody. Separate custody is defined as the deposit of a paper security of one depositor separately from the paper securities of other depositors. The main obligation of the manager is to return to the client the depositor the same paper security that was entrusted to him for safekeeping. At the same time, it is legally liable for damage to the deposited paper security. An exception is the case of impossibility of averting damage even with all professional care (Raisová et al., 2020).

Among the basic duties of the manager, we can include the consistent keeping of records on each paper security deposited in

custody. If the paper security is not already with the manager at the time of concluding the contract, he is obliged to take it over and deposit it immediately. Subsequently, however, he is obliged to protect him with all professional care so as not to lose, destroy, damage or devalue. The client's rights inevitably include his ability to request the return of a paper security at any time, as well as the ability to return the security to the manager, if the concluded portfolio management contract has not expired in the meantime (Nekit at al., 2020).

The possibility exists to declare bankruptcy on the part of the property of the manager. Despite the fact that the occurrence of such a situation in the conditions of the Slovak Republic is rather hypothetical, it is necessary to clarify certain facts. The declaration of bankruptcy means a fundamental interference with the client's property. In order to secure the assets of the bankrupt (manager) and satisfy the claims of creditors, the administrator of the bankruptcy estate will perform actions aimed at handing over the deposited securities to its owners. If it is not possible to return them, for example due to an obstacle to the changed address of the depositor, the insolvency administrator must deposit the non-transferred securities with another custodian under conditions similar to those under which they were deposited. The additional custody costs incurred in this way are borne by the bankrupt t. j. forest manager. However, it is precisely his clients as custodians who are obliged by law to reimburse the costs thus incurred to the administrator of the bankruptcy estate according to the proportions of their shares. Subsequently, they can recover these costs from the bankrupt in bankruptcy proceedings, though with a minimal chance of reimbursement (Sararu, 2016, 2017).

Even within the custody of a security, the manager has the option to transfer the taken over security to another custodian without the client's consent. In practice, this is the so-called secondary custody, the purpose of which is to enable the concentration of custody of paper securities by persons specializing in this activity. It does not matter the person of the manager with whom the client, as the owner of the security, has entered into a contract. However, applying the principle of availability, the portfolio management agreement may exclude secondary custody (Rontchevsky, 2017). When looking for answers to questions of liability for damage, it should be emphasized that the transfer of a paper security to another custodian does not mean the cessation of the manager's liability. He is liable for any damage as if he had the security at his disposal at all times.

3.4 Securities management

The Securities Act deals with the issue of securities management only briefly in § 41 without reference to the supporting application of the Commercial Code or the Civil Code. As part of the administration of securities, the manager, as the administrator, undertakes to perform all legal acts necessary for the exercise and maintenance of rights associated with a particular security for the duration of the contract, and the client, as the owner of the security, undertakes to pay him remuneration.

The mission of the manager is to perform all acts related to the performance and preservation of rights associated with the ownership of a security with professional care, even without the instructions of his client (Mura and Rozsa, 2013). These include, in particular, requiring the fulfillment of obligations arising from ownership, the exercise of exchange or pre-emptive rights attached to a security, provided that the securities portfolio management agreement does not contain different rights or obligations. The manager is also directly responsible by law for the fulfillment of the client's instructions, which must be in writing (Kotásek, 2013). However, in today's age of information age, it is possible to contractually agree on another, most often, electronic form. As part of the step-by-step obligation, the administrator shall duly and timely notify the client of incorrectly given instructions. When managing a dematerialized security, the client is a contractual obligation, upon request by the manager, to take timely measures to ensure that the manager is entitled to issue orders for the disposal of the dematerialized security to the necessary extent. Ownership of some type of security is also associated with the right to vote, the exercise of which the client may entrust to the manager (Veronesi, 2010). To this end, however, he shall issue him with the necessary power of attorney, within which he may also receive binding instructions on how to vote.

The peculiarity of the security administration is also calculated at the time of holding the security. In this case, it is limited to the time necessary, as it is the legal obligation of the manager to hand it over immediately after the act for which he had to be in his possession. Even in this case, a deviation may occur within the portfolio management. When managing a security, legal liability for damage to the paper security during the holding is also applied. The only reason for the liberation is the impossibility of averting the damage with all professional care. In the case of reimbursement of costs associated with the administration of a security, the remuneration of the manager also includes the costs incurred in the performance of his obligation (Khan et al., 2020).

In general according to Panova (2020), the manager performs legal acts related to the administration of a security on behalf of and for the account of his client. The provisions of the Securities Act and the provisions of the Commercial Code on the mandate agreement shall be used as a support measure to determine other rights and obligations arising from the administration of securities which are not provided for in the Securities Act. Again, there is an exception when the provisions of the Commercial Code on the commission contract and the Securities Act apply. This is the case when the manager has to perform a legal act in his own name and on behalf of the client according to the contract.

3.5 Determination of remuneration and termination of the portfolio management contract

The Securities Act does not pay even minimal attention to the issues of remuneration for the manager of the termination of the obligation under the portfolio management contract. For this reason, it is necessary to apply the general and special provisions of Part Three of the Commercial Code.

The amount of the remuneration in general, not only for the manager, is not one of the essential requirements of the contract, either according to the Securities Act or according to the Commercial Code. Retaliation contracts must only specify the obligation to pay retaliation. Without determining the severance, it could no longer be a portfolio management contract but only a certain hybrid type of innominate contract. We agree with the views of some authors (Ślusarczyk, 2018) that, however, the portfolio management contract is the subject of the trader's business, the purpose of which is to generate profit. Within the subsidiary scope of the Commercial Code, retaliation can be determined in several ways. The first way is the agreement of the parties on the amount of remuneration as well as its maturity. The second option for determining the remuneration would be an agreement in the contract, according to which the method of determining the remuneration for the contracting authority would be determined (Maris, 2017). The last possibility is a legal diction that the client pays the fee that is usually paid for comparable services at the time of concluding the contract under similar business conditions. In our opinion, the solution would also be the issuance of a decree by the Ministry of Finance of the Slovak Republic, which would determine the amount of remuneration for individual activities. Such a procedure is applied e.g. in advocacy in the provision of legal aid, when the Ministry of Justice of the Slovak Republic issued Decree no. 655/2004 Coll. on lawyers' fees and compensation.

The easiest way to terminate a portfolio management contract is to fulfill the obligation on both sides. Other ways of terminating the contract include the expiration of the time for which it was concluded and the agreement of the parties on its termination.

Unlike the portfolio management contract itself, it does not have to be in writing, though this is not recommended. The Commercial Code allows both parties to t. j. the manager as well as the client to terminate the obligation under the contract by termination. As part of arranging the purchase or sale of a security, they may terminate the contract in any way, in part or in full, in any way. If the termination does not specify a later effect, it shall take effect on the day on which the operator became aware or could have learned of it. The legislator does not prescribe the form of termination or the method of delivery, but again for reasons of legal certainty of the parties, it is appropriate to comply with a demonstrable method of delivery (Mucha, 2019). From the effective date of the notice, the manager may not continue the activity to which the notice relates. On the other hand, he is obliged to warn the client to take the necessary measures to prevent the occurrence of damage, which immediately threatens the non-completion of the activities of the manager. Here, however, the legal right of the manager to reimbursement of necessary and purposefully incurred costs, including a reasonable part of the remuneration for the activity duly performed until the termination takes effect (Vedinas and Condurache, 2019).

The Commercial Code does not allow the manager to terminate the contract unilaterally at any time. As stated in the literature (Šebestová at el, 2018), the manager may terminate it, but not until the end of the calendar month following the month in which the notice was delivered to him. As of that date, his obligation to carry out the activity to which he has committed himself also expires. Among other things, if the interruption of such activity could cause damage to the client, he is obliged to notify him of the necessary measures. If the client cannot do them with the help of other persons and requests their performance from the manager, the latter is obliged to carry them out under the threat of possible liability for damage.

The obligation of the manager also expires on the basis of a legal event such as his death, if he is a natural person, or his termination without a legal successor, if he is a legal person. However, he retains the right to reimbursement of purposefully and necessarily incurred costs as well as to a part of the remuneration reasonable to the result achieved in arranging the matter (Langenbucher, 2011).

In the custody and administration of a security, the issue of termination of the portfolio management agreement is regulated in the same way. According to Okanazu (2019) in addition to the fulfillment of the obligation, the expiration of the time as well as the agreement on the termination of the contract, the contract can be terminated. This option can be used by both the manager and the client. However, the difference is in effectiveness. If the contract does not specify a period of notice, the manager may terminate the contract only at the end of the calendar month following the delivery of the notice. The client can do so with immediate effect. A special reason for the manager to terminate the contract is not to collect the deposited securities by the client within the agreed time. An exception is the situation when the contract solves the situation differently (Mucha, 2019). We evaluate positively the statutory guarantee of the manager to secure his rights under the contract and especially the payment of his remuneration by establishing a statutory lien on the securities held and managed by him.

In practice, one negative phenomenon quite often occurs. Clients quite often terminate a portfolio management agreement before the expiration date for speculative reasons. They consider that such a procedure will relieve them of their obligation to pay remuneration to the manager (Przekova et al. (2019). They will be misled by the application of the supporting § 574 paragraph 4 of the Commercial Code, which grants the manager the right to reimbursement of costs as well as a reasonable part of the remuneration for action duly performed until the termination takes effect.

4 Discussion and conclusion

Securities contracts are important economic instruments of the financial market, through which a change of owner of a security takes place. The hypothesis that it is a separate type of contract in Slovak commercial law is confirmed. The Securities Act in § 43 directly enshrines the legal definition of a portfolio management agreement. From this its essential requirements are determined:

- contracting parties, t. j. who is the manager and who is the client,
- the obligation of the manager to manage the client's portfolio on the basis of the manager's decision-making within and within the scope of the contract,
- the client's obligation to pay remuneration to the manager.

It also follows from the theory of law that in order to determine whether it is a contractual type, it is sufficient to determine the essential elements themselves without further specification. However, this does not change the statement that this agreement is strictly or insufficiently regulated by the Securities Act, which in practice can cause several problems. Nor will the procedure of the legislator, which sought to remedy this shortcoming by referring to the regulation of other types of contracts in the Securities Act and the Commercial Code, stand up.

In general, it is possible to agree with the statement of the authors led by Eliáš (1999), who expressed a broader legal opinion that the entire second part of the Securities Act, i. j. the provisions of § 30 to § 53f, which regulate the issue of securities contracts, constitute a *lex specialis* in relation to both the Commercial Code and the Civil Code. As a clear positive, it is necessary to point out the provision of § 261 paragraph 3 letter c) of the Commercial Code, which classifies in the category of absolute commercial obligations all types of obligations from stock exchange trades and their intermediation (§ 642) and remuneration contracts relating to securities. This fact excludes any possible considerations about the application of the Civil Code to the regulation of the rights and obligations of the contracting parties from the portfolio management contract. In this way, the legislator at least managed to eliminate the danger of splitting the legal regime for the implementation of selected types of contracts, which could otherwise comply with the provisions of the Civil Code or the Commercial Code and cause confusion.

Nor does it follow that the legislature prohibits the possibility of concluding other “nominative” contracts relating to the management of securities. However, such a possibility could be expressed explicitly directly in the Securities Act

The legal regulation of all securities contracts, despite the efforts of the legislator, is still insufficient and thus does not fully respect the general trends in the development of European law. As part of the de *lege ferenda* proposals. Therefore, a comprehensive amendment to the second part of the Securities Act should be undertaken. As part of the amendments, the wording of the law should be supplemented not only with legal definitions of all contractual types, but at the same time the individual contractual types and in particular the securities portfolio management agreement examined by us should be expanded in a more appropriate and proportionate manner. The result of such a procedure would be a comprehensive legal regulation, which would be based on the current needs of the Slovak capital market.

Literature:

1. Act No. 40/1964 Coll. Civil Code as amended
2. Act No. 513/1991 Coll. Commercial Code as amended
3. Act No. 566/2001 Coll. on Securities and Investment Services as amended
4. Bajus, R. (2011). Manazment portfolia cennych papierov a analyza investicii. Bratislava: Iura Edition

5. Čižo, E. Lavrinenko, O. Ignatjeva, S. (2020). Determinants of financial development of the EU countries in the period 1995-2017, *Insights into Regional Development* 2 (2): 505-522, doi: 10.9770/IRD.2020.2.2(1)
6. Dumitru, O. I., Tomescu, A. V. (2020). European consumer law in the digital single market. *Juridical Tribune-Tribuna Juridica*, 10 (2) 222-238
7. Decree of the Ministry of Justice of the Slovak Republic No. 655/2004 Coll. on lawyers' fees and compensation
8. Dermine, J. (2015). *Bank valuation and value-based management Deposit and loan pricing, performance evaluation, and risk*. New York: McGraw-Hill
9. Duľová Spisaková, E., Mura, L., Gontkovicova, B., Hajduova, Z. (2017). R&D in the context of Europe 2020 in selected countries. *Economic Computation and Economic Cybernetics Studies and Research*, 51 (4) 243 – 261
10. Elias, K. (1999). *Kurs obchodniho práva. Obchodni zavazky Cenne papiry*, Praha: C. H. Beck
11. Gavurova, B., Kubak, M., Huculova, E., Popadakova, D., Bilan, S. (2019). Financial literacy and rationality of youth in Slovakia. *Transformations in Business & Economics*, 18 (3), 43-53
12. Grancay, M., Grancay, N., Drutarovska, J., Mura, L. (2015). Gravity model of trade of the Czech and Slovak Republics 1995-2012: How have determinants of trade changed. *Politicka Ekonomie*, 63 (6), 759-777.
13. Haentjens, M. (2015). *European Banking and Financial Law*. Routledge: New York
14. Hajduova, Z., Klimek, M., Daneshjo, N., Prokopenko, O. (2019). Competitiveness of Franklin Templeton Fund Managers: Do the Fund Managers Exceed the Benchmark? *Journal of Competitiveness*, 11 (2), 70–86, doi: 10.7441/joc.2019.03.05
15. Horecky, J. (2018). Operation and action of a trade union (in terms of Czech Republic labour law). *Central European Journal of Labour Law and Personnel Management*, 1 (1), 17 – 27, doi:10.33382/cejllpm.2018.01.02
16. Chovancova, B. and Arendas, P. (2016). The Stock Market versus the Real Economy and its Indicator GDP, *Politicka ekonomie*, 64 (8), 939-952, doi: 10.18267/j.polek.1119
17. Judgement of the Supreme Court of the Czech Republic No. 29 Cdo 5239/2008
18. Judgement of the Supreme Court of the Czech Republic No. 32 Cdo 3464/2008
19. Judgement of the Supreme Court of the Czech Republic No. 33 Cdo 4385/2007
20. Judgement of the Supreme court of the Slovak Republic No. 3 Obo 186/2007
21. Judgement of the Supreme Court of the Slovak Republic No. 3 Obo 55/2010
22. Khan, K.A., Dankiewicz, R., Kliuchnikava, Y., and Olah, J. (2020). How Do Entrepreneurs Feel Bankruptcy? *International Journal of Entrepreneurial Knowledge*, 8 (1), 89-101, doi: 10.37335/ijek.v8i1.103
23. Kotasek, J. (2013). *Pravo cennich papiru*. Praha: C. H. BECK
24. Kral, P., Valjaskova, V., Janoskova, K. (2019). Quantitative approach to project portfolio management: proposal for Slovak companies. *Oeconomia Copernicana*, 10 (4), 797-814, doi: 10.24136/oc.2019.036
25. Lachlan, B. (2014). European securities law. New York: Oxford University Press
26. Langenbucher, K. (2011). *Aktien- und Kapitalmarktrecht. Munchen*: C. H. Beck
27. Koleva, Z. (2019). Bulgarian perspectives on the abuse of rights in lights of the Directive 2011/7/EU on combating late payment in commercial transactions. *Juridical Tribune-Tribuna Juridica*, 9 (3), 599-606
28. Macikova, L., Smorada, M., Dorcak, P., Beug, B. and Markovic, P. (2018). Financial aspects of sustainability: An evidence from Slovak companies, *Sustainability*, 10 (7), 2274. doi: 10.3390/su10072274
29. Masood, O. Javaria, K. Petrenko, Y. (2020). Terrorism activities influence on financial stock markets: an empirical evidence from United Kingdom, India, France, Pakistan, Spain and America, *Insights into Regional Development* 2 (1), 443-455, doi: 10.9770/IRD.2020.2.1(4)
30. Maris, M. (2017). *Macroeconomic imbalances in economically integrated Europe and its development*. International Scientific Conference on Economic Policy in Global Environment, 195-206
31. Mucha, B. (2019). *Tools to increase the effectiveness of comprehensive management of emergencies affected by climate change in the Slovak republic.* International Multidisciplinary Scientific GeoConference Surveying Geology and Mining Ecology Management, SGEM, 19 (5.4), 573-580, doi: 10.5593/sgem2019/5.4/S23.075
32. Mura, L. and Rózsa, Z. (2013). The impact of networking on the innovation performance of SMEs. 7th International Days of Statistics and Economics, 1036-1042
33. Noskova, M. (2019). *International Business Law*. Comenius University in Bratislava, Bratislava
34. Nekit, K., Kolodin, D., Fedorov, V. (2020). Personal data protection and liability for damage in the field of the internet of things. *Juridical Tribune-Tribuna Juridica*, 10 (1) 80-93
35. Okanazu, O.O., Madu, M.A., Igboke, S. A. (2019). A recipe for efficient and corrupt free public sector. *Central European Journal of Labour Law and Personnel Management*, 2 (1), 29-46, doi: 10.33382/cejllpm.2019.02.03
36. Panova, E. (2020). Determinants of capital structure in Russian small and medium manufacturing enterprises. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 15 (2), 361-375, doi: 10.24136/eq.2020.017
37. Pauly, J. (2017). T*eoreticke a legislativni zaklady cennych papiru*. Praha: Wolters Kluwer
38. Peráček T., Mittelman A., and Mucha B. (2018). *The Particular Aspects of Procurement Contracts of Trading in Securities in the Conditions of the Slovak Republic*. Springer Proceedings in Business and Economics. Springer, Cham, 175-185, doi:10.1007/978-3-319-92228-7_15
39. Polisenska, P. (2016). *Pravo cennych papiru*. Praha: Wolters Kluwer
40. Przekota, G., Rembeza, J., Mentel, G., Szetela, B. (2019). The relationship between the stock market and the economy: evidence from Central and Eastern European countries. *Transformations in Business & Economics*, 18 (2A), 397-415
41. Raisová, M., Regásková, M., Lazányi, K. (2020). The financial transaction tax: an ANOVA assessment of selected EU countries. *Equilibrium - Quarterly Journal of Economics and Economic Policy*, 15 (1), 29-48, doi: 10.24136/eq.2020.002
42. Rontchevsky, N. (2017). *Code de Commerce*. Paris: DALLOZ
43. Sararu, C. S. (2016). Considerations on the public services in the XXI century. *Juridical Tribune-Tribuna Juridica*, 6, (SI), 160-166.
44. Sararu, C. S. (2017). Administrative litigation systems in Europe. *Juridical Tribune-Tribuna Juridica*, 7 (1), 227-235.
45. Sebestova, J., Majerova, I., Szarowska, I. (2018). Indicators for assessing the financial condition and municipality management. *Administratie si Management Public*, 31, 97-110, doi: 10.24818/amp/2018.31-07
46. Ślusarczyk, B. (2018). Tax incentives as a main factor to attract foreign direct investments in Poland. *Administratie si Management Public*, 30, 67-81. DOI: 10.24818/amp/2018.30-05
47. Vedinas, V., Condurache, G. (2019). The financial independence of the Romanian Parliament *Juridical Tribune-Tribuna Juridica*, 9 (2), 392-401
48. Veronesi, P. (2010). *Fixed Income Securities*. London: John Wiley & Sons,

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