

The Impact on Investors of Legislative Restrictions on the Activities of Securities Traders: The Case of the Slovak Republic

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Abstract

Investing from a financial point of view is an activity focused on the placement and distribution of the investor's free funds with the aim of their future appreciation, or obtaining income resulting from the subsequent difference in the price of the security. When trading this commodity, it is necessary in the Slovak Republic to use several contract types contained in the Securities and Investment Services Act. The most important contract type is the contract on the portfolio of securities, which is used by securities traders. This contract or, however, the activities included in this contract consist of four contracts regulating the procurement of the purchase or sale of a security, its custody and management. For this reason, we devote our attention and main goal to an in-depth examination of selected contracts as well as activities that together form a contract on the management of a portfolio of securities. We use selected scientific research methods such as critical analysis, synthesis, deduction and comparison as well as scientific and doctrinal interpretation. The material of our scientific study consists of the Regulation of the European Parliament and the Council on securities trading, the Securities Act, the Commercial Code, the Civil Code, professional literature as well as judgments of Slovak and Czech courts. The results indicate that the development of the securities portfolio management contract is stuck in time, as the legislation, among other shortcomings, does not allow an electronic conclusion of this contract.

Keywords: Commercial Code, contract, portfolio management, securities, traders, investor.

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1. Introduction

Investing from a financial perspective according to Ali et al. represents an activity focused on the location and distribution of the investor's free funds with the aim of their future appreciation, or obtaining income resulting from the subsequent difference in the price of the security. When investing, as a rule, the higher the expected return, the

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higher the risk will have to be faced.³ Incorrect investment can bring with it fatal consequences, consisting in the loss of the entire investment. One of the ways to effectively avoid such a risk is to spread the investment into several instruments or assets. Several authors such as Cheng et al. say portfolio diversification. With such a procedure, it is possible to spread the risk and increase the probability of not only a return, but especially the appreciation of your investment.⁴ The probability and amount of possible loss depend on the risk profile of the selected asset. The investment strategy also depends on how we plan to invest, individually or collectively. In the case of an individual investor, according to some authors, the investor himself determines in individual cases in which specific securities or other financial instruments he invests. In the case of collective investment, the investor chooses the type of fund in which he is interested in investing.⁵ However, in this case, the fund itself chooses specific financial instruments for him. However, as stated by Klimek and Funta, investing in securities in the Slovak Republic is carried out through a securities dealer who performs all the necessary actions for his client - the investor, based on the securities portfolio management contract.⁶

Investing in securities and related trading in this commodity has never met the interest of the population in Slovakia. His lack of interest is mainly caused by negative experiences with coupon privatisation implemented after the change in the social structure in 1989. Another obstacle is the rather incomprehensible legislation, which, according to Funta, caused minimal interest, especially among legal theorists, to investigate this issue more deeply, despite its indisputable importance in investment practice. Investing in financial markets is mainly done by experts in the field of economic theory. Here, however, it is necessary to point out that it is the legislation and its guards that determine the "rules of the game" on the Slovak securities market.⁷ This is the main reason why we decided to examine in detail the legislative aspects of the contractual management of the securities portfolio through this scientific study.

The very structure of the scientific study corresponds to this main goal, the "Results" part of which is systematically divided into five subsections. The first to the fourth pay attention to one of the performed activities of the stock trader as part of the activities for the investor. The last fifth examines the options for determining the remuneration for the trader and the termination of the portfolio management contract as well as individual contracts.

³ Omar Ali, Mujtaba Momin, Anup Shrestha, Ronnie Das, Fadia Alhaji, Yogesh K. Dwivedi, "A review of the key challenges of non-fungible tokens." *Technological Forecasting and Social Change* 187, (2023): 122248. <https://doi.org/10.1016/j.techfore.2022.122248>.

⁴ Cheng, Li-Chen, Wei-Ting Lu and Benjamin Yeo. 2023. "Predicting abnormal trading behaviour from internet rumour propagation: a machine learning approach." *Financial Innovation* 9, no. 3 (2023). <https://doi.org/10.1186/s40854-022-00423-9>

⁵ Benny Hutahayan, Mohamad Fadli, Satria Amiputra Amimakmur and Reka Dewantara. "Investment decision, legal certainty and its determinant factors: evidence from the Indonesia Stock Exchange." *Cogent Business & Management* 11, no. 1 (2024). <https://doi.org/10.1080/23311975.2024.2332950>

⁶ Libor Klimek and Rastislav Funta, "Data and E-commerce: An Economic Relationship." *Danube* 12, no. 1 (2021): 33–44. doi: 10.2478/danb-2021-0003

⁷ Rastislav Funta, "Discounts and their effects - economic and legal approach." *Danube* 5, no. 4 (2014): 277–285. doi: 10.2478/danb-2014-0015

2. Literature Review

According to Oral, the capital market can be understood as a certain system of institutions and instruments ensuring the movement of both medium-term and long-term capital between economic entities through various forms of securities.⁸ Bajžíková et al. draws attention to the fact that, in contrast to the money market, the range of subjects appearing on the capital market is wider and the organisation of the market is also more diverse.⁹ According to Hepburn, stock market transactions as special commercial contracts are also an integral part of it. Their key feature is that they are closed on the stock exchange, which is distinguished from other markets by its highly formal organisation.¹⁰ In this context, Sidak et al. emphasises that the transfer of capital in the form of securities takes place on the basis of concluded securities contracts, which are implemented by the security traders themselves on the basis of concluded contracts on behalf of their investors.¹¹ Economic theorists such as Swinkels understand the very term "portfolio" as a combination of investment options in which the investor has invested his capital.¹² Thus, according to Tao et al., portfolio investment represents an investment in a combination of assets¹³, while according to Vítek et al. can be a combination of both the primary market and the secondary market. The portfolio is therefore made up of investment instruments, other securities or funds intended for the purchase of investment instruments.¹⁴ Other theorists such as Narayan et al. understand a portfolio of securities as a stock of diverse securities held by the investor himself. According to them, the goal of creating a portfolio of securities is risk diversification because the holding of securities allows the investor several advantages. First of all, it is the possibility of an adequate rate of return on invested capital at a relatively low risk. In the second place, the investor will get the greatest possible rate of return on invested capital at an acceptable risk for him.¹⁵

⁸ Tuğçe Oral, 'Legal Nature of Cryptocurrencies in Comparative Law, Use of Them in Contracts and for Performance Purposes and Investing Cryptocurrencies in Commercial Companies as Share Capital in Turkish Law', *Juridical Tribune – Review of Comparative and International Law* 15, no. 1 (March 2025): 184-203. doi: 10.62768/TBJ/2025/15/1/09.

⁹ Lubica Bajžíková, Daniela Nováčková and Lucia Paškrťová, „New Generation EU Agreements – The Basis for Future World Trade”. *Juridical Tribune - Review of Comparative and International Law* 14, no. 1 (March 2024): 116-129. doi: 10.62768/TBJ/2024/14/1/07

¹⁰ Jarrod Hepburn, "The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law", *European Journal of International Law* 36, no. 1 (February 2025): 43–75. <https://doi.org/10.1093/ejil/chaf017>

¹¹ Mikuláš Sidak, Andrea Slezaková, Edita Hajnišová and Stanislav Filip, "Determination of Public Supervision Aspects and Legal Pillars of Activities of Financial Agents in Central European Countries." *Administrative Sciences* 13, no. 3 (2023): 78. doi:10.3390/admsci13030078.

¹² Laurens Swinkels, "Empirical evidence on the ownership and liquidity of real estate tokens." *Financial Innovation* 9, (2023):45. <https://doi.org/10.1186/s40854-022-00427-5>

¹³ Zhijie Tao, Bo Peng and Lina Ma, "Optimal initial coin offering under speculative token trading." *European Journal of Operational Research* 302, no. 2 (2023): 632/644. <https://doi.org/10.1016/j.ejor.2022.07.023>.

¹⁴ Bohumil Vítek, Jitka Matějková & Ondřej Pavelek, "The influence of the Ius-naturale conception of ABGB on the regulation of personality protection and compensation for non-proprietary damage in the Czech Civil Code." *Hungarian Journal of Legal Studies* 62, no. 3 (2022): 185-197. <https://doi.org/10.1556/2052.2021.00329>.

¹⁵ Seema Wati Narayan, Mobeen Ur Rehman, Yi-Shuai Ren & Chaoqun Ma, "Is a correlation-based investment strategy beneficial for long-term international portfolio investors?" *Financial Innovation* 9,

When trading securities, according to Matúšová & Nováček, it is necessary to have an open asset account with a member of the central securities depository, while it is usually possible to have an account in the central securities depository.¹⁶ Subsequently, a stockbroker is selected depending on one's own preferences. In this context, however, Pessa et al. draw attention to the need to pay attention to all contractual conditions before concluding a contract with a trader; in particular, the amount of fees related to trading, which is either fixed or in the form of a percentage of the value of the trade.¹⁷

3. Aim, Materials and Methods

As we have already stated, the main goal of this scientific study is an in-depth analysis of the securities portfolio management contract and to assess its suitability in the Slovak legal order. In addition to the main goal set in this way, in our opinion, it is also necessary to set sub-goals, which are:

- analysis of individual contract types, which as a whole form a contract on the portfolio management of securities;
- the answer to the research question whether it is possible to consider the contract on the management of the portfolio of securities as a separate type of contract;
- determination of the scope of electronicization when concluding and subsequent implementation of actions of individual contract types.

Our intention is to achieve the main goal as well as the secondary goals, especially with the use of legal regulations, professional and scientific literature, as well as the jurisprudence of Slovak and Czech courts.

Considering the nature of our scientific study, in our opinion, it is possible to apply several scientific methods of knowledge. For knowledge of law, it is mainly a method of logical analysis to examine the legal status and legal regulation as well as abstraction. The comparative method finds its application in the framework of comparing the opinions of both theoreticians and practitioners from several key areas of science. Applying our own and practical experience from practising law in several parts, we use doctrinal interpretation.

Due to the fact that it is a legal theoretical study, the primary and therefore the main source of our knowledge is Slovak legislation. It is mainly about:

- Act No. 566/2001 Coll. on securities and investment services and on amendments to certain laws as amended (hereinafter referred to as the "Securities Act");
- Act of the National Assembly of the Czechoslovak Socialist Republic No. 40/1964 Coll. Civil Code as amended (hereinafter referred to as "Civil Code");
- Act of the Federal Assembly of the Czech and Slovak Federative Republic No. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the "Commercial Code").

However, an equally important source of knowledge is Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017, on the

(2023): 64. <https://doi.org/10.1186/s40854-023-00471-9>.

¹⁶ Silvia Matúšová and Peter Nováček, "New generation of investment agreements in the regime of the European Union." *Juridical Tribune* 12, no. 1 (2022):21-34. doi: 10.24818/TBJ/2022/12/1.02.

¹⁷ Arthur A.B. Pessa, Matjaž Perc and Haroldo V. Ribeiro, "Age and market capitalisation drive large price variations of cryptocurrencies", *Scientific Reports* 13 (2023): 3351. <https://doi.org/10.1038/s41598-023-30431-3>.

prospectus published when securities are offered to the public or admitted to trading on a regulated market, and on the repeal of Directive 2003/71/ EStext with EEA relevance.

These normative legal acts represent the key formal sources of securities law in the Slovak Republic. However, in our opinion, they need to be supplemented with a secondary source. This is the decision-making activity of both Slovak and Czech courts. Jurisprudence, with the exception of decisions of the Constitutional Court of the Slovak Republic published in the Collection of Laws of the Slovak Republic, does not constitute a formal source of law in the Slovak Republic. Nevertheless, its place is invaluable and irreplaceable because its task is to fill gaps in legislation and to unify the interpretation of disputed legal institutes. Tertiary sources necessary for the processing of this scientific study include scientific and professional literature, mainly from the Web of Science and Scopus databases.

4. Results

The contract on portfolio management is regulated in § 43 paragraphs 1 to 6 of the Securities Act. As follows from the legal definition of the portfolio management contract, the manager, who can only be a securities trader, undertakes to manage the client's (investor's) portfolio based on the manager's decision within and within the scope of the contract, and the investor must pay a fee for this. From this definition, it is possible to determine the essential elements:

1. determination of contractual parties t. j. who is the business donor (merchant) and who is the client (investor)
2. determination of the trader's obligation to manage the client's portfolio
3. determination of the client's obligation to pay compensation to the merchant

What is very important, a condition for the validity of the contract on portfolio management is its execution in written form. Only verbally or implicitly concluded this type of contract is absolutely invalid. The law literally only outlines the rights and obligations of the individual contracting parties resulting from this contract. Pursuant to Section 43, paragraph 3 of the Securities Act, the manager is obliged to procure the purchase and sale, as well as the first acquisition of securities, without the client's instructions. Unless otherwise stated in the contract, he performs activities according to Section 39 and Section 41 of the Securities Act in order to ensure long-term professional care of his portfolio. The investor can limit the trader's obligation only to obligations related to the procurement of the acquisition of securities upon their issuance. In this case, the remuneration paid by the investor will be adjusted according to circumstances and needs. As follows from this definition, unlimited freedom is left to the contracting parties with a very vague reference to legal regulation:

- contracts for the purchase of securities,
- for the mandate and commission agreement on the procurement of the purchase or sale of a security,
- contracts and custody of a documentary securities.
- contract on securities management.

According to the opinion of Števček & Ivančo, § 30 to § 53f of the Securities Act regulating the legal institution of securities contracts represents the *lex specialis* in relation to the Civil Code and the Commercial Code. This has the effect of merely

supporting the application of these laws to all securities contracts.¹⁸

4.1. Commission Method of Buying or Selling a Security

Ensuring the purchase or sale of a security is the primary activity of every securities trader in the position of manager within the framework of portfolio management. According to the law, this activity can be carried out in two ways. The first is execution by commission method. According to the Supreme Court of the Slovak Republic no. 1MOBdo V 6/2009, this type of contract establishes a legal relationship between a merchant and an investor that has the nature of indirect representation. As an indirect representative of the investor, the merchant acts on behalf of the investor, but in his own name, therefore, no rights and obligations arise directly for the investor from his side vis-à-vis third parties.

In this case, the trader as a commission agent either arranges, in his own name, for the investor as a principal on his account the purchase or sale of a security or carries out an activity to achieve the result determined in this way. It is the investor's duty to pay him compensation for that. It follows from the above that the content of the contract will be fulfilled provided that the trader succeeds in selling or buying the security. The second possibility of fulfilment of the content of the contract and its termination due to fulfilment will also be the situation when the purchase or sale of a security did not take place, but what is very important, the trader performed the specified activity with professional care. However, the contract must be concluded in writing under the threat of its invalidity.

What is very important, the Securities Act only dispositively determines the written form for the investor's instruction to the trader, on the basis of which the latter will ensure the sale or purchase of a security. It follows from the above that this obligation can be adjusted with deviations based on the contract. The exception is the situation if the investor's instruction was not made in writing.

According to Mitterpachova et al. if the subject of the contract is securing the sale of a deed security, the merchant has the right to ask the investor client for its release.¹⁹ On the other hand, when an electronic security is sold, the right to dispose of the sold security is suspended in the records of the central depository of securities or in other separate records. From the essence of the matter, even according to the opinion of Pessa et al. it follows that during this time the investor is not allowed to dispose of the security. In this context, however, we consider it necessary to draw attention to one important fact.²⁰ In our opinion, the merchant can also fulfil his obligation in a special way. This is the possibility that he sells the security from his property to the investor, or otherwise buys the security from him. It is not a common procedure and it is possible only in contractually agreed cases. Such a procedure is called "merchant self-entry".

¹⁸ Marek Števček & Marek Ivančo, "The conception and institutional novelties of the recodification of private law in the Slovak Republic." *The Law of Obligations in Central and Southeast Europe: Recodification and Recent Developments* (2021): 33-49.

¹⁹ Jana Mitterpachova, Marek Števček & Marek Ivančo, "The private law aspects of the sharing economy after the "user case"." *International journal of transformation studies* 7, no. 2 (2019), pp. 58-78.

²⁰ Arthur A.B. Pessa, Matjaž Perc and Haroldo V. Ribeiro, "Age and market capitalisation drive large price variations of cryptocurrencies." *Scientific Reports* 13 (2023): 3351. <https://doi.org/10.1038/s41598-023-30431-3>.

According to the Judgment of the Supreme Court of the Czech Republic dated November 20, 2007, no. 29 Since 1643/2005, the trader realises this right by sending the investor a report on the result, in which, instead of the third party with whom he concluded the contract, he explicitly states that he is the seller of the right. The delivery of the result report to the client must then be considered as the moment of conclusion of this contract. This creates a purchase contract between the parties.

Applying the principle of freedom of contract, it is assumed that the price of the security is determined by the agreement of the parties in the contract or in the given instruction. As mentioned by Guliš and Ondria in the case, however, if there is an opportunity for the trader to sell the security at a higher price than the contractually agreed, he is clearly obliged to do so even without the investor's consent. The same applies in the opposite case, i.e. if it is possible to purchase a cheaper purchase than was stated in the contract. Failure to fulfil this obligation causes the trader to be liable for the damage he could cause to the investor. From the above follows the trader's obligation to buy or sell securities for the investor at the best possible price, with the trader himself exercising all professional care.²¹

According to Sockin and Xiong, a special issue is the transfer of ownership rights to securities. In general, the securities entrusted to the merchant for sale are his property until a third party takes possession of them. Documentary securities procured by a merchant for an investor become his property on the day of execution of the notarisation, provided that their subsequent physical handover to the investor is also required. In the case of electronic securities, the key moment is their registration on the client's account or the trader's holding account.²²

Sararu advises the other tasks of the trader to act with the necessary professional care according to the instructions of the investor himself. The law also pays increased attention to the protection of the legitimate interests of the investor, to whom the trader must immediately notify all relevant circumstances that have even a potential impact on changing his instructions.²³ Some authors such as Yue and Li, emphasise the contractual anchoring of the obligation to ensure securities.²⁴

What the Securities Act does not regulate, however, is the issue of using a third party to fulfil the trader's obligation. It is advisable to correct this possibility directly in the contract, even with possible restrictions. Otherwise, the application of § 580 paragraph 1 of the Commercial Code is given space. When using it, the trader is obliged to use a third party to fulfil his obligation. However, this does not apply absolutely, but only if the content itself cannot fulfil it. From the wording of the law conceived in this way, it is absolutely clear that the use of a third party is directly linked to the situation of the existence of obstacles on the part of the merchant in fulfilling the obligation. As a

²¹ Peter Ondria and Róbert Guliš, 'The Impact of Membership in the European Union on the Development of Tax Reforms in the Slovak Republic', *Juridical Tribune – Review of Comparative and International Law* 15, no. 2 (June 2025): 365-387. doi: 10.62768/TBJ/2025/15/2/07.

²² Michael Sockin and Wei Xiong, "Decentralisation Through Tokenization." *Journal of Finance* 78, no. 1 (2023): 247-299. <https://doi.org/10.1111/jofi.13192>.

²³ Catalin Silviu Săraru, "Regulation of Public Services in the Administrative Code of Romania: Challenges and Limitations." *Access to Justice in Eastern Europe* 18, no. 1 (2023): 69-83. doi:10.33327/AJEE-18-6.1-a000110.

²⁴ Wen Yue and Xuefei Li, 2023. "Financial constraints and firms' markup: evidence from China." *Humanities and Social Sciences Communications* 10, (2023): 140. <https://doi.org/10.1057/s41599-023-01630-0>.

rule, this will be an exceptional situation, but if it occurs, the merchant will use a third party to fulfil his obligation. However, the contractor can completely eliminate this option. However, the use of a third person has another disadvantage. If the merchant uses another person to fulfil his obligation, the general rule on his liability applies as if he had performed the activity himself.

As already mentioned, the trader's actions do not give the investor any rights or obligations in relation to third parties, since the trader in this case is acting on his own behalf. What is interesting, however, is that the investor is allowed by law to directly demand from a third party the issue of an item or the fulfilment of an obligation that the trader procured for the investor. However, this right is not applied only on the condition that the merchant cannot do so for reasons on his side.

As stated by Gao and Bai, the reward for the trader for the activities performed will probably always represent the most important issue. In the case of these activities, the law does not specifically regulate the merchant's remuneration.²⁵ As it follows from the legal definition, the only mandatory part of the contract is the determination of the investor's obligation to pay the trader compensation. Determination of its amount, maturity and other conditions is left to the agreement of the contracting parties as part of the optional requirements of the contract, otherwise § 587 and § 588 of the Commercial Code determining the method of determining compensation for the client (merchant) are applied subsidiarily. The Commercial Code is based on the fact that the merchant is entitled to a reward commensurate with the activity performed by him and the result achieved, taking into account the remuneration usually provided for similar activity at the time of the conclusion of the contract. What is customary remuneration must therefore always be interpreted, taking into account the existing customary economic practice, which is respected in this area.

Payment of remuneration or the right to its payment belongs to the merchant only when he has not only fulfilled his obligations but has also submitted to the investor a report on the results of the activity facility and an invoice. However, the reward includes two components. The first is the trader's costs and the second is the reward itself. In a special way, the Commercial Code deals with the issue of reimbursement of costs that are part of the commission agent's remuneration and are paid together with the remuneration. These are costs that the merchant inevitably and expediently had to incur when performing the agreed activities, such as travel, telephone and the like. Jurisprudence also dealt with the issue of the obligation to pay an additional duty, which the merchant usefully paid in fulfilling his duty. According to the Judgment of the Supreme Court of the Czech Republic dated August 26, 2004, no. 29 Odo 263/2002, the investor is obliged to pay this cost to the trader.

4.2. A Mandated Method of Procuring the Purchase or Sale of Security

The second way in which a trader can ensure the purchase or sale of a security within the framework of portfolio management is the mandate method. This is a specific procedure contained in Section 36, paragraphs 1 and 2 of the Securities Act within the framework of the mandate contract for the procurement of the purchase or sale of a

²⁵ Rui Gao and Yanfei Bai, "A. Stackelberg reinsurance-investment game with derivatives trading." *Boundary Value Problems* 43 (2023). <https://doi.org/10.1186/s13661-023-01731-4>.

security.

In such a case, the manager as a trader undertakes to buy or sell a security on behalf of the client, i.e. the investor and on his account, according to his instructions, or to carry out activities to achieve this result, and the client undertakes to pay him compensation. Their mutual rights and obligations are governed by § 33 of the Securities Act and § 566 to § 576 of the Commercial Code on mandate contracts. Thus, the mandate contract represents the Judgment of the Supreme Court of the Czech Republic dated May 23, 2007, number 26 Cdo 3590/2016, a special designation of the mandate contract in business obligations where the parties are the mandatary (merchant) and the principal (investor). In the opinion of the court, in addition to specifying the parties to the contract, the concept is the obligation of the merchant to arrange a certain business matter for the investor in the name and on the account of the investor and the obligation of the investor to pay him compensation, while this type of contract does not result in the authorisation of the merchant to act in his own name. Only the application of those provisions that explicitly contradict the Securities Act is excluded. Even in this case, the contract must be concluded in writing.

As Orga claims, similar to the commission, in this case the trader's activity can also be tied to the result representing the trader's commitment to arrange the purchase or sale of a security on behalf of the investor and especially on his account. The second option is not tied to achieving a result. It is sufficient only to carry out activities leading to the sale or purchase of security. Even in this case, it also applies that the content of the contract will be fulfilled either if the security is sold or bought, or even if the purchase or sale of the security does not occur, but the trader performed the agreed activity with professional care.²⁶

The main activity of the trader is to arrange for the investor and on his account the purchase or sale of securities, or just to carry out such activity for a certain fee. An inseparable part of the trader's activities is professionalism as well as proceeding with professional care, as it is the main content of his business activity. According to Alexandre, among his other duties, it is necessary to include compliance with the investor's instructions, but especially acting in accordance with his interests. The trader should know them and communicate them to the investor. In this situation, however, it should be emphasised that he should only notify him of information that has at least a potential impact on changing the instructions already given.²⁷

Anak et al. emphasise one fact. A manifestation of confidence in the trader's professionalism results from his ability to deviate from the investor's instructions, but only if it is necessary.²⁸ As a rule, it may be the impossibility of timely connection of the contractual parties. What is important, however, even in such an exceptional case, it is prohibited by law to deviate from the investor's instructions if it follows from the

²⁶ Orga-Dumitriu, Gina, 'Property Rights and the Free Movement of Capital in the Case Law of the CJEU', *Juridical Tribune – Review of Comparative and International Law* 15, no. 2 (June 2025): 337-364. doi: 10.62768/TBJ/2025/15/2/06.

²⁷ Ana Alexandre. 2019. "Research: ICO Market Down Almost 100% From a Year Ago, Raised \$40 Million in Q1 2019." Available from: <https://de.cointelegraph.com/news/research-ico-market-down-almost-100-from-a-year-ago-raised-40-million-in-q1-2019>.

²⁸ Anak Agung Duwi Daniswara and I Gusti Wayan Nurjaya Purwanto, "Juridical Status of Stock Exchange and Investor Legal Protection in Forced Delisting." *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 4 (2022): 39–48, <https://doi.org/10.55047/polri.v1i4.464>.

concluded contract or from previously imposed instructions. In particular, it is necessary to apply § 33, paragraphs 2 and 3 of the Securities Act. This is the same provision as in the commission procurement of the purchase or sale of a security. Even in this case, the trader is obliged to act in the most favourable way for the investor. Otherwise, as with the commission method, he would be responsible for the damage he would cause to the investor. In the absence of a price determination in the investor's instruction, it is necessary to buy or sell a security at the most favourable price that could be achieved by exercising professional care.

The legislator also in this case allows the operator to be represented by a third party, but with the risk of bearing responsibility for any damage caused by a third party. The option to be represented cannot be used only in case of a contractual prohibition.

As part of further investigation, it is necessary to point out the client's obligations, which primarily follow from the Commercial Code and the Securities Act. First of all, he hands over to the merchant all the necessary things and information necessary for the timely fulfilment of the content of the contract. The only exceptions are things that he procures himself. However, as stated by Hohmann et al., it is not possible to secure selected business matters without a power of attorney, which the investor is obliged to issue as soon as possible and especially in writing. The power of attorney for representation as an expression of will in third parties follows directly from the content of the securities portfolio management contract examined by us.²⁹ However, it is intended for third parties and authorises the trader to act in the name and on the account of the investor. The sections of the Commercial Code regulating the mandate contract do not regulate the consequences of exceeding the authorisation of the trader himself. For this reason, the subsidiary general legal regulation of representation based on power of attorney contained in the Civil Code is applied.

Due to the considerable variety of activities that the trader performs for the investor as part of his activity, it is also necessary to point out his authorisation to accept things other than only deed securities on his behalf. Examples can be various documents, such as contracts and the like. However, it is his unquestionable duty to issue them to the investor as soon as possible.

The question of the damage caused could be disputed. This area is regulated by the Commercial Code in the same way as in the case of a commission contract, namely the direct liability of the trader towards the investor for damage to the items taken over. However, as Skóra et al. even in this case, it is possible to minimise the risk of damage by an optional part of the contract, namely insurance. Compulsory insurance of things or liability for damage is applied in only two cases. The first is the contractual anchoring and the second is the investor's request, but always only on his account.³⁰

It is necessary to emphasise the general obligation of the trader to proceed with the necessary professional care. In the case of the sale of a security that shows certain deficiencies, his task is more demanding due to the reduced interest in such goods. However, the creators of the Commercial Code also thought of a situation where the

²⁹ Balázs Hohmann, Adrián Fábián & Gergely László Szőke, 'The Shades of the Concept of Transparency on the Horizon of European Technology Law and Platform Regulation', *Juridical Tribune – Review of Comparative and International Law* 15, no. 1 (March 2025): 44-62. doi: 10.62768/TBJ/2025/15/1/03.

³⁰ Agnieszka Skóra, Mária Srebalová and Ingrid Papáčová, "Administrative judiciary is looking for a balance in a crisis." *Juridical Tribune* 12, no. 1 (2022): pp. 5-20. doi: 10.24818/TBJ/2022/12/1.01.

buyer would know about the existence of defects in the object of purchase at the time of concluding the contract and would be, nevertheless, by the "damaged" security. In such a case, this is a legal special reason for excluding the responsibility of the merchant for this lack of security. Furthermore, according to Matejkova & Pavelek, the trader's responsibility for the shortcomings of the security is not excluded in the event that the security was supposed to have certain properties, but in fact it did not.³¹ There is also extensive case law for this case. The Supreme Court of the Slovak Republic is convinced that the knowledge of the buyer is not examined taking into account professional care, but only taking into account care appropriate to the ratio. The legal system of the Slovak Republic allows the contract, which transfers ownership of valuables, to contain the "tel quel" clause (as is), or "taken and approved". The use of this contractual arrangement eliminates the merchant's responsibility for defects in the security, and the buyer can no longer claim them against him.

As part of the management of the securities portfolio, it is possible to negotiate a reward as a whole for all activities, or even partially, i.e. j. for individual actions. If the investor and the trader were to agree on a reward for such procurement of the purchase or sale of a security, the law on securities, as the best way assumes the agreement of the contracting parties on the amount of the reward. If this does not happen, the amount of the reward will be determined according to the custom at the time of the conclusion of the contract, the subject of which is securing the purchase or sale of a security. In such a case, the right to the payment of the reward itself arises for the merchant only after the proper performance of the contractually agreed actions, regardless of whether the expected result was achieved based on his actions. However, the application of the principle of dispositiveness makes it possible to use § 571 paragraph 1 of the Commercial Code and condition the right to the payment of the agreed remuneration only upon the achievement of the desired result. The special situation of the right to remuneration was also dealt with by the Judgment of the Supreme Court of the Czech Republic dated March 15, 2005, number 32 Obo 1056/2004. According to him, the only condition for the emergence of the right to a reward, if the participants have not agreed otherwise in the contract, is the trader's properly performed activity. However, if the trader cannot perform the activity due to obstacles on the part of the investor, the claim to his reward is not established.

As Peráček 2020 reminds, if higher expenses are expected when buying or selling securities, the trader has the right to an adequate advance payment from the investor as soon as possible after the conclusion of the contract. For this reason, when subsequently determining the amount of the reward, we recommend that the investor and trader clearly agree in the contract whether the reward already includes the expenses incurred for the purchase of the security. The reason is the fact that, in the absence of such an agreement, it is assumed that the costs are already included in the compensation. Paragraph 573 of the Commercial Code limits the content of the merchant's liability so that it eliminates his liability for the breach of the obligation of the buyer with whom he concluded the transaction. However, there is an exception to this rule. This can only be applied if he has personally and even in writing guaranteed in the contract for the fulfilment of the obligations assumed by these third parties in connection with the trade

³¹ Jitka Matejkova & Ondrej Pavelek, Claim trading as a misuse of law. *Law and financial markets review* 14, no. 1 (2020): 29-32. doi:10.1080/17521440.2019.1582204

secured by him.³²

4.3. Safekeeping of Securities by Traders

As part of the activities performed during the contractual management of the securities portfolio, the Securities Act allows the trader to keep the securities. When determining the individual rights and obligations of the contractual parties, the agreement on the custody of documentary securities is based. It has its place in Section 39 and Section 40 of the Securities Act. However, we see the problem in the fact that there is no direct reference in the law to the supporting application of either the Commercial Code or the Civil Code. However, we are of the opinion that, since it is a remunerative type of contract related to the acquisition of securities, the rights and obligations will be governed by the third part of the Commercial Code. It applies to commercial obligation relations even in issues not specifically addressed by the Securities Act.

As part of the safekeeping of securities, a trader who is a custodian on the basis of a written contract takes over security for storage in a separate or collective safekeeping, and the investor, as a depositor, pays him a fee for this activity. However, contractually designated authorised persons are also capable of handling the stored securities.

As the name of this type of contract implies, only paper securities can be the subject of custody, which clearly excludes the custody of electronic securities. As part of several amendments to the Securities Act, two types of securities custody were introduced into our legal system. It can be either individual custody or collective custody. Collective custody has several fundamental meanings, especially for securities trading. First of all, according to Narayan et al. speed up the transfer of securities and this has the effect of reducing the cost of transferring securities. In general, fungible securities are deposited in collective custody and non-fungible securities in separate custody. In order to ensure legal certainty, the legislator also took pains to define terms such as "separate custody". Here it is understood as the storage of the securities of one consolidator separately from the securities of other consolidators. The trader's key duty is to return to the investor the same paper security that was entrusted to him for safekeeping. At the same time, however, he is not legally liable for any damage to the securities deposited in his custody. The liberating reason for this responsibility is only "vis majeure". In practice, this is a case of the impossibility of averting the damage, even with all possible professional care on the part of the trader.³³

Matejkova & Pavelek determine among his main duties is the consistent keeping of records of every paper security deposited in safekeeping. If the document security is not with him at the time of signing the custody agreement, he is obliged to take it over and deposit it as soon as possible.³⁴ Subsequently, however, he has a legal obligation to

³² Tomáš Peráček, "Legal issues and practical problems in the management of the securities portfolio in Slovakia." *AD ALTA-Journal of Interdisciplinary research* 10, no. 2 (2020): 255-260.

³³ Seema Wati Narayan, Rehman, Moebeben Ur Rehmann, Yi-Shuabi Ren and Chaoqun Ma, "Is a correlation-based investment strategy beneficial for long-term international portfolio investors?" *Financial Innovation* 9, (2023): 64. <https://doi.org/10.1186/s40854-023-00471-9>.

³⁴ Jitka Matejkova & Ondrej Pavelek, "The Protective Purpose of the Contract and the Liability of an Expert towards a Third Party in Czech, Austrian, and German Private Law." *Baltic Journal of Law and Politics* 12,

protect it in such a way that any damage, which would reduce the value of the investor's property, is excluded. The Securities Act also grants the investor the right to demand the return of his security from the trader at any time, as well as the right to hand the security back to him. All this, however, under the assumption that the main contractual relationship between him and the merchant has not expired in the meantime.

Toma at al. also focuses its attention on the issue of a possible declaration of bankruptcy on the property of the trader himself. Considering the strictness of the Slovak legislation as well as the strict supervision of public administration bodies over the financial sector, such a possibility is only at the level of a hypothesis.³⁵ However, if such a fact were to occur, the declaration of bankruptcy would clearly cause significant damage to the investor's property. In order to secure the property of the bankrupt, which in this case would be a businessman, and to subsequently satisfy the claims of his creditors, the court-appointed receiver would perform such legal actions as would cause the transfer of deposited securities to individual investors. In the event that, for any reason, it would not be possible to return them to the investors (for example, due to the obstacle of the investor's changed address), the trustee in bankruptcy would have to deposit the undelivered securities with another custodian under similar conditions under which they were deposited. However, this would create additional and not small costs. The storage costs incurred in this way are always paid by the bankrupt, that is, by the merchant. In our opinion, the fundamental lack of legal regulation consists in the fact that it is the traders' investors who, based on the Bankruptcy and Restructuring Act, will reimburse the costs incurred in this way to the administrator of the bankruptcy estate. The cost ratios between them are determined according to their shares. According to Srebalova & Vojtech, their ability to subsequently recover these costs from the merchant in bankruptcy proceedings is a very weak patch. By nature and matter and experience, their chances as unsecured creditors would be more than minimal.³⁶

Even within the custody of securities, the merchant is granted the right to hand over the taken security to another custodian even without the consent of the investor himself. In business practice, such a procedure is called secondary custody. Its main meaning is to enable the centralisation of custody of deed securities with selected legal entities, as a rule, authorised for this type of business. It doesn't even matter who the trader is, with whom the investor, as the owner of the security, has entered into a contract. What is important, however, when using the principle of disposability as well as contractual freedom, the portfolio management contract can directly eliminate this institution? Also, within the framework of solving the issue of liability for damage, Sidak et al. emphasise that the handing over of documentary security to another trader does not cause the original trader's liability to cease.³⁷ He is liable for any damage to the securities to the extent that he had the stored securities in his possession at all times.

no. 2 (2019): 163–185.

³⁵ Filip-Mihai Toma, Cosmin-Octavian Cepoi, Matei-Nicolae Kubinschi and Makoto Miyakoshi, “Gazing through the bubble: an experimental investigation into financial risk-taking using eye-tracking.” *Financial Innovation* 9 (2023):28. <https://doi.org/10.1186/s40854-022-00444-4>.

³⁶ Mária Srebalová & František Vojtech, “SME Development in the Visegrad Area.” *Eurasian Studies in Business and Economics* 17 (2021): 269–281. doi:10.1007/978-3-030-65147-3_19.

³⁷ Mikuláš Sidak, Andrea Slezaková, Edita Hajnišová and Stanislav Filip, “Determination of Public Supervision Aspects and Legal Pillars of Activities of Financial Agents in Central European Countries.” *Administrative Sciences* 13, no. 3 (2023): 78. doi:10.3390/admsci13030078.

4.4. Securities Management

As it follows from the Securities Act, the last activity within the possible actions of a trader is the management of securities. We do not understand the superficiality of the legislator and why he devoted only one paragraph to this issue when drafting the Securities Act. Specifically, it is § 41 of the Securities Act, even without any reference to the supporting application of the Commercial Code or the Civil Code. Securities management, similar to the custody of securities, represents a written commitment by the trader as a trustee that, during the duration of the securities management contract, he will perform all legal actions necessary to exercise and preserve the rights associated with a certain security, and the investor, as the owner of the security, will the activity pay the reward. Here, too, the legislator determines the written form of the contract under threat of invalidity.

The most important task of the trader is to carry out with professional care all the activities necessary to exercise and preserve the rights associated with the ownership of the security, even without the instructions of the investor. In our opinion, it is mainly about demanding the fulfilment of obligations arising from the ownership of a security, the exercise of exchange or pre-emption rights associated with it. However, these activities are carried out only on the condition that the portfolio management contract does not contain different rights or obligations that would contradict this. As reported by Zhang et al. directly from the Securities Act, the trader is also responsible for fulfilling the investor's instructions, which are compulsorily given in writing. However, we are of the opinion that in today's era of extensive electronicization, this provision should only be dispositive and enable electronic communication between participants within the scope of the obligation to intervene the trader must properly and timely notify the investor in a demonstrable manner about the error of the instructions given by him.³⁸ When managing a book-entry security, we emphasise the investor's obligation to take timely measures after the trader's call to enable the trader to issue orders for handling the book-entry securities to the extent necessary. According to Pavelek et al. 2020 is the right to vote is associated with the ownership of some type of security. The investor can entrust the administrator himself with its performance. In order to demonstrate his right to vote on behalf of the investor, he issues a written power of attorney, usually also with an officially verified signature, in which he also receives binding instructions for him as part of the vote.

In our opinion, the peculiarity of the contractual administration of a security is counted even during the time of its possession. In this case, it is limited only to the necessary time. The reason for this limitation is the trader's legal obligation to hand over the security as soon as possible after the act for which the investor had to hand it over to him. Even in this case, however, the principle of disposition comes into play and a deviation occurs in the management of the portfolio of securities. When managing securities, in addition to other obligations of the trader, his legal responsibility for damage to the securities during the trader's possession also applies. The reason for exemption is only the impossibility of averting the damage while exercising all

³⁸ Yue-Jun Zhang, Han Zhang and Rangan Gupta, "A new hybrid method with data-characteristic-driven analysis for artificial intelligence and robotics index return forecasting". *Financial Innovation* 9, no. 75 (2023). doi: <https://doi.org/10.1186/s40854-023-00483-5>.

professional care on the part of the trader. Reimbursement of the merchant's costs associated with security management is handled similarly to other contract types. It is assumed that his remuneration already includes the costs incurred in fulfilling his contractual obligations. However, the contract may also specify something else.

Swinkels emphasises that the manager performs legal acts related to the management of the security in the name of his client and on his account.³⁹ To determine other rights and obligations related to the management of securities, which are not covered by the Securities Act, its provisions and the provisions of the Commercial Code on the mandate contract shall be used in support. Again, there is an exception when the provisions of the Commercial Code on commission contracts and the Securities Act are applied. These are cases of the trader's contractual obligation to perform a legal act in his name and on the account of the investor.

4.5. Remuneration of the Trader and Termination of the Contractual Relationship

Despite a thorough analysis, we find that the creators of the securities law did not devote even a minimum of space to such a fundamental issue as the remuneration for the trader after fulfilling the content of the obligation from the portfolio management contract. For this reason, in our opinion, it is necessary to apply the general and special provisions of the third part of the Commercial Code.

The specific amount of the reward to which the merchant is entitled is neither according to the Securities Act nor according to the Commercial Code among the essential elements of the contract as a bilateral legal act. Commercial indemnity agreements must contain only the determination of the obligation to pay indemnity. Without determining the obligation to pay compensation, it could no longer be a portfolio management contract. Such a defect would mean that it could only be an innominate contract.

The contract on portfolio management as a named contract type represents the subject of the trader's business activity. And the goal of every entrepreneur is making a profit as one of the basic features of the business. For this reason, we can unequivocally rule out the possibility of her gratuitous contract for the management of the securities portfolio. Within the subsidiary scope of the Commercial Code, we note that remuneration can be determined in several ways. The first and most suitable way is the agreement between the trader and the investor on the amount of the reward as well as the maturity period. As a second suitable option for determining the reward for the trader, a method would be agreed upon, according to which the method of determining the reward would be determined. The third option, in our opinion, is the legal wording, according to which the investor will pay such remuneration, which is usually paid for comparable services at the time of the conclusion of the contract under similar business conditions. As part of the *de lege ferenda* proposals, we would also propose another solution. The creators of the law on securities could be inspired by the decree of the Ministry of Justice of the Slovak Republic on the remuneration and compensation of lawyers and in a similar way adjust the claims of the securities trader towards the

³⁹ Laurens Swinkels, "Empirical evidence on the ownership and liquidity of real estate tokens." *Financial Innovation* 9, (2023):45. <https://doi.org/10.1186/s40854-022-00427-5>.

investor.

The termination of the obligation from the contract on the management of the securities portfolio is also a special issue. The simplest and, at the same time, the most appropriate way to terminate the contract is mutual fulfilment of the obligation. Among other typical legal ways of termination of the contract is the expiration of the time for which it was concluded. An agreement between the contracting parties on the termination of the contractual relationship is also a suitable and conflict-free method. Unlike the portfolio management contract itself, according to Funta, it does not have to be in written form and would not be sanctioned by the defect of absolute invalidity of the legal act.⁴⁰ However, due to the legal certainty of both the trader and the investor, we do not recommend this risk in any case.

The Commercial Code allows both contracting parties t. j. for both the trader and the investor to terminate the contractual relationship by a unilateral legal act, such as termination. As part of the procurement of the purchase or sale of securities, they may terminate the contract in any way, partially or in full, at any time. According to the law, if the termination does not specify a later effective date, it shall take effect on the day the trader learned about it or could have learned about it. The legislator's laxity also lies in the fact that he does not determine the form of the notice or the method of its delivery. Again, however, for the sake of legal certainty for the parties to the contract, in our opinion, it is appropriate to adhere to a demonstrable method of delivery.

However, the delivery of the notice has several fundamental consequences. From its effectiveness, the trader may not continue the activity to which the termination applies. However, according to Jančíková and Pásztorová, the imbalance between the position of the trader and the investor is manifested in his warning the investor to take the measures necessary to prevent the occurrence of damage, which immediately threatens the non-completion of his activity. At least, in such a case, the law entitles him to the payment of necessary and purposefully incurred costs, including a reasonable part of the remuneration for activities properly carried out before the effective date of termination.⁴¹

The Commercial Code apparently considers the merchant to be the stronger party to the contract and does not allow him to unilaterally terminate the contract at any time. Although the merchant can also terminate it, but at the earliest with effect at the end of the calendar month following the month in which the termination was delivered to him. As of this date, his obligation to carry out the activity to which he has committed also expires. Among other things, if the interruption of such activity could cause damage to the investor, he is obliged to notify him of the necessary measures. If the investor cannot do them himself or with the help of other persons, he can request these services from a trader. He is obliged to carry them out under the threat of legal liability j for possible damage.

The contract and thus also the trader's obligation also expires on the basis of a legal event such as his death. This is provided that it is a natural person. The termination of the merchant, who is a legal entity without a legal successor, is also the reason for the

⁴⁰ Rastislav Funta, "Economic and Legal Features of Digital Markets." *Danube 10*, no. 2 (2019):173–183. doi: 10.2478/danb-2019-0009.

⁴¹ Eva Jančíková and Janka Pásztorová, "Promoting EU values in international agreements." *Juridical Tribune 11*, no. 2 (2021):203-218. doi: 10.24818/TBJ/2021/11/2.04.

termination of the obligation. He remains entitled to reimbursement of purposefully and necessarily incurred costs as well as to part of the compensation for the reasonable result achieved in arranging the matter.

In the case of custody and security management, the issue of termination of the portfolio management contract is regulated in the same way. In addition to the fulfilment of the obligation and the expiration of time, as well as the agreement on the termination of the contract, it is possible to terminate the contract. This option can be used by both the trader and the investor. However, the difference is in effectiveness. If the contract does not specify a notice period, the merchant may terminate the contract until the end of the calendar month following delivery of the notice. The investor has more options and, among other things, can do so with immediate effect. The trader's special reason for terminating the contract is the failure to pick up the deposited securities by the investor within the contractually agreed time. An exception is the situation when the contract resolves the situation differently.

It is possible to positively evaluate the legal guarantee for the merchant to secure his rights from the contract and especially the payment of his reward by establishing a legal lien on the securities kept and managed with him.

According to Xu & Ma, when trading securities, it is possible to observe a negative step by the investor. Investors without legal awareness often unilaterally terminate a portfolio management contract before the expiration date for speculative reasons only.⁴² They think that by doing this they will get rid of their obligation to pay the merchant a reward. However, this assumption is incorrect. Paragraph § 574 paragraph 4 of the Commercial Code clearly entitles the trader to the payment of costs as well as to a reasonable part of the compensation for all his actions properly performed before the termination by the investor takes effect.

5. Discussion and Conclusion

The Commercial Code apparently considers the merchant to be the stronger party to the contract and does not allow him to unilaterally terminate the contract at any time. Although the merchant can also terminate it, but at the earliest with effect at the end of the calendar month following the month in which the termination was delivered to him. As of this date, his obligation to carry out the activity to which he has committed also expires. Among other things, if the interruption of such activity could cause damage to the investor, he is obliged to notify him of the necessary measures. If the investor cannot do them himself or with the help of other persons, he can request these services from a trader. He is obliged to carry them out under the threat of legal liability for possible damage.

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⁴² Fengmin Xu & Jieao Ma, "Intelligent option portfolio model with perspective of shadow price and risk-free profit." *Financial Innovation* 9 (2023): 79. <https://doi.org/10.1186/s40854-023-00488-0>.

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