# Development of Commercial Law in the Slovak Republic — Outline of Problems

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***Abstract.*** *The article concerns the issue of trade law in the context of its evolution and the current realities of its being in force in Republic of Slovakia. In the paper the authors present an historical view of the creation of legal regulations about trade from ancient times to present days. In the first part of the paper the political system and its components are discussed. The reader will be able to acquaint themselves with the functioning of the apparatus of executive power (the government and ministries), legislative power (the parliament consisting of 150 members) and judiciary (independent courts and prosecutors) in the Republic of Slovakia. Moreover, this part of the article provides information about practical aspects of the creation of selected components of the constitutional legal order (e.g. parliamentary elections). In the second part, the paper covers the evolution of trade law over the centuries, approaches to regulations in Mesopotamia, based on, inter alia, the Code of Hammurabi, and also in ancient Egypt and Greece. Tracing the development of trade law over the centuries, the authors also present the evolution of legal regulations in this field in the XIX century, with particular reference to France, Germany and Austria-Hungary (especially the territory which today forms the Czech Republic and the Slovak Republic). In the last part of the article, the forming of regulations of trade law in Czechoslovakia from 1918 and during subsequent periods which created the history of that country, to the overthrow communism and the peaceful division of the state in 1993 into two separate, independent state organisms — the Czech Republic and Slovakia — is approached.*

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## Introduction

Since civilizations first appeared, all rulers naturally strove for a code of legal rules covering a broad spectrum of regulations and sanctions aiming not only at the protection of life and personal property, but also at enhancing the development of trading relations, which could ensure a beneficial standard of living. This was also the reason why individual legal fields gradually developed. Two of these have been permanently present in the development of civilization and nowadays, they present a traditional component of the current political and legal conditions and facts. The first of the two legal branches is the Civil Law, the Roman basis of which is present in the legal system of the whole of Continental Europe. As far as the vision for the future is concerned, the Civil law will occupy the same position (in the figurative sense) as philosophy does in the rank of other sciences. Vice versa, the Commercial Law, as the second traditional legal branch, was determined by the eternal desire of man to sell his own products and services for a certain counter-equivalent, i.e. for the money which came after the time of barter. This dualism

is a foundation stone of the Private Law itself and of the constant social interaction between non-entrepreneurial and entrepreneurial entities as well.

The text presents the functioning development of the sector in the light of the civil law in Slovakia.

## 1. The Legal System in Slovakia

The Republic of Slovakia is a democratic country with parliamentary-cabinet system of government. The country provides tri-partition of power into a legislative branch (one-chamber parliament with 150 members — the National Council of the Slovak Republic), executive branch (Government and President) and judicial branch (independent judiciary).

The Head of State is the President, elected in a secret ballot by direct universal suffrage for a five year tenure and can be elected only once. The candidacy for the President of the Republic of Slovakia is appointed by the members of the National Council (candidacy must be signed by a minimum of 15 representatives) or citizens (minimum 15 thousand Slovaks) in the form of a petition, which must be submitted to the chairperson of the National Council not later than 21 days prior to the planned election date. The chief representative of the Slovak nation can be a citizen of the Republic who is a voting member and has reached the age of 40 years by the election day.

The term of the President of the Republic of Slovakia begins after making affirmation to the National Council and the President of the General Constitutional Court (Tribunal) at noon on the day when the office of the predecessor finishes. The Chairman, Deputy Chairmen and the members of the National Council having its registered office in Bratislava are elected for four years in secret voting by those of legal age (18 years) and citizens of the republic, in general, equal and direct elections.

The National Council has competence in respect of legislation, control, creation of bodies and state institutions as well as taking decisions in the area of internal and external policy of the country. In the sphere of legislative powers, the National Council works on the basis of the Constitution, ratified contracts and international agreements, laws and other legal acts, and these control the process of their proceedings and their adherence to it. Furthermore, it regulates standards and relations present in all areas of social, political and agricultural life of the Republic of Slovakia. The legislative process and details concerning certain stages of creating and proceeding in case of laws were published in the Act of the National Council of the Republic of Slovakia of 18 December 1996 on practice for the management of legislative process.[1]

Parliamentary committees of the National Councils, Parliamentarians and the Government of the Republic of Slovakia have legislative initiative. The members of parliament are elected among the citizens of the Republic of Slovakia.

[1] The Act of the National Council of the Republic of Slovakia of 18 December 1996 on practice for the management of legislative process (Journal of Law of 1997, No. 19, item 8, pp. 74–88).

Members of the Parliament exercise their mandate in accordance with their conscience and beliefs not bound by any obligations.

A parliamentarian in the Republic of Slovakia can be a person who:

— has the right to vote;
— has reached the age of 21 years;
— has a permanent address in the Republic of Slovakia.

The role of a member of parliament cannot be linked with:

— the office of the President of the Republic of Slovakia;
— performance as a judge;
— performance as a prosecutor;
— performance of Ombudsman's duties;
— performance as a soldier in active military service;
— the function of a police officer and other national security agencies.

The President of the Republic shall appoint and dismiss members of the government which is a collegiate body of the executive branch at the request of the Prime Minister. The Government is accountable to the National Council which may adopt a parliamentary resolution on a secret vote, expressing lack of confidence in the performance of a minister or government which further leads to their resignation ("a vote of no confidence").

The fundamental tasks of the Slovak Council of Ministers are:

— the implementation of domestic and foreign policy of the Republic of Slovakia;
— directing government administration domains;
— working under the terms specified in the Constitution and other acts;
— ensuring the enforcement of legal regulations;
— coordination and control of governmental authorities' work;
— protection of the Treasury;
— directing the implementation and establishment of the general budget of the State;
— ensuring security and public order in the country;
— establishing and maintaining diplomatic relations with other states and international organisations.

Currently, in the territory of the Republic of Slovakia, there are 13 government administration offices (ministries) run by ministers responsible for the conduct of their ministries. The detailed scope of their activities is regulated by the Act of the National Council of the Republic of Slovakia of 12 December 2001 on the organisation of government activities and central public administration (the so-called empowering act).[2]

As foreseen in § 3 of the legal act, in Slovakia, central government administration is constituted of:

— Ministry of Transport, the Ministry of Construction and Regional Development;
— Ministry of Finance;

[2] The Act of the National Council of the Republic of Slovakia of 12 December 2001 on the organisation of government activities and central public administration in its amended version (Journal of Law 2001, No. 575, item 225, pp. 5966–5973).

— Ministry of Economy;
— Ministry of Culture;
— Ministry of Defence;
— Ministry of Agriculture and Rural Development;
— Ministry of Employment and Social Affairs;
— Ministry of Justice;
— Ministry of Education, Science, Research and Sport;
— Ministry of Internal Affairs;
— Ministry of Foreign Affairs;
— Ministry of Health;
— Ministry for the Environment.

The judiciary in Slovakia is constituted by the courts, which have a Constitutional guarantee of independence from other authorities. The justice system is two-fold and is divided into common courts of law (district laws — first-level, voivodship courts and, at the second-level, the Supreme Court — the supreme body of judiciary power) as well as military courts. Common courts settle all matters concerning criminal, civil, family, and guardianship laws in addition to labour legislation and social insurances which are not reserved for other courts**.**

Military jurisdiction (High Military Court, District Military Courts) was established to administer justice within the Uniformed Forces of the Slovak Republic.

The Constitution of the Republic of Slovakia is the most significant legal act and national basis of the system. This legislation describes provisions ensuring citizens' rights and freedom. Moreover, it defines mutual relations among powers (legislative, judicial and executive) as well as being decisive as for the form and method of appointing the highest state institutions such as the National Council, President and Council of Ministers and it also has a direct influence on the scope of judicial system, local authority and government administration agencies.[3]

## 2. Development of Commercial Law in Slovak Republic — Legislative Contexts Selected Not Purely from the Central European Legislation

To test the level of stability of any element of the legal system, it is necessary to know its background — both legislative and historical. Each change, each milestone of development of the law, whereby I mean not only the commercial law but the law itself, has resulted from previous events and experience without which the current status quo would not exist. One of the possibilities of how to best draft law from basic moral and ethical values, is to learn from the past but, I don´t mean the near past of a couple of previous years but the past going back to the formation of the first social rules.

[3] Dworzecki J, Gašpierik L, The role of the police force in shaping security and public order in the Slovak Republic, [in:] Dworzecki J (Ed.), Selected Social and Political Aspects of Internal Security. New York: Iglobal Writer Inc. & Pro Pomerania Foundation Poland, 2015, pp. 196–218.

Examining steps of the development of commercial law, we cannot just state its beginning based on the first codifications. We have to follow the historical axis back to the Ancient World, as some commercial-legal institutes originated there. As early as in ancient Mesopotamia, during the Sumerian period, merchants had originally been depending on the directive philosophy of their kings or temples but, later on (approximately since the end of the 3rd Millennium BC), they achieved a position of independent entrepreneurs. Especially after enacting the Code of Hammurabi in the 18th century BC, merchants achieved significant freedoms in business relations. The Code of Hammurabi also governed relations among merchants themselves (tamkars, as they were called according to available sources and generally accepted translations) and their assistants — commercial agents (samali). Their cooperation was governed by a liability relationship, the main features of which are reminiscent of the commission of a contract of nowadays (provisions of § 577 to 590 of the current Slovak Commercial Code) — that is why this type of contract can be qualified as one of the traditional contractual institutes, which have been related to the Commercial Law for millennia. In this sense, I add that commercial agents` support was especially used by tamkars for their big business, as they could not implement their business goals without the cooperation of other persons.

Further significant upswings in business relations resulted from the development of ancient Egypt approximately in the 16th century BC, after the gradual formation of the idea of a legally binding association of entrepreneurs (similarly to the above mentioned Sumerian era), which wanted to achieve a similar goal. The subsequent method of development of the commercial law in Egypt was clearly under the strong influence of the Ancient Greek culture.[4] Greeks were enterprising merchants and their elite gradually obtained state powers in Greek city states. Typical features of their business were ingenious solutions involving various bank businesses, e.g. clients gave their money at interest to Greek bankers (so called trapezitei) and bankers used the money for giving credits and invested it into other business. Greek bankers even knew the very practical system of cashless payments — mainly due to the substantial weight of money — which was used at those times. In this sense, we can speak about further traditional institutes of the commercial law, which are clearly reminiscent of the bank contracts of nowadays, that are known to each modern commercial-legal system, e.g. a contract on current account, contract on deposit account, loan agreement etc.

Regulation of relations among entrepreneurs which, however, in many aspects resembles the current relations, can also be identified in Medieval Europe, the relations of which were also featured in the Estates Law, i.e. Public Law. Selected rules of commercial-legal relations became a part of the traditional law or legal systems in cities known as commercial centres in Italy, France and Spain, although the commercial law itself was still not codified. A new dimension and a clear demand to determine commercial rules appeared (as partially given above) due to upswings of maritime powers (Portugal, Spain, England, Netherlands and France) in the 16th and 17th centuries. To a certain extent, it can be true that — as a matter

[4] Mamojka M, Traditional Institutes of the Slovak Commercial Law throughout Norm-Setting Changes. Cracow: European Association for Security, 2015, p. 9.

of fact — the history of the commercial law in written form is the history of efforts to put the free business under control of the state.[5]

The commercial law could not have been established earlier than during (the above mentioned) 16th and 17th centuries, i.e. at the time of the onset of mercantilism, which stimulated the codification of the complete legal regulation of commercial relations.[6] "*Ordonnance du commerce*" issued in 1673, was the first important milestone at the beginning of this process. The Ordonnance was initiated by merchant Jacques Savary (known as the "Savary Code"). Shortly afterwards, there was issued "*Ordonnance touchant de la marine*" in 1681, which governed norms of the maritime commercial law, and later it was taken over — without major changes — to become Napoleon´s "*Code de commerce*". Basic elements of the Code were adopted to transport contracts in the current modern maritime business, as well as to several modifications of contracts in the Slovak legal order, and especially in the contract on transport of things — from § 610 to 629 of the valid Slovak Commercial Code.

The actual upswing of positively regulated commercial law (i.e. the law in a written form accepted on the relevant legal territory) started during the 19th century. At this period, we can already speak about the first fully fledged codifications of commercial law via commercial codes. In 1807, there appeared the French "*Code du commerce*", an elaboration of the commercial law as a separate part of the unified private law. The Code consisted of four books: the first one comprised provisions regarding tradesmen as individuals, and propriety relations of merchants who married; and further trading companies, stock exchange, commercial sales contract and also limitation. The second book comprised provisions on sea trade, the third book a bankruptcy and the last one, ergo fourth book, dealt with issues of commercial jurisdiction. With a slight detachment, we can thereby refer to the first substantive and procedural trade law. During Napoleonic wars, the Code was also valid on the territories annexed to France and, the Code was also adopted by the states which supported the Napoleonic regime (e.g. West German state-members of the Confederation of the Rhine). "*Code du commerce*" became a solid basis for trade codes in Italy, Belgium, as well as in Spain. During the Napoleonic wars, not only were the last drafts of the 1811 General Civil Code made. The Danube Monarchy intended to codify the trade law. In spite of all efforts, the code was not adopted. The first legal regulation covering the most important clauses of the trade law in the Slovak territory was the Common Directive on Business Reports No. 168/1857 issued by ministries of law and trade in the Imperial Law Gazette. The directive provided clauses regarding the trade register, as well as trade companies and procuration. This directive was in force only for a short time. The momentum of the trade code and the following codification were accelerated by the fall of Bach´s absolutism and the end of the bourgeois revolution, both followed by intensive trade development.

[5] Professor Karel Elias believes that new economic doctrines, especially mercantilism, strongly inspired and influenced first efforts to make a complete legal system of relations in Europe — such relations are governed by the Commercial Law nowadays. *Source*: Eliáš K, Kurs obchodního práva — Úvodní a obecná část. Soutěžní právo. 2. vydání (Overview of Commercial Law — Introduction and General Facts, Competition Law, 2nd Edition). Prague: C.H. Beck, 1997, pp. 24–51.

[6] Raban P, Obchodní zákoník (Commercial Code). Prague: EUROUNION, 2003, pp. 87–91.

Codification of trade had already been considered in the Austrian Monarchy at the beginning of the 19th century. Emperor Francis 1st ordered the court commission for legal issues to work out a draft of the "commercial code". This code should have covered trade, bills and maritime law, as well as bankruptcy legislation and judicial procedures in trade matters. None of the drafts was adopted (the commission had obviously been inspired by the French legislation). Between 1857 and 1861, a special commission in German Nuremberg had worked out a draft of a Germany-wide trade code in 1862. The code was also valid for the states of Habsburg Cisleithanian and issued as a Law No. 1/1863 in the Imperial Law Gazette (the code was based on principles of the framework trade code drafted for German countries). This trade code defined both the legal relations arising from trade activities, and the word of merchant (as a person making business as a trader); the code defined various enterprising activities made by more entities within a single business (i.e. trade companies and their legal forms). The trade law became the law governing business which otherwise would have been governed by the civil law (this is another feature which has been preserved up to nowadays — this dualism as a combination of private-legal law. I personally advocate it from both the theoretical and the applicable points of view). Among its assets, there was unification of valid provisions of the company law, rules of free competition and the keeping of business books. The trade law hereby deleted principles of the estate merchant law supported by the feudal legal order. The code itself consisted of general provisions and four books: the first book was on trading, the second book on trade companies, the third book on silent partnership and joint venture based on joint account (such institutes are unquestionably supported by the current law — especially the Silent Partnership Agreement, as well as the commission contract which was mentioned earlier in connection with the Ancient Law), and the fourth book was on trade.

Germany re-codified the trade law at the end of the 19th century. On January 1st, 1900, both the German Civil Code (adopted in 1896) and the new Trade Code (adopted 1897) came in force. Nonetheless, Switzerland chose a monistic model — a single code set up by both the civil and trade codes. The first step was to codify trade relations according to the trade law drafted by Walther Munzinger in 1865. The Law of Obligations Act was adopted in 1881. The Law provided a clause according to which all contracts on movables were governed by the same legislation — no difference was made between trade and "normal" contracts. In 1911, works on codifying the Civil Law via the Civil Code were completed. The Law of Obligations Act merged with the Civil Code and the result was a single code — the "commercialized" Civil Code, which was internally divided into five parts: the first one defined rights of persons, the second one the family law, the third one the inheritance law, the fourth one the rights in rem, and the fifth one the law of obligation. The concept of the Civil Code was later copied by Italy and Netherlands.

At the time, at which we can already state that the modern commercial law was formed, the territories of the current Czech Republic and Slovakia were parts of Habsburg Danube monarchy. Since the 16th and 17th centuries, there had already occurred some commercial-legal institutes: trade companies and the institute of business books were the most important of them. It is interesting that the first share-holding company in the Czech Republic had been registered as soon as in 1724. The company´s business was the import of raw silk. The next

share-holding company was registered after many years — in 1822, as the Prague Steamship Share-Holding Company. In the territory of the current Czech Republic, business law (commercial law) has been taught at the Faculty of Law of Prague University since 1810. The law was also taught at Olomouc University in the form of courses in spite of the fact that there was no faculty of law at that time.

Taking into consideration the development of business law, it is necessary to point out both the historical and legislative facts after the formation of Czechoslovakia in 1918 — an important milestone was the adoption of the Act No. 11/1918 Coll. which took over the then Austrian legal order and the then Hungarian legal order. The following period was marked by a legal dualism. It meant that different legal regulations were valid in different regions of the state — Czech regions were governed by the Cisleithanian law, whereas Slovakia and Ruthenia by the Hungarian law. This difference was also reflected in the trade law — it was only the Act No. 271/1920 Coll. which governed a company limited in the whole of Czechoslovakia; later on, an issue of unfair competition was regulated (under Act No. 111/1927 Coll.) as well as the antitrust law (Act No. 141/1931 Coll.). After the fashion of active approach to unify the Civil Code, a special commission was established in 1930 with the aim of working out a commercial code. The subsequent German occupation in 1939 stopped the work and the project remained unfinished. After the war, the majority of legal regulations referring to the commercial law were cancelled, whereas some institutes (e.g. procuration) were preserved in the Civil Code.

After the liberation of Czechoslovakia, the pre-war legal status quo was restored. The first significant change was made in 1949 by adopting the Stock Corporation Act No. 243/1949 Coll. Its goal was to prevent free enterprising and to set all stock companies under the intensified state supervision. In 1950, both the Cisleithanian and the Hungarian commercial codes were cancelled and replaced by the unified Civil Code (under the Act No. 141/1950 Coll.), which came into force on January 1st, 1951. This Code unified the private law throughout the whole republic into a single codification.

In order to make a legal framework of economic relations in Czechoslovakia in 1950s, the Economic Code had been worked out which, however, was not adaptable to foreign trade relations. That is why the third code was adopted — the International Trade Code (Act No. 101/1963 Coll.). This legal regulation was completed by several special acts. The Economic Code was valid until 1989, when — after fundamental social changes — the Code could not meet the new demands of democracy and a free market, although the Code was amended by the Act No. 103/1990 Coll. (which was adopted to define the first forms of business companies). The private-legal sphere of civil law was therefore completely reformed (the majority of the Civil Code was amended by the Act No. 509/1991 Coll.), and after a short time, a completely new Commercial Code (under the Act No. 513/1991 Coll.) was adopted, which — after a couple of amendments — is preserved until now. The adoption of the Commercial Code in 1991 cannot be seen as an isolated issue, as it was an important part and one of building stones of the completely new legal system being already based on the market economy and not on the directive management carried out by the political and state ownership monopoly. The first natural step to position it in the legal system was to change the Constitution. The result was the abolishment of classification by ownership. This meant the equality of all potential business entities regarding

their possibility to acquire ownership, to treat ownership and to protect ownership. Thereby was introduced the legal foundation for free competition and creation of principles as a necessary basis of private-legal code of trade nature, i.e. a code strongly featured by the principle of contractual freedom. Not to be omitted is a legal milestone at both the practical and applicative levels — the Act No. 105/1990 Coll. on Private Enterprise of Citizens, which enabled individual business activities operated by citizens and their realisation. This Act exactly adhered to the legislation adopted in the sphere of restitutions and privatisation.

Which way will be taken by the commercial law in the future is a question. As given in the above brief historical overview, it is clear that some institutes have been preserved until now, whereas other institutes were of less permanence. They sank into oblivion. The current legal status quo is not ideal but it is still a further step to achieve the distant goal of the law as a unit which — though being typically complicated — could correspond more to basic moral principles.

## Conclusion

Beyond any doubt, commercial-legal relations present a traditional element of interaction between people that makes it necessary to constantly work out more precise legal regulations governing legal requirements for entering the market and the following economic-legal activities of market participants. This is also a reason to examine the effectiveness of the valid law which is primarily presented by a subsidiary co-relation between the Commercial Code and Civil Code in the entrepreneurial segment.

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**Legislative acts**

1. The Act of the National Council of the Republic of Slovakia of 18 December 1996 on practice for the management of legislative process (Journal of Law of 1997, No. 19, item 8).
2. The Act of the National Council of the Republic of Slovakia of 12 December 2001 on the organisation of government activities and central public administration in its amended version (Journal of Law 2001, No. 575, item 225).

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***Streszczenie.** Artykuł porusza problematykę prawa handlowego w kontekście ewolucji i aktualnych realiów jego obowiązywania na terenie Republiki Słowackiej. W materiale przedstawiono rys historyczny tworzenia regulacji prawnych poświęconych obszarowi handlu od czasów starożytnych do współczesności. W pierwszej części opracowania przybliżono ustrój polityczny i tworzące go komponenty. Czytelnik będzie mógł się zapoznać z funkcjonowaniem aparatu władzy wykonawczej (rząd i poszczególne ministerstwa), władzy ustawodawczej (150 osobowy parlament) i sądowniczej (niezawisłe sądy i prokuratura) na terenie Republiki Słowackiej. Ponadto ta część tekstu zawiera informacje o praktycznych aspektach tworzenia wybranych komponentów konstytucyjnego porządku prawnego (np. wybory do parlamentu). W części drugiej opracowania poświęconej ewolucji prawa handlowego na przestrzeni dziejów, przybliżono regulacje obowiązujące w Mezopotamii oparte m.in. na prawie Hammurabiego, a także w starożytnym Egipcie i antycznej Grecji. Śledząc rozwój prawa handlowego na przestrzeni wieków, autorzy wskazali również na ewolucję regulacji prawnych w tym zakresie w XIX wieku, ze szczególnym uwzględnieniem Francji, Niemiec i Austro-Węgier (zwłaszcza terytorium, które dzisiaj tworzy Republikę Czeską i Republikę Słowacką). W ostatniej części opracowania przybliżono kształtowanie się od 1918 r. regulacji z zakresu prawa handlowego w Czechosłowacji i w kolejnych okresach kształtujących historię tego kraju, aż do obalenia komunizmu i pokojowego rozdziału państwa w 1993 r. na dwa samodzielne, niezależne organizmy państwowe, tj. Czechy i Słowację.*

***Резюме.** В статье поднимается вопрос о коммерческом праве в контексте эволюции и современном его применении в Республике Словакия. В представленном материале показан исторический аспект создания законодательства, посвященного торговле с древних времен до наших дней. В первой части исследования описаны политические системы и составляющие их компоненты. Читатель ознакомиться с функционированием аппарата исполнительной (правительства и отдельных министерств), законодательной (150-местного парламента) и судебной властей (независимые суды и прокуратура) в Республике Словакия. Кроме того, в данном разделе представлена информация о практических аспектах создания избранных компонентов конституционного правового порядка (например, о выборах в Парламент). Во второй части, посвященной эволюции развития коммерческого права на протяжении всей истории, представлены правила, действовавшие в Месопотамии и основанные на законах Хаммурапи, а также в Древнем Египте и Древней Греции. Прослеживая развитие коммерческого права на протяжении веков, авторы также указывают на эволюцию правовых положений в этой области в девятнадцатом веке, с уделением особого внимания Франции, Германии и Австро-Венгрии (особенно той территории, которая сегодня формирует Чехию и Словакию). В последней части исследования представлен процесс формирования положений коммерческого права в Чехословакии с 1918 г. и во все последующие периоды истории этой страны до падения коммунизма и мирного разделения государства в 1993 году на два отдельных, независимых государственных организма, то есть Республики Чехия и Словакия.*