CZECH AND SLOVAK COMMERCIAL CODES: PROBLEMS AND SOLUTIONS

Assoc. Prof. JUDr. Karel Marek, CSc.
Department of Commercial Law, Faculty of Law, Masaryk University, Czech Republic

JUDr. Edita Hajnish, PhD.
Department of Commercial, Financial and Economic Law, Facilty of Law, Comenius University, Slovak Republic

Автори досліджують правове регулювання підприємницьких відносин у Словацькій Республіці, Чеській Республіці та найбільш авторитетного міжнародного об'єднання – Європейського Союзу; на базі проведеного аналізу розробили науково-практичні рекомендації щодо належного проведення процесу імплементації європейських норм у національні законодавства країн-членів ЄС.
Ключові слова: Комерційний кодекс, підприємницькі відносини.

Авторы исследуют правовое регулирование предпринимательских отношений в Словацкой Республике, Чешской Республике и наиболее авторитетном международном объединении – Европейском Союзе; на базе проведенного анализа разработаны научно-практические рекомендации по надлежащему проведению процесса имплементации европейских норм в национальные законодательства стран-членов ЕС.
Ключевые слова: Коммерческий кодекс, предпринимательские отношения

The authors investigate the law regulation of commercial relations in the Slovak Republic, Czech Republic and those of the most influential international alliance, the European Union. On the basis of the analysis the scientific and practical recommendations on the appropriate measures towards the process of the European norms implementation in national legislation of the EU member states.
Key words: Commercial Code, commercial relations

Business Law of Contract is a very problematic area for foreign persons carrying business in the Czech and Slovak Republics, and it troubles Czech and Slovak business subjects themselves.

The Czech and Slovak Commercial Codes are formed by their general provisions which specify the range of regulations and the basic concepts.

Provisions on business activities of foreign persons (who on principle transact business on the same conditions as Czech and Slovak subjects) form a specific chapter of part one of the Commercial Code. Provisions on Commercial Register can also be found in part one. Business Accounting represents an independent chapter of part one of the law. The last chapter in part one is called Economic Competition and it deals with the conduct in business competition, unfair competitive behaviour and means of law protection against unfair competition (forbidden competition limitation is dealt with in social law).

Part two, apart from general provisions on business companies, regulates general commercial partnership, limited partnership, limited liability companies, joint stock companies and, in an individual chapter, co-operatives. The content of this part confirms the fact that the Commercial Code is a code of laws which contains issues earlier included in a whole range of regulations (e.g. on joint stock companies and co-operatives).

The name of the third part is Business Obligations. Some provisions on acts in law, some provisions on the conclusion of contract, provisions on discharge of an obligation by performance, some provisions on the discharge of a non-performed obligation, provisions on securing an obligation, some provisions on the set-off of claims etc. are located here. Whenever there is "some" in the name of the provision, we have to realise that other provisions are a part of civil legal regulations, above all the Civil Code. This does not mean, however, that if there is not the "some" in the headline, the civil legal regulation is sufficient.

As practical experience has shown, solving questions concerning the Civil Code provisions and the Commercial Code is not at all easy. In practice, attentive observation of the practice of courts is fully recommended (which holds generally). It has been certified (and a whole range of Commercial Code commentaries tries to solve this) that a good idea is to mark in the code when the regulation is in the Commercial Code, when in the Civil Code only and when Civil Code provisions are valid, but with variations and supplements of the Commercial Code.

For practice it is also recommended to mark in a good way the regulations of the third part of the Commercial Code peremptory rules (amendments of acts to Commercial Code change the number of peremptory rules, there was a significant change by the 370/2000 Law, the

so-called harmonisation measure and the 501/2001 Law, the co-called technical measure).

The third part of the code is not further divided, as we were used to with the previous Economic Code, according to the object of obligation fulfilment (obligations concerning product delivery, preparation and execution of a capital construction, etc.), but according to the content of the obligation or according to the type of contract. In the third part, Special Provisions on Contractual Obligations in International Trade can also be found. The code ends with the Common, Transitory and Concluding Provisions (the fourth part of the law).

The relations of the Commercial Code as a specific regulation and the general civil regulations can be simply expressed in three ways. In the area of no specifications, there are no special provisions in the Commercial Code and only the regulations of the Civil Code, or civil regulations, are valid. In the area of certain specifications, the Commercial Code contains some (often also entitled that way) variant, supplementary provisions. Subsequently, partly the general Civil Code is valid, and partly variants and supplements of the Commercial Code. Where specific obligatory relations are concerned, the Commercial Code contains a specific regulation. The cohesion of laws should be more exact and, in consequence, their interrelationship less troublesome.

An important matter dealt with in the Commercial Code is the definitions of businesspersons. Businesspersons, according to the Commercial Code, are subjects recorded in the Commercial Register, persons engaged in business activity on the basis of an authorisation to practice certain trade (sole traders), persons engaged in business activity on the basis of an authorisation issued under particular acts or regulation different from the provision governing the issue of trade authorisation or according to specific regulations, and individuals engaged in farming activity (agricultural production) who are recorded in an appropriate register under a particular act or regulation.

Very frequent are the provisions of the third part on business obligatory relations. The subject of regulations of this part of the law are obligatory relations among businesspersons, if it is obvious from all the circumstances in the beginning that they refer to their entrepreneurial activity (this is the so-called *relative business* – it would be more exact to speak of relative obligatory relations; here as well as in the whole of the article the shorter version, which is used in practice, is being used).

Obligatory relations between the state or municipalities and businesspersons during their entrepreneurial activity, if they refer to securing public need (this is also relative business), are also ruled by this part of the law. For this purpose, state organisations which are not businesspersons are also considered to be the state if they make contracts from the content of which it follows that they also refer to securing public needs.

The third part of the law handles, without considering the nature of the participants, obligatory relations among founders of business companies, between a member and a business company as well as among members themselves, if it concerns relations referring to the company shares and relations following from the contracts by which the share of a member is transferred, also obligatory relations between founders of a co-operative, between the co-operative and its members and among the members themselves, if they follow from the co-operative membership or from contracts on transfer of member right and obligations, obligatory relations rising from operations in stocks and their mediation, and, furthermore, from contracts referring to stocks and bonds, contracts of sale of an enterprise or its parts, contracts of lease of an enterprise, right of lien to a business share, credit contracts, inspection contracts, forwarding contracts, contracts on operating a means of transportation, silent partnership contracts, letter of credit contracts, collection contracts, contracts on deposit of a thing with a bank, current account contract, deposit account contracts and obligatory relations following from a bank guarantee, traveller's cheque and a promise of indemnity, between a company or a co-operative and a subject which is a statutory or some other organ or its member, or between founders and the administrator of contributions (see § 261 section 3 of the Commercial Code).

In compliance with the principle of liberty of contract the parties can also agree that their obligatory relation which is not a relation ruled by the Commercial Code on the basis of provisions of law (§ 262) will be ruled by this on the basis of this agreement (the so-called *Facultative business*).

The fact that parties can deviate from the provisions of the part of the law or omit certain individual regulations reflects than the Commercial Code of the Czech Republic markedly prefers the principle of liberty of contract. The parties cannot, however, agree on a regulation in the contract that would oppose the *peremptory rules* being quoted on principle in this connection for the third part of the Commercial Code (their number is, however, not very large concerning the extent of the obligatory part) in § 263 provision of the Czech Commercial Code. At the same time we must also respect § 263 section 2, which says that all basic provisions of the types of contracts are peremptory and, subsequently, the provisions that prescribe a compulsory written form of the act of law are also peremptory.

There are many difference from earlier laws in contract making, The contract making regulation expresses the principle that every subject chooses his own contract partners. Every subject also bears the consequences of a wrong choice. Contracts are nevertheless, according to general provisions, made by an agreement on all the content. Provisions § 409 to 719a of the Commercial Code regulating individual types of contract are only used with contracts whose content, agreed on by parties, involves substantial parts of a contract set in the basic provision for each of the contracts. Other contracts, the so-called innominated contracts, are, according to provision § 269 section 2 of The Commercial Code, not made if parties do not sufficiently define the content of their obligation (the Commercial Code says the "obligation object").

Another important change in comparison with the previous regulation refers to typical earlier consequences

of the liability for defects and default, the so-called penalties (that were numerous both in the old Commercial Code (Economic Code) and the basic delivery conditions). These are not defined in the code, but the so-called contract penalty can be agreed on by the parties. liability for damage caused by the breach of obligation is in the Commercial Code conceived according to the so-called objective principle, which is also a marked change (the fault of the wrong-doer is not demanded, but the possibility of liberation is given).

Is it obvious, even from just an orientational familiarisation with the Commercial Code, that, in comparison with the previous regulations, it does not prescribe peremptory regulations, above all in many matters of obligatory relations. Neither the extent nor the content of the legal regulation is as detailed as the previous regulation, for which a number of implementary regulations was characteristic.

The Commercial Code annulled more than eighty regulations (including the Economic Code, among others the public notices and decrees by which the basic delivery conditions were given). The concrete regulation is on principle left to the contract; this holds among others for the matters of payment, invoicing, package returning, examinations, etc., the unsuitable regulation or the absence of which in the contract can possibly have harmful impact on realisation. Expertly transacted contract activity will thus be in a much larger extent than so far directly proportional to a successfully functioning economy of a given subject. The art of making contracts will markedly influence the economic success of enterprising subjects.

To the Efficiency of the Legal Regulation

Activity of enterprising subjects in today's society should be defined by a consistent effort for efficiency of all the activities which these subjects perform. Legal regulation, which should not contain retardatory mechanisms and should support enterprising activities, should promote the enforcement of businesspersons' will while making contracts and realising them, should also help efficiency. At the same time, however, the legal regulation should not support only the interest of businesspersons but also public interest (above all elimination of subjects who ensure their income by violating the principles of fair business contract). Prosperity of a company can in our opinion only be based on providing quality service while respecting ethic principles valid in enterprising as well.

- The Efficiency of Law and its Conception

The effort for efficiency is also visible from the valid legal regulation of contract types within the frame of obligatory business relations of the Czech and Slovak Commercial Codes. Thanks to this legal regulation, subjects were given really great liberty of contract. Simultaneously, elements representing public interest are applied here (see among others provision § 265 of the Commercial Code of the Czech Republic, which says that the exercise of the right which contradicts the principles of fair business conduct is not granted legal protection).

If the efficiency or a legal regulation is observed, the realisation of law functions can be considered the rate of its efficiency (In this part of the work we use the lectures of professor P. Hajn given at Masaryk University in Brno, The Faculty of Law.). There are, however, different theories of efficiency, which understand the efficiency of law only as the quality of legal regulations, or only as the realisation of legal regulations; there is also an aim-effect conception of law efficiency, expense-effect conception, and other conceptions are of use. In the functional conception of law efficiency we look for the essence of efficiency above all in its functionality. It concerns the determination of extent in which functional possibilities are realised, and also the determination of circumstances in which they are fulfilled.

In general, two groups of law functions are distinguished: the organisationally-regulative and the protectively-securing. These function groups express the need of securing public interests, but also partial interests of individual persons. In the frame of these function groups, functions of different sectors are usually specified and investigated, particularly on the level of these individual sectors. Individual sectors of law contribute to the realisation of general functions of law in different extent and in different areas. This is the reason for differences in the functions of individual sectors of law.

Functions being fulfilled in general groups and functions in relation among function groups can be mutually complementary (i.e. the peremptory rule of Statute of limitation sets deadlines sufficient for the assert rights of party – it protects a general interest and prevents from the arranging of inadequately short deadlines, but after the expiration of the deadlines makes possible the exceptio temporis. By this it works in the concrete case to the benefit of the subject to which it allows not to observe the rights and the duties in earlier relations, when among others the evidence situation is already difficult.

The functions can, however, also exist in a competitive relation (a peremptory rule can present a social interest and can prevent an individual, different contractual solution even in cases in which such a solution would be in compliance with the interests of both contractors). If the relation of the functions is competitive, it can be discussed whether the interest of the society prevails over the interests of individuals or vice versa (see e.g. provision § 446 of the Czech Commercial Code, which sets: The buyer acquires ownership title even if the seller is not the owner of the sold goods; here the security of the buyer is being preferred on the one hand, which is surely a common interest, on the other hand this is surely a substantial interference with existing property rights; a question then arises whether it is desirable to increase the security of the buyer by such a regulation and whether this is really also of a social interest).

The competitive relation of the functions can also be understood as a relation of their mutual limitation – e.g. the effort for securing the creditor's right with the help of the right of lien is limited by the protection of the legal status of the debtor, whose right of property can be interfered with by the creditor only in the way defined by law. A balanced relations of fulfilling the functions is a desirable state, but it can only be achieved with difficulty.

It is a certain ideal model towards which the legislation and the practice of realisation should approach.

Today it may seem that after a period of a strong social preference for certain subjects, or certain economical activities (see among others the earlier obligation of contract making defined by the annulled Economic Code), the imaginary scales have reclined towards individual interests (e.g. the possibility of operation of business companies with a relatively low registered capital and the possibility of operating of sole traders in the so-called irregulated trade), which can positively influence the increase of the number of enterprising subjects, but also unwanted consequences which lie in the possible instability and lower professional level of such persons.

In this connection we speak about the assumed efficiency (the rise of ten thousands enterprising subjects in the Czech Republic) and about the non-assumed efficiency (some businesspersons with a weak property and professional background and perhaps low moral and social level disrupt the relation chain of the enterprising sphere with social consequences), depending on how the functions of law are performed. We can also speak about the assumed and non-assumed negative consequences of a legal act or acts.

The basic facts that condition the realisation of the functions of law are: the quality of the act of law themselves, which is defined by their adequacy to the relations described on the legal regulation, the co-ordination of legal regulations, respecting the results and the limits of law, the systematics of legal regulations and, besides, also the language and the style of legal regulations (the basic requirement of the style of legal regulations is a brief and in this sense economical way of speech; it limits the extent of normative material and facilitates its mastery; the briefness of the legal style is, however, in a certain competition with its comunicativeness), factors connected to persons who will realise law, above all their attitudes (which limit the realisation of legal regulations), the knowledge and abilities (where improvement of the hitherto state can also be improved by publishing, e.g. articles in newspapers and public speeches), the existence of corresponding controlling mechanisms). All of these must be concerned when looking at today's legal regulations and, above all, when creating new legal regulations, because in this way constantly sustainable growth of society can be achieved. .

Although legal regulations of individual contract types of the Czech Commercial Code is rather brief, in its body it naturally contains many legal regulations. The whole of the Czech Commercial Code (even though approximately eighty acts of law have been annulled) is form the point of view of most addressees of legal regulations (not lawyers) a publication so huge (in their eyes) that many of them (often also because of the previous existence of tens of laws in which a non-lawyer could not orientate oneself) only with difficulty overcome their constraints towards getting to know the text of law. At the same time, certain complicated parts of various laws (fragmented by a range of novelisations and not at all well-arranged), in which a subject tries to orientate oneself, can create negative attitudes to law as such (in this regard the regulation of the types of contracts according to section two of the third part of the Commercial Code seems, in comparison with other regulations, more favourable).

The quality of legal regulations markedly influence the attitudes to law. There is, however, a certain interdependence. Mutual conditionality also exists between the knowledge of law and skills. If positive approaches of subjects to law and gaining its wider understanding can be gradually achieved (we can try to achieve this by a longer preparation time of the decisive regulations with the participation of the professional public), only then can we talk about the development of corresponding skills. Individual knowledge can be substituted by various materials and information – models, printed forms, forms. Such materials and information can only be used as individual solution. Time and effort which could thus be gained in business while preparing contracts could eventually have negative consequences.

It seems that continuous novelisations of various legal regulations without their mutual co-ordination during the phase of their preparation could make an impression that for common norm addressees it is a state they are not able to reflect, it may seem that the condition of efficiency is not mentioned. Any possible insufficiently consistent normative system in general can become a powerful tool of disorganisation.

- Law Efficiency Presumptions

When examining law efficiency, we already specify its basic presumptions, but we also need to know the current state of the valid legal regulation efficiency. Fulfilling law functions can be examined by different methods. Among others, we can carry out a comparison with another system of law. This method is especially suitable where new legal institution is formed within out system of law (e.g. leasing). A comparison with a different system of law makes possible, above all, to monitor the completeness or incompleteness (and, in this, sense, the adequacy or inadequacy) of the regulation of one or another area of social relations.

Even if we eventually find out that our legal regulations are not, compared to another system of law, complete (e.g. that in comparison with the regulation of certain kinds of obligations in Germany the legal regulation of service billing, i.e. the legal regulation of invoicing, is missing), it cannot be expected that a potential addition of this regulation into our system of law can automatically correct certain undesirable phenomena (e.g. late execution of payments among businesspersons and a failure to perform duties set by tax provisions). These phenomena can in fact be caused by a whole range of both objective and subjective causes. An important presumption for the efficiency of legal regulations is to respect a known fact that law is neither omnipotent nor powerless (it can contribute to the improvement of the given state in compliance with its possibilities).

To the Concepts of Contract law.

After the publishing of the Commercial Code of the Czech Republic, business obligatory relations in legal

literature – including commentary literature – were divided into the so-called *absolute business obligatory relations* (enumerated in § 261 section 3; this enumeration was changed by novelisations), *relative business obligatory relations* (if conditions in § 261 section 1 and 2 were fulfilled), *facultative business obligatory relations* (on the basis of parties agreement according to § 262 of the Commercial Code) and *absolute non-business obligatory relations* (or absolute civil relations, according to § 261 section 6 of the Commercial Code). In short, the so-called absolute business, relative business, facultative business and absolute non-business was and is being spoken of (with the knowledge of its inaccuracy and with a practical need for brief expression).

Legal regulation has changed[1)] and the question is whether and how to keep or correct this established terminology[2)]. The following lines are dedicated to this topic. These matters have already been discussed in both legal press [3)] and commentary literature[4)].

A very important change of the legal regulation is, in this connection, the change of the provision of § 262 of the Commercial Code. More specifically, it is the statutory text of § 262 of the Commercial Code, section 4. Originally, the provision of § 262 section 4 was suggested in a more condensed version, and even with this version, difficulty was feared[5)].

The today's version of § 262 section 4 of the Commercial Code says: in relations according to the § 261 or subordinate to the Commercial Code by agreements according to section 1, provisions of this part will be used if something else does not follow from this law or from a specific legal regulation; provisions of the Civil Code or specific legal regulations on consumer contracts, accessory contracts, abuse clauses and other provisions for the protection of user must be used when it is for the benefit of contracting party that is not a businessperson. The contracting party that is not a businessperson is responsible for the breach of obligation in these relations according to the Civil Code and provision of the Civil Code will be used for the party's common obligations. (The Slovak Commercial Code does not contain this legal regulation at the moment.)

- Absolute Business (Type business)

The interpretation of the provision of § 262 section 4 does not seem easy today[6)]. One of the questions arising from the current version of § 262 section 4 of the Commercial Code is whether the conception of "*absolute business*" can still be used for relations regulated by the provision of § 261 section 3 of the Commercial Code , according to which the relations named in this paragraph are regulated by the third part of the Commercial Code, irrespective of the nature of the participants.

Let us remind that the so far used concept of *absolute business* does not express that the above mentioned relations would be regulated by the Commercial Code only. This would be in conflict with, among others, the provision of § 1 section 2 of the Commercial Code(scheme 1.). The concept of absolute business was to express that the mentioned relations will be absolutely, i.e. without fulfilling other conditions, always commercial-legal and will be on principle regulated by the Commercial Code first, even though today they are also regulated by the provision of § 262 section 4. We follow the provision of § 1 section 2, only if some matters cannot be solved according to the commercial-legal provisions, they shall be resolved in accordance with the civil law provisions. In the event that such issues cannot be resolved in accordance with the civil law provisions, they shall be considered according to trade usage (commercial practice) and, in the absence of this, according to the principles upon which this Commercial Code is based. The provision of § 262 section 4, however, intersects even this regulation. The fact that these are always firstly commercial-legal relations (even though e.g. a non-businessperson will be responsible for the breach of obligation according to the Civil Code and this special provision will be used in the first place) does not change. The provision of § 261 section 3, saying that "this part (understand the third) of law, regulates (irrespective of the nature of the participants) relationship of obligations" (which are mentioned here).

In this situation, those who will still use the term "*absolute business*" cannot be judged. Those who will do so should, however, point out (if suitable, with regard to their recipients, e.g. students or the general public) the above mentioned relevant regulations, above all § 1 section 2 and § 262 section 4. The pro of this solution is the preservation of continuity of the current terminology in legal articles, commentaries, etc. up to now. The con might then be a wrong understanding of the term as related to other than commercial-legal regulations which do intersect "absolute business", above all according to § 262 section 4.

We should value and respect the authors who search for a new term which would describe the character of relations regulated in the provision of § 261 section 3 in a better way. From such a point of view we should judge the suggestion of terms such as "*type business*" or "*nominal business*". Not even the authors of these terms will probably be able to avoid the notice that these relations were earlier called absolute business (term suitable e.g. for searching in lexicons etc.), whereas the term should express that the relations are initially commercial-legal and this is given by their concrete naming in § 261 section 3, while with relative business, conditions mentioned in the provision of § 261 section 1 or § 261 section 2 must be fulfilled so that these could be classified as business obligation relations, there is no enumeration in the Commercial Code. Should it be suitable with certain recipients (e.g. business sphere employees), they could be warned that these are not terms for contract definition and type contracts are, naturally, a different term. Mainly *type business* and *nominal business* form the contract types mentioned in § 261 section 3 and other mentioned obligations, i.e. obligation of the promise of compensation. Even with the terminology conception it is necessary to mention the intersection with the provision of § 262 section 4.

It is suitable to point out (especially while talking to non-lawyers), that not all contract types lie within the nominal (or type) business, but only those enumerated in

§ 261 section 3. When using new terminology, the use of the terms of the same category will not be possible. These will be absolute (the use of the Commercial Code is initial without fulfilling the conditions) or relative (with fulfilling the conditions). No matter if we use traditional or new terminology, we will have to at least comment on the other one.

- Relative Business

The provision of § 262 section 4 of the Commercial Code is an intersection, or, more precisely, it markedly penetrates[7)] all types of business (except for obligatory relations regulated by § 261 section 7, which, naturally ,are not commercial-legal, even though they are regulated by § 261). Thus it also penetrates *relative business.*

Relative business, with which the original is commercial-legal if given conditions are fulfilled, is usually divided, according to the limitation by the provisions of § 261 section 1 and § 261 section 2, into: obligatory relations among businesspersons, if it is obvious from the beginning with regard to the circumstances that they refer to their enterprising activity, obligatory relations between the state (for this purpose, even state organisations that are not businesspersons are considered as state when making contracts from the content of which it is clear that their aim is to satisfy public needs) or a municipality (here, Slovak Commercial Code mentions, apart from the above mentioned subjects, also a corporate body created by law as a public institution and apart from public needs it also mentions that these may as well concern the operation of the mentioned non-enterprising subjects itself) and businesspersons during their enterprising activity, if these concern securing of needs.

Even though the issue became more difficult with the use of the provision of § 262 section 4, the fact whether original commercial-legal regulation will be concerned is influenced by the conditions set in § 261 section 1 and section 2. For that reason, the used term *relative business* would not have to be changed, which is considered is favourable. This favourable situation does not exist in the case of the regulation set by § 261 section 6 in the first sentence. The original text of the Commercial Code set that contracts among persons mentioned in § 261 section 1 and section 2, which are not regulated in chapter II. of the third part of the Commercial Code, are regulated only by the provisions of the Civil Code. That is why the term *absolute non-business* was used.

However, the today's version of § 261 section 6 in the first sentence sets that these contracts are regulated by relevant provisions on this type of contract in the Civil Code and the Commercial Code. Because the term *absolute non-business* thus can not be used any longer, there is a suggestion of using the term *varied business* or *combined business*[8)]. This is naturally fully possible, with a notice of the difference between *varied business* from the so-called mixed contracts. Perhaps another solution could be taken into account: such a type of business could be distinguished within *relative business*, because it concerns contracts between persons mentioned in § 261 section 1 and section 2 and is also regulated by the Commercial Code (even though it is at the same time also regulated by relevant provisions on this type of contract in the Civil Code).

A division according to another criterion would be added to the above mentioned division of relative business (divided according to set conditions into: 1. modified in section 1 § 261, 2. modified in section 2 § 261). Relative business could thus be divided into those with which we use: the *contract type from the Commercial Code* (naturally with the exception of the contract types mentioned in § 261 section 3), the so-called *unnamed contract made according to the Commercial Code* (see first sentence of § 269 section 2), and the *contract type from the Civil Code* (according to § 261 section 6).

- Civil-Legal Relations (Absolute Non-Business) in the Czech Republic

The so-called *absolute non-business* of today is the contracts made in compliance with the provisions of § 261 section 7. This provision contains a brief text: the contract of insurance is regulated by the Civil Code and special laws.

We would welcome if the contract of insurance had the same conditions as other types of contract from the Civil Code (according to § 261 section 6). By naming it individually, the legislator did not want to express that it is a contract according to § 261 section 6 and that the only difference is that it is also regulated by special laws. Other contracts are also regulated by special laws. Probably it was only conceived as civil-legal (see professor J. Bejček in his quoted work and the commentary of professor J. Dědič et. al., and also the commentary quoted in note 4 in the first place[9)]). The fact that it is a civil-legal contract does not seem to be a very systematic solution (which, after our discussion, cannot be motivated by a great number of existing contracts of insurance), but from the point of view of the valid legal regulation it must be respected.

- Facultative Business

Still, according to § 262 of the Commercial Code there is a possibility that parties may agree that their mutual obligations which are not listed in section 261 will be governed by this code.

NOTES

1. Changed also more times in Slovakia. See among others Moravčíková, A.: Novela Obchodného zákoníka, Slovenský profit, č. 15/1998, s. 195; Patakyová, M., Moravčíková, A.: Obchodný zákoník, Ekonomický a právny poradca podnikatela, č. 5-6/2002, s. 3 – 406.
2. From Marek, K.: K obchodním závazkovým vztahům, Právní rádce, č. 3/2004, s. 28-29.
3. See Bejček, J.: Změny v typologii obchodních závazků, Obchodní právo č. 3/2003, s. 2 -12.

4. Compare e.g. Štenglová, I.; Plíva, S.; Tomsa, M.: Obchodní zákoník, 8. vydání, C.H. Beck Praha, 2003, s. 939 – 949 with previous versions.
5. Dědič, J. a kol.: Obchodní zákoník, komentář, díl. IV., Polygon Praha 2002, s. 3269-3278.
6. For these see Pelikánová, I.: Obchodní zákoník drcený novelami novel, Právní zpravodaj č. 3/2001, s. 1 a s. 4 and compare Marek, K.: Poznámka k článku Obchodní zákoník drcený novelami novel, Právní zpravodaj č. 4/2001, s. III-IV.
7. See literature from notes 3, compare with 4 and the following.
8. Does not affect relations according to § 261 section 3 if their participants are businesspersons. Does not affect relations according to § 261 section 1. Does not affect relations according to § 261 section 6 if the relations are also regulated by § 261 section 1. Does not affect relations according to § 262 if their participants are businesspersons and have agreed on the use of the Commercial Code in cases when the relations do not concern their enterprising activity.
9. See literature from notes 3, compare with 4 and the following.
10. Same in –with regard to the new special regulation of contracts of insurance valid from 1.1.2005 – in 9th edition Štenglová, I.; Plíva, S.; Tomsa, M.: Obchodní zákoník, komentář, C.H. Beck Praha, 2004, s. 935 and same also in the 10th enlarged edition, C.H. Beck Praha, 2005.