

Research Article

ASSIGNMENTS OF RECEIVABLES IN CIVIL AND COMMERCIAL MATTERS UNDER THE LAWS OF THE SLOVAK REPUBLIC

Miloš Levrinc

Submitted on 11 Dec 2023 / Revised 1st 17 Feb 2023 / Revised 2nd **09 Mar 2023** /
Approved 15 Mar 2023 / Published: **15 May 2023**

Summary: 1. Introduction. – 2. Assignment of Receivables in Civil and Commercial Matters – Basic Legal Background. – 3. Receivables That Cannot Be Assigned. – 4. Legal Effects of the Assignment of a Receivable. – 5. Legal Status of the Debtor in the Event of Assignment of Receivable. – 6. Conclusions.

Keywords: assignment of receivable, assignor, assignee, debtor, contract on assignment of receivable

ABSTRACT

Background: *Receivables play an increasingly important role in the financing of particularly small and medium-sized businesses. This importance has been recognised by many international organisations, including UNIDROIT, which is slated to adopt a Model Law on Factoring in 2023. The purpose of the Model Law is to encourage States to modernise their legal frameworks for absolute and security assignments, as well as pledges of receivables. The EU has been struggling to find common ground*

Miloš Levrinc

Scholarly assistant at the Department of International, European Law and Legal Communication, Matej Bel University, Banská Bystrica, Slovak Republic
milos.levrinc@umb.sk
<https://orcid.org/0000-0002-5009-9593>

Author, solely responsible for writing and research. **Competing interests:** Any competing interests were included. **Disclaimer:** The author declares that his opinion and views expressed in this manuscript are free of any impact of any organizations. **Translation:** The content of this article was translated with the participation of third parties under the authors' supervision.

Managing editor – Mg Polina Siedova. **English Editor** – Dr Sarah White.

Copyright: © 2023 Miloš Levrinc. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

How to cite: Miloš Levrinc 'Assignments of Receivables in Civil and Commercial Matters Under the Laws of the Slovak Republic' 2023 2 (19) Access to Justice in Eastern Europe 122-134. <https://doi.org/10.33327/AJEE-18-6.2-a000223>

with respect to a regulation on the law applicable to assignments that would build on the Rome I Regulation. A modern receivables regime rests on several key foundation blocks that include the ability to describe receivables generically, achievement of third-party effectiveness by registration, and predictable priority rules. Much of the law of assignments is of contractual nature, which is suitable to party autonomy. Party autonomy in the field of contractual obligations is a recognised institution under the national substantive law of the legal order of the Slovak Republic. In some respects, the Slovak legal regime would benefit from modernisation, such as in requiring all types of assignments and pledges to be registered, which facilitates the determination of priorities. This article examines the law governing assignments of receivables in civil and commercial matters in the Slovak Republic. It not only analyses the statutory law but also surveys the relevant case law that fills gaps in the legislation.

Methods: The author uses traditional scientific methods: logical methods - the method of analysis, the method of synthesis, the method of analogy, the descriptive method, as well as comparative method. First, the descriptive method was used to familiarise the reader with the applicable statutory provisions governing assignments of receivables in civil and commercial matters in the Slovak Republic. Second, the author analyses specific provisions with regard to current developments and practical applications. Third, the author uses a comparative method in highlighting the practical needs that incentivise the modernisation of the current legislation in light of recent developments, especially the upcoming adoption of the UNIDROIT Model Law on Factoring.

Results and Conclusions: The Slovak regime for absolute assignments of receivables is governed by the Civil Code, which also applies to assignments in commercial transactions. The Code also recognises a security assignment of receivable. The pledge law reform in 2002 introduced a registration system for pledges of receivables. Special laws continue to govern specific types of receivables. Case law has addressed several aspects of transfers of receivables, particularly in insolvency. However, no statutory provision provides a priority rule among the statutorily-recognised types of transfers. Several other aspects have been clarified in case law. For instance, the Supreme Court of Slovakia defined a description standard for future receivables, which must be identified by the name of the transferor, debtor, and a category, such as a receivable arising from the following contract. The degree of specificity is driven by doctrinal considerations rather than the needs of practice. Several important practical aspects are neither grounded in a statutory foundation nor case law. One example is the lack of recognition of transfers of partial interests in a receivable, a practice that is common in the Slovak market. The law recognises and enforces an anti-assignment clause that would make a transfer ineffective. However, such a clause would be ineffective in the insolvency of the transferor, so the insolvency estate would include the receivable. In this aspect, Slovak law falls short of the international standards that override the effect of anti-assignment clauses.

Since the pledge law reform over two decades ago, no statutory changes concerning transfers of receivables have been introduced. The interpretation of the existing framework by the courts exacerbates uncertainty. The lack of certainty and predictability embedded in the statutory framework that falls short of international standards are good reasons to consider reforming the framework.

1 INTRODUCTION

Receivables generated from the sale of goods and provision of services are an important source of finance for many small and medium-sized enterprises (SMEs) in the European Union. Traditionally, a factoring company provides liquidity to an SME based on the eligible receivables assigned to it.¹ The factoring company may offer a form of credit protection against the default risk of the client's customers as well, providing additional capital to ed-

1 Leora Klapper, 'The Role of Factoring for Financing Small and Medium Enterprises' (2006) 30 (11) *Journal of Banking & Business* 3111, doi: 10.1016/j.jbankfin.2006.05.001.

buyers, many of which are also SMEs. Factoring is a vitally important type of financing used across the globe. The FCI, a global representative body for factoring and financing open account domestic and international trade receivables, estimated the global volume of receivables finance in 2021 exceed €3 trillion in its 2022 Annual Report.² While the volume declined in 2020 by 6.5%, it increased in 2021 by 13.5%.³

Fast-forward to today when the aftermath of the Covid-19 crisis impacts most economies. Factoring will be in high demand during — and after — the crisis. Many companies will seek to retain their role within supply chains or integrate into new ones, which would necessitate alternative funding sources.⁴ Supporting receivables finance is especially critical in light of the COVID support measures that propped up companies being withdrawn.

Several jurisdictions, such as Bosnia and Herzegovina (2016) and Serbia (2013), reformed their secured transactions and factoring laws recently. However, the EBRD 2018 Factoring Survey concluded that many of these reformed frameworks are inadequate to facilitate receivables finance.⁵ Many of these frameworks reflect the outdated UNIDROIT Convention on International Factoring of 1988.⁶ Several aspects of assignments of receivables remain controversial within the EU, including the law applicable to assignments of receivables.⁷ The proposed measure to amend the Rome I Regulation remains at a standstill. Only two countries have ratified the United Nations Convention on the Assignment of Receivables in International Trade, which is unlikely to enter into force in the near future.⁸ The Model Law on Factoring, expected to be adopted by UNIDROIT in 2023, provides an opportunity to revisit the laws that govern assignments of receivables.⁹ The Model Law was proposed by the World Bank Group, which has a significant footprint in Eastern Europe, where it supports many reforms. The Model Law has been supported by the largest factoring associations in the world, including FCI, but also attracted unjustified criticism as potentially

2 Factors Chain International (FCI), *Annual Review 2022* (FCI 2022) <<https://fci.nl/en/annual-review>> accessed 17 February 2023. See also Carter Hoffman, 'FCI Releases World Factoring Statistics, Reports Largest Volume Increase in Over Two Decades' (Trade Finance Global, 20 May 2022) <<https://www.tradefinanceglobal.com/wire/fci-releases-world-factoring-statistics-reports-largest-volume-increase-in-over-two-decades>> accessed 17 February 2023.

3 *ibid.*

4 'FCI: Factoring Has the Wind in Its Sails — and a Long and Successful History Behind It' (*Capital Finance International* (CFI.co), 26 October 2020) <<https://cfi.co/menu/corporate/2020/10/fci-factoring-has-the-wind-in-its-sails-and-a-long-and-successful-history-behind-it>> accessed 17 February 2023.

5 European Bank for Reconstruction and Development (EBRD), *Factoring Survey in EBRD Countries of Operation* (3rd edn, EBRD 2018) <<https://www.ebrd.com/documents/ogc/factoring-survey.pdf>> accessed 17 February 2023.

6 Franco Ferrari, 'The International Sphere of Application of the 1988 Ottawa Convention on International Factoring' (1997) 31 (1) *The International Lawyer* 41.

7 Catherine Walsh, 'The Law Applicable to Third-Party Effects of an Assignment of Receivables: Whither the EU?' (2018) 22 (4) *Uniform Law Review* 781, doi: 10.1093/ulr/unx050; Charles W Mooney CW, 'Choice-of-Law Rules for Secured Transactions: An Interest-Based and Modern Principles-based Framework for Assessment' (2017) 22 (4) *Uniform Law Review* 842, doi: 10.1093/ulr/unx054; Christian Heinze and Cara Janine Warmuth, 'The Law Applicable to Proprietary Effects of Assignment and its Interplay with Insolvency' (2017) 22 (4) *Uniform Law Review* 808, doi: 10.1093/ulr/unx039.

8 Spiros V Bazinas, 'Key Policy Issues of the United Nations Convention on the Assignment of Receivables in International Trade' (2003) 11 *Tulane Journal of International and Comparative Law* 275; Spiros V Bazinas, 'The United Nations Convention on the Assignment of Receivables in International Trade: Insolvency Aspects' (2004) 13 (3) *International Insolvency Review* 155, doi: 10.1002/iir.119; Franco Ferrari, 'The UNCITRAL Draft Convention on Assignment in Receivables Financing: Applicability, General Provisions and the Conflict of Conventions' (2000) 1 (1) *Melbourne Journal of International Law* 1, doi: 10.3316/agispt.20012926.

9 See International Institute for the Unification of Private Law (UNIDROIT), 'Model Law on Factoring: Study LVIII A' (*UNIDROIT*, 2023) <<https://www.unidroit.org/work-in-progress/factoring-model-law>> accessed 17 February 2023.

undermining the efforts to modernize broader secured transactions regimes.¹⁰ UNIDROIT will develop a guide to enactment to provide guidance to policymakers and legislators in the implementation of the Model Law. One of the important functions of the guide would also be to provide insights into the regulatory matters affecting factoring transactions.¹¹

The assignment of receivables is an important institution in the area of contractual obligations arising from various business transactions taking place within as well as beyond national borders. Receivables may be transferred voluntarily (contractual assignment) or involuntarily by operation of the law. The receivable itself may be generated from a contractual transaction, such as a sale of goods, or non-contractually, such as from a court order. The ambit of the article is on receivables generated contractually that are assigned contractually, which are typical for commercial transactions that enable SMEs to fund their operations.

2 ASSIGNMENT OF RECEIVABLES IN CIVIL AND COMMERCIAL MATTERS - BASIC LEGAL BACKGROUND

The law of the Slovak Republic does not draw a distinction between the assignment of receivables from civil and commercial transactions. The Commercial Code that governs commercial relations does not provide specific rules concerning assignments.¹² Therefore, contractual assignments of commercial obligations are subject to the Civil Code.¹³

The basis for the voluntary assignment of receivables is a contract on the assignment of receivables. Assignment of a receivable by contract in accordance with Art. 524 et seq. of the Civil Code represents a typical voluntary transfer. As a result, the receivable is transferred from its original owner or creditor, known as the assignor, to the assignee. A transfer occurs without the participation of the debtor, whose consent is not required for the assignment of the receivable and who may not be informed of the assignment at all.¹⁴

As neither the Civil Code nor the Commercial Code provides for the contract on the assignment of a receivable or its equivalent, such as a factoring contract, an agreement to assign a receivable will be considered as an innominate type of contract. Such a contract must meet both the general legal requirements for contracts or legal acts and must be in accordance with the already mentioned special normative civil law regulation of the assignment of a receivable. In the case of a contractual assignment of a receivable in a commercial transaction, the relevant commercial law will also be applicable.

The contract on the assignment of receivable must be concluded in writing. The subject of the assignment contract may be any current or future receivables, or a set of receivables,

10 Spiros V Bazinas, 'The Desirability and Feasibility of Another Uniform Law on Factoring' (2020) 35 (7) *Butterworths Journal of International Banking and Financial Law* 467.

11 See UNIDROIT, Model Law on Factoring: Study LVIII A WG3 Doc 2 Issues Paper (Third Working Group Meeting, 26-28 May 2021) s T, 19-21 <<https://www.unidroit.org/english/documents/2021/study58a/wg03/s-58a-wg-03-02-e.pdf>> accessed 17 February 2023. The desirability to coordinate private law and regulatory aspects of financing transactions has been highlighted primarily in the work of Prof. Castellano and Dr. Dubovec. See Giuliano G Castellano and Marek Dubovec, 'Global Regulatory Standards and Secured Transactions Law Reforms: At the Crossroad Between Access to Credit and Financial Stability' (2018) 41 (3) *Fordham International Law Journal* 531.

12 Commercial Code of the Slovak Republic No 513/1991 'Obchodný Zákoník' of 5 November 1995 (as amended of 1 February 2023) <<https://www.zakonypreludi.sk/zz/1991-513>> accessed 17 February 2023.

13 Civil Code of the Slovak Republic No 40/1964 'Občiansky Zákoník' of 5 March 1964 (as amended of 1 December 2019) arts 524-530 <<https://www.zakonypreludi.sk/zz/1964-40>> accessed 17 February 2023.

14 *ibid.*, art 524 (1); Marek Števec and others, *Občiansky Zákoník: Komentár*, d 2 (§ 451 – § 880) (CH Beck 2015) 1802.

except for those that are excluded by law from the assignment (e.g., it is not possible to assign a receivable if the assignment would be against the law or the agreement with the debtor).¹⁵ The receivable must be defined with sufficient certainty so as not to raise doubts as to the subject of the assignment and to be identified uniquely. Since the law does not specify the precise standards for the identification of receivables, the general legal provisions requiring certainty and clear identifiability of legal acts would apply.¹⁶ Lack of identifiability will render the assignment invalid.¹⁷ According to a decision of the Supreme Court of the Slovak Republic, future receivables must be described by identifying the assignor, the debtor, and other information, e.g., the performance of the loan agreement.¹⁸

The Constitutional Court has repeatedly stated that excessive legal formalism and exaggerated claims to the formulation of a treaty cannot be accepted from a constitutional point of view and interferes with the contractual freedom resulting from the principle of contractual freedom, according to Art. 2(3) of the Constitution.¹⁹ At the same time, the Constitutional Court emphasised that one of the basic principles of the interpretation of contracts is an interpretation that does not lead to the invalidity of a contract. The principle of autonomy of the contracting parties, the nature of private law, and the associated social and economic function of the contract are thus expressed and supported.²⁰

The invalidity of the contract should therefore be the exception and not the principle. The general courts' preference for the interpretation invalidating the contract is therefore constitutionally challengeable and contrary to the principles arising from Art. 1 of the Constitution.²¹ The formalistic requirements of general courts to formulate the subject of the contract (description of receivables) are constitutionally challengeable.

Taking into account the above-mentioned starting points for the validity and certainty of the legal act, we can define criteria (elements) for the agreement to assign a receivable, which are: the identification of the debtor and identification of the subject matter of performance from the transferred receivable. In the case of several receivables of the same type, the assigned receivables must be identified in such a way that they are not interchangeable with receivables of the same type which are not being assigned. For instance, the agreement may provide for an assignment of all receivables owed to the assignor by its clients A, B, and C.

It must be clear from the contract on the assignment of a receivable who are the assignor, assignee, and debtor. The legal reason for the receivable is not required to be stated. Unlike the previous legal regulation of the provision of Art. 262(2) of the Civil Code No. 141/1950 Coll.,²² where valid legal grounds were required. In the case of a divisible performance, the

15 See Civil Code (n 14) arts 525, 604, 844.

16 *ibid*, art 37 (1).

17 Under the provision of Art 37(1) of the Civil Code, a legal act must be done freely, seriously, and clearly, otherwise it is invalid.

18 Case No 1 M Obdo 2/2008 (Supreme Court of the Slovak Republic, 7 May 2009).

19 Constitution of the Slovak Republic 'Ústava Slovenskej Republiky' No 460/1992 of 1 September 1992 (as amended of 26 January 2023) <<https://www.zakonypreludi.sk/zz/1992-460>> accessed 17 February 2023.

See, e.g., Case No I ÚS 243/07 (Constitutional Court of the Slovak Republic, 19 June 2008); Case No I ÚS 242/07 (Constitutional Court of the Slovak Republic, 3 July 2008); Case No IV ÚS 15/2014 (Constitutional Court of the Slovak Republic, 28 April 2014).

20 See also Miloš Levrinc, 'Voľba práva v medzinárodnom práve súkromnom' (The Rule of Law and Its Place in International Law: Bratislava legal forum 2020, Comenius University in Bratislava, Faculty of Law, 6–7 February 2020) 61.

21 For this see, Case No I ÚS 243/07 (n 20); Case No I ÚS 242/07 (n 20); Case No IV ÚS 340/2012 (Constitutional Court of the Slovak Republic, 22 November 2012).

22 Civil Code of the Czechoslovak Republic No 141/1950 'Občiansky Zákonník' of 25 October 1950 (temporary version of the regulation effective from 1 January 1951 to 31 March 1964) <<https://www.slovlex.sk/pravne-predpisy/SK/ZZ/1950/141/19510101.html>> accessed 17 February 2023.

parties have agreed that only part of the receivable will be assigned; it must be clear from the contract which part of the receivable is being assigned.

From the point of view of the subject matter of the assignment, we can distinguish the assignment of an *individual receivable* from the assignment of *multiple receivables* (so-called global cession or general cession). Based on the postulate, what is not prohibited is allowed, and also only a certain part of the receivable can be assigned. What is not possible, however, is the assignment of the contractual obligation as a whole. From the point of view of the legal framework of the regulation and the effects of the assignment, it is necessary to realise that only a certain receivable against the debtor is always transferred within the assignment, from which follows a specific right of performance of the debtor against the original creditor. It is clear from such a definition that obligations cannot be transferred under the contract on the assignment of a receivable either, but only the rights to a specific performance. At the same time, the subject matter of the assignment can only be a receivable arising from a contractual relationship, not a right in rem or another right of an absolute nature.²³ By concluding a contract on the assignment of a receivable, unless otherwise agreed between the parties, the contractual relationship between the original creditor and the debtor does not terminate, or the new creditor does not enter into all the rights and, in particular, the obligations arising from the basic obligation. The new creditor (assignee) acquires the same receivable as it was generated and modified by the original parties at the time of the assignment.²⁴

The receivable may be assigned with or without notification of the debtor. In the absence of a notification, the assignor will enforce the assigned receivable in its own name but hold the proceeds for the benefit of the assignee.²⁵ Art. 530 (1) of the Civil Code is actually an exception to the principle that in the event of a change of creditor as a result of the assignment of the claim, the assignor loses the right to recover receivable from the debtor.²⁶

Among the special methods of assignment arising in practice,²⁷ we can also include the secure transfer of the receivable in accordance with the provision of Art. 554 of the Civil Code,²⁸ factoring,²⁹ debt collection of a receivable,³⁰ or *bianco cesium*.³¹

Among the special categories of receivables, we can include receivables whose special conditions of the contractual assignment are regulated by special legal regulations (e.g., the provisions of Art. 92(8) of the Banks Act No. 483/2001 Coll., as amended) as a *lex specialis*. The general civil law regulation in the provision of Art. 524 to Art. 530 of the Civil Code as a *lex generalis* shall apply only if a special regulation does not stipulate otherwise.

23 See Case No 1 M Obdo V 6/2006 (Supreme Court of the Slovak Republic, 30 October 2008).

24 Under the provision of Art. 524(2) of the Civil Code, with the assigned receivable, its accessories and all rights associated with it also pass. See Civil Code (n 14).

25 *ibid*, art 530 (1).

26 See, Case No I ÚS 718/2014 (Constitutional Court of the Slovak Republic, 1 April 2015).

27 Imrich Fekete, *Občiansky zákonník: Veľký komentár*, d 2 (§ 460 – § 880) (Eurokodex 2011) 1492.

28 The receivable may be secured by assigning the debtor's receivable or a receivable of a third party to the creditor (hereinafter as 'security assignment of the receivable') unless this is precluded by a special law.

29 Repurchase of short-term receivables from the seller before their due date in order to obtain cash and ensure cash flow.

30 The assignee acts as a creditor (enforces receivables in his/her own name) and is contractually obliged to transfer the amounts recovered from the debtor to the assignor.

31 In such a case, we can talk about a framework assignment of a receivable, where the assignee acquires the right to assignment of partial receivables arising in the future, these will be assigned only when they arise, and these must be described in the contract exactly in terms of type and amount.

3 RECEIVABLES THAT CANNOT BE ASSIGNED

Not all receivables arising from civil or commercial transactions may be validly assigned. The Civil Code restricts the transferability of certain types of receivables in order to protect certain interests, whether of the original creditor, the debtor, or both, or public interest.³² The purported assignment of a receivable that by law may not be assigned would render the assignment invalid.³³

The following receivables may not be assigned:

a) a receivable which expires at the latest on the death of the creditor,

Receivables that expire at the latest on the death of the creditor include rights that are limited to the creditor's person, e.g., the right to maintenance, the right to lost earnings, the right to restitution, social security compensation, the right to damages for interference with the rights to protection of personality.

b) a receivable, the content of which would change with the change of creditor.

Receivables whose content would be altered by a change of creditor include receivables which, due to their nature, retain their original content (identity) only if they are owed to a specific creditor. The examples are receivables, the assignment of which would negatively affect the legal position of the debtor. This would not apply to receivables under which the nature of the debtor's obligation is pecuniary.³⁴ This restriction encompasses those receivables that arise between close persons or persons in a family relationship or receivables arising from a relationship that is built on mutual trust between the creditor and the debtor.³⁵ Accordingly, this limitation would have no effect on commercial transactions that do not pertain to such receivables.

c) a receivable which cannot be made subject to an enforcement action.

These receivables are identified by the regulations governing enforcement proceedings.³⁶ Examples include winnings from bets and games.

d) in the event that the assignment would be contrary to the agreement with the debtor.

In addition to these, the assignment of a receivable may be prohibited by special legislation.³⁷

In the case of the contract on the assignment of a receivable, the new creditor does not step into the entire original contractual relationship, which continues to exist between the original creditor and the debtor. By including a prohibition of the assignment of receivables, the debtor seeks to maintain the original relationship with the original creditor. The intention is that only the original creditor can seek performance from the debtor. Violation of

32 See Civil Code (n 14) s 525.

33 *ibid*, art 39.

34 See, e.g., Case No 4 Cdo 105/2000 (Supreme Court of the Slovak Republic, 1 July 2001).

35 E.g., receivables from the relationship between a lawyer and a client, where the assignment of a receivable could result in a breach of the client's duty of confidentiality on the part of the lawyer.

36 See Act of the Slovak Republic No 233/1995 On Court Executors and Execution Activities (Execution Code) 'O súdnych exekútoroch a exekučnej činnosti (Exekučný poriadok)' of 2 November 1995 (as amended 1 December 2021) Arts 111, 112 <<https://www.zakonypreludi.sk/zz/1995-233>> accessed 17 February 2023.

37 E.g., the provision of sections 604 and 844 of the Civil Code, possibly a ban on the assignment of tax and other receivables of the state to an entity of private law resulting from special public law regulations. See Civil Code (n 14).

the prohibition of the assignment of receivables would result in the invalidity of the assignment, regardless of whether or not the assignee was aware of that prohibition. The law does not stipulate special conditions and requirements to provide for an effective prohibition on the assignment of receivables. Therefore, such a contract can also be concluded in relation to time (for a certain period), as a general prohibition or possibly as a prohibition on assignment only to certain persons, or even so that the creditor may assign the receivable without the consent of the debtor only to a certain type of a creditor (e.g., a bank).³⁸ Contractual arrangements prohibiting the bankrupt from assigning his/her receivables or prohibiting the assignment of receivables which arose before the bankruptcy are ineffective during the bankruptcy, and both the administrator and the creditor may assign these receivables to other persons.³⁹ This exception maximises the value of the bankrupt assignor's assets available for distribution to its creditors.

4 LEGAL EFFECTS OF THE ASSIGNMENT OF A RECEIVABLE

The assignment takes legal effect between the assignor and assignee upon execution of the contract of assignment.

With the assigned receivable, its accessories and all rights associated with it also pass.⁴⁰ The assignor is obliged to hand over all documents to the assignee and provide all necessary information concerning the assigned receivable.⁴¹ The transfer of accessories and all supporting rights associated with the receivable, such as a personal guarantee, occurs by law, regardless of whether it has been provided for in the contract. The rights associated with the receivable include, in particular, accessory rights arising from Art. 528 of the Civil Code, such as ownership of the seller that it has reserved in the goods sold. Notwithstanding the above, the legal relations between the lien creditor and the lien are governed by the general provisions of the contractual obligations of the Commercial Code if the secured obligation is subject to the regulation of commercial law. The new modern legislation on liens is based on the Model Law on Secured Transactions developed by the European Bank for Reconstruction and Development, which introduced and developed the principle of registering a lien in a public register.

Some accessory rights, such as the non-possessory pledge, may have been entered in a register. A transfer to the assignee is automatic without the need to amend the relevant registration.

Upon assignment, the assignee acquires the right to collect the receivable. This right may be exercised as soon as the receivable becomes payable. In the event that the receivable is to be enforced in court proceedings, a motion for admission of a change must be filed by the assignor.⁴² In the absence of such a motion and the receivable being further enforced

38 Case No 1 Cdo 76/2007 (Supreme Court of the Slovak Republic, 28 January 2009).

39 See Act of the Slovak Republic No 7/2005 On Bankruptcy and Restructuring 'Zákon o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov' of 14 January 2005 (as amended 1 February 2023) art 55 <<https://www.zakonypreludi.sk/zz/2005-7>> accessed 17 February 2023.

40 Civil Code (n 14) art 524 (1).

41 *ibid*, art 528 (1).

42 Civil Contentious Procedure Code of the Slovak Republic No 160/2015 'Civilný Sporový Poriadok' of 17 July 2015 (as amended of 17 July 2022) <<https://www.zakonypreludi.sk/zz/2015-160>> accessed 17 February 2023. See the provision of Art. 80, stipulates as follows: 'If, after the commencement of the proceedings, a legal fact has arisen which involves the assignment or transfer of the rights or obligations in question, the plaintiff may request that the person to whom those rights or obligations have been assigned enter the proceedings or replace him or her, or to whom they passed. The court or tribunal shall grant the application pursuant to paragraph 1 if it is established that a right or obligation has been assigned or transferred after the commencement of the proceedings and if the person who is to take the place of the plaintiff agrees. The legal effects associated with bringing an action remain the same. The person who enters the proceedings accepts the status of the proceedings on the day of his entry.'

by the assignor, the debtor defending himself/herself in the proceedings by proving the assignment of the receivable, either by notification by the assignor or by proof of assignment by the assignee, the court would have to dismiss the plaintiff's action for lack of active legitimacy. Substantive succession in itself, as a result of the assignment of a receivable after the commencement of legal proceedings, does not automatically result in procedural succession. Changes in the case of a singular succession, i.e., changes in connection with the assignment of a receivable, must be notified without undue delay in the enforcement proceedings to the executor, together with the proof of the assignment of the receivable, and the executor is obliged to deliver this notification to the court. The court shall take this fact into account by issuing an addendum to the execution authorisation, which it shall deliver to the executor. If there are no reasons to change the party to the proceedings, the court shall, depending on the nature of the case, suspend the execution in whole or in part or inform the executor that there is no reason to issue an addendum to the execution authorisation; in such a case, execution is continued with the original parties. During the enforcement, the assignment of the enforced receivable is effective only if the entire enforced receivable is assigned.⁴³

If a receivable is transferred during the bankruptcy proceedings, the court shall decide on the motion of the acquirer of the receivable on his/her entry into the bankruptcy proceedings if the acquisition of the receivable is proven in the motion. Otherwise, it will reject the motion to enter bankruptcy proceedings. The court shall decide on the motion to enter bankruptcy proceedings within ten days from the service of the full motion by a resolution, which shall be immediately published in the Commercial Gazette. The person directly concerned by the transfer or assignment of the receivable is entitled to appeal against the resolution. The appellate court shall decide on the appeal within 30 days from the submission of the case. As soon as the resolution on entry into bankruptcy proceedings enters into force, the court shall immediately publish a notice on the entry into force of this resolution in the Commercial Gazette. Since the publication of this fact in the Commercial Gazette, the rights associated with the acquired receivable in bankruptcy proceedings may be exercised by its acquirer.⁴⁴ If, during the bankruptcy proceedings, a receivable conferring the creditor's status as a party to the bankruptcy proceedings is transferred or assigned to another party to the bankruptcy proceedings, the court shall confirm the transfer or assignment of the receivable to the acquirer based on the motion of the acquirer of the receivable, if the acquisition of the receivable is proven in the motion. Otherwise, it will reject the motion to confirm the transfer or assignment of the receivable. The court shall decide on the motion to confirm the transfer or assignment of the receivable within ten days from the service of the full motion by a resolution, which shall be immediately published in the Commercial Gazette. The person directly concerned by the transfer or assignment of the receivable is entitled to appeal against the resolution. The appellate court shall decide on the appeal within 30 days from the submission of the case. As soon as the resolution confirming the transfer or assignment of the receivable enters into force, the court shall immediately publish a notice on the entry into force of this resolution in the Commercial Gazette. Since the publication of this fact in the Commercial Gazette, the rights associated with the acquired receivable in bankruptcy proceedings may be exercised by its acquirer.⁴⁵ As in court proceedings, also the legal regulation of arbitration proceedings in the Slovak Republic combines with the singular succession in the case of assignment of a receivable the effects of the arbitration agreement on the legal successors of the parties in the relationship covered by the arbitration

43 See Act No 233/1995 (n 37) art 37.

44 See Act No 7/2005 (n 40) art 25.

45 *ibid*, art 26.

agreement.⁴⁶ In arbitration proceedings that have already begun, in the absence of the relevant arbitration rules, the procedural change of the plaintiff in the proceedings will have to be dealt with appropriately using the general rules on court proceedings if the nature of the case so allows.⁴⁷

The assignor and assignee may agree to postpone the effectiveness of the assignment. The law requires the assignor to notify the debtor without undue delay of the assignment of the receivable. Until the assignment of the receivable is notified to the debtor or until the assignee proves the assignment of the receivable to the debtor, the debtor is discharged from the obligation by payment to the assignor.⁴⁸ If the assignment of the receivable is notified to the debtor by the assignor, the debtor is not entitled to demand proof of the assignment.⁴⁹ The debtor is obliged to fulfil the assignment to the assignee after notification of the assignment of the receivable, and any objections on his/her part in relation to the validity or existence of the assignment may be disregarded unless they relate to the non-transferability of the receivable pursuant to Art. 525 of the Civil Code. In that case, the debtor obtains a discharge by paying the assignor.

Although the law does not provide for any special form in which the assignor should notify the debtor of the assignment, it is advisable to make such notification in writing in case the debtor later challenges the effectiveness of the notification. The Court relies on such a notice without first examining the existence and validity of the contract on the assignment of the receivable. In such a case, the debtor cannot successfully invoke the invalidity of the contract on the assignment of the receivable or its non-existence. He/she would only be able to do so if the assignment of the receivable was proved by the assignee.⁵⁰

The contract of assignment may not negatively affect the position of the debtor. The court does not deal with the contract on the assignment of the receivable, as in such a case, the assignor is responsible for the correctness of the notification and also bears the consequences of the subsequent goodwill performance of the debtor to a third party.⁵¹

a) The assignor shall be liable to the assignee if:

The assignee did not effectively acquire the receivable.

b) The assignor remains responsible for the validity of the receivable, i.e., for its legal effectiveness.

The debtor did not fulfil the obligation to the assignor before he was obliged to fulfil it to the assignee.

This situation may arise if the debtor pays his/her debt to the assignor before the assignor has informed him/her of the assignment of the receivable. The assignee is entitled to claim the proceeds of collection from the assignor.

c) The assigned receivable has been offset, in full or partially, with the debtor's claim against the assignor.⁵²

46 See Act of the Slovak Republic No 244/2002 On Arbitration Proceedings 'Zákon o rozhodcovskom konaní' of 15 May 2002 (as amended 1 January 2020) Art 3 (2) <<https://www.zakonypreludi.sk/zz/2002-244>> accessed 17 February 2023.

47 *ibid*, art 51 (3).

48 See, Civil Code (n 14) art 526 (1).

49 *ibid*, art 526 (2).

50 Case No 4 Obo 210/2001 (Supreme Court of the Slovak Republic, 11 June 2003); Jaroslav Krajčo, *Občiansky zákonník pre prax (komentár): Judikatúra NS SR, NS ČR, ESD, ESJP* (Urounion 2015) 2318.

51 Števček and others (n 15) 1828.

52 Civil Code (n 14) art 527 (1).

Since the position of the debtor cannot be negatively affected by the assignment, it is entitled to set off any claim it has against the assignor that accrued prior to the assignment.

These are mandatory provisions that cannot be excluded or changed by agreement between the assignor and the assignee. The law provides autonomy to the parties to agree on responsibility for the creditworthiness of the debtor, which includes the enforceability of the assigned receivable. This is known as recourse.

5 LEGAL STATUS OF THE DEBTOR IN THE EVENT OF ASSIGNMENT OF RECEIVABLE

Legal rules governing assignments of receivables are based on the principle that the assignment shall not negatively affect the position of the debtor.⁵³ Thus, any defences to the collection of a receivable that the debtor may have raised at the time of the assignment may be asserted against the assignee.⁵⁴

In particular, the law gives the debtor the opportunity to object to reciprocal receivables which he/she had against the assignor at the time he/she was notified about the assignment of the receivable, or it was proved to him/her if he/she notified about them without undue delay the assignee. The debtor might assert defences even if the receivables were not yet due at the time of notification.⁵⁵ The right to set off the debtor's receivable against the assignor cannot be asserted by the debtor in the case of subsequent assignments. Pursuant to Art. 363 of the Commercial Code, it should be highlighted where the receivable was assigned to several successive assignees, the debtor may set off only the claim accrued at the time of the assignment against the first creditor and the claim it has against the last creditor.

Until notification of assignment is received, the debtor offsets its claims and defences directly against the assignor. In such a case, the aforementioned general legal regulation in the provision of Art. 580 et seq. of the Civil Code shall be applied to the offsetting. In the event that the debtor does not notify the assignee of any eligible receivables without undue delay, the right to set off the said receivables against the assignee shall expire.

The law specifically provides for an objection of the debtor for the so-called silent assignment when neither the assignor nor the assignee notifies the debtor about the assignment of the receivable. If the assignor attempts to collect the receivable, the debtor may set off eligible claims against the assignor but not the claims it has against the assignee.⁵⁶ However, if the assignment of the receivable has been notified or proved to the debtor (Art. 526 of the Civil Code), the assignor may enforce the receivable only if it is not enforced by the assignee and the assignor proves to the debtor the assignee's consent to such recovery.⁵⁷

53 See e.g., Case No 4 Cdo 105/2000 (n 35).

54 Civil Code (n 14) art 529 (1).

55 *ibid*, art 529 (2).

56 *ibid*, art 530 (2).

57 *ibid*, art 530 (1).

6 CONCLUSIONS

This article examined the law governing transfers of receivables in civil and commercial matters in the Slovak Republic. These transfers include absolute assignments, security assignments, and pledges. It analysed the consequences and legal effects of transfers not only in relation to the assignor and assignee but also in relation to the debtor and third parties that may have issued undertakings securing the performance of a receivable. The increasing market needs to raise capital, particularly for SMEs, also elicited an appropriate response from the judicial authorities. However, the inadequate legal regime has become unpredictable and no longer provides certainty and predictability. This article suggests a reform to align with international standards. This reform would statutorily recognise the validity of assignments even where the receivables have not been individualised, validate assignments of pools of receivables as well as future receivables. The principle that enables the debtor to maximise the value of an estate for creditors by assigning receivables despite a restriction should be extended to a pre-insolvency situation. The law should thus expressly override the effect of anti-assignment clauses. The ongoing efforts in the region to modernise factoring regimes would put pressure on Slovakia to keep pace so as to become an attractive environment for factoring transactions.

REFERENCES

1. Bazinas SV, 'Key Policy Issues of the United Nations Convention on the Assignment of Receivables in International Trade' (2003) 11 *Tulane Journal of International and Comparative Law* 275.
2. Bazinas SV, 'The Desirability and Feasibility of Another Uniform Law on Factoring' (2020) 35 (7) *Butterworths Journal of International Banking and Financial Law* 467.
3. Bazinas SV, 'The United Nations Convention on the Assignment of Receivables in International Trade: Insolvency Aspects' (2004) 13 (3) *International Insolvency Review* 155, doi: 10.1002/iir.119.
4. Castellano GG and Dubovec M, 'Global Regulatory Standards and Secured Transactions Law Reforms: At the Crossroad Between Access to Credit and Financial Stability' (2018) 41 (3) *Fordham International Law Journal* 531.
5. Fekete I, *Občiansky zákonník: Veľký komentár*, d 2 (§ 460 – § 880) (Eurokodex 2011).
6. Ferrari F, 'The International Sphere of Application of the 1988 Ottawa Convention on International Factoring' (1997) 31 (1) *The International Lawyer* 41.
7. Ferrari F, 'The UNCITRAL Draft Convention on Assignment in Receivables Financing: Applicability, General Provisions and the Conflict of Conventions' (2000) 1 (1) *Melbourne Journal of International Law* 1, doi: 10.3316/agispt.20012926.
8. Heinze C and Warmuth CJ, 'The Law Applicable to Proprietary Effects of Assignment and its Interplay with Insolvency' (2017) 22 (4) *Uniform Law Review* 808, doi: 10.1093/ulr/unx039.
9. Hoffman C, 'FCI Releases World Factoring Statistics, Reports Largest Volume Increase in Over Two Decades' (*Trade Finance Global*, 20 May 2022) <<https://www.tradefinanceglobal.com/wire/fci-releases-world-factoring-statistics-reports-largest-volume-increase-in-over-two-decades>> accessed 17 February 2023.
10. Klapper L, 'The Role of Factoring for Financing Small and Medium Enterprises' (2006) 30 (11) *Journal of Banking & Business* 3111, doi: 10.1016/j.jbankfin.2006.05.001.

11. Krajčo J, *Občiansky zákonník pre prax (komentár): Judikatúra NS SR, NS ČR, ESD, ESLP* (Urounion 2015).
12. Levrinc M, 'Voľba práva v medzinárodnom práve súkromnom' (The Rule of Law and Its Place in International Law: Bratislava legal forum 2020, Comenius University in Bratislava, Faculty of Law, 6-7 February 2020) 61.
13. Mooney CW, 'Choice-of-Law Rules for Secured Transactions: An Interest-Based and Modern Principles-based Framework for Assessment' (2017) 22 (4) Uniform Law Review 842, doi: 10.1093/ulr/unx054.
14. Števček M and others, *Občiansky Zákonník: Komentár*, d 2 (§ 451 – § 880) (CH Beck 2015).
15. Walsh C, 'The Law Applicable to Third-Party Effects of an Assignment of Receivables: Whither the EU?' (2018) 22 (4) Uniform Law Review 781, doi: 10.1093/ulr/unx050.