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# Vis Major in Geneva Law of Bills of Exchange and Promissory Notes

In the end of the 19th century, the first efforts were made to come to an international unification of existing laws concerning bills of exchange, promissory notes and checks. These efforts resulted in six conventions in Geneva in 1930 and 1931 (three concerned with bills and notes, and three with checks). Present legal regulation of bills of exchange, promissory notes and checks in the most European countries[1] arises from the results of Geneva conference. Decisive importance for material law regulations of bills and promissory notes has the first appendix of first Convention. It contains Uniform Law on Bills of Exchange and Promissory Notes having in total 78 articles and stipulating bill of exchange and promissory note. Czech legal regulation of bills of exchange and promissory notes, similarly to the Hungarian legal regulation, strictly arises from Geneva conventions and adopts inter alia the Uniform Law on Bills of Exchange and Promissory Notes.

## I. THE SENSE OF PRESENTMENT AND PROTESTATION OF BILLS OF EXCHANGE AND PROMISSORY NOTES

The Czech Bills of Exchange and Checks Act (zákon směnečný a šekový)[2] presupposes presentment or protestation of bill of exchange (check) in various places of its text. Depending on the circumstances these operations constitute a precondition of the exercise of the so-called recourse rights, i.e. especially against the drawer of bill of exchange, endorsers and avals of these persons. Failure to perform the prescribed acts (in practice it means mainly presentment of a bill of exchange to payment or protestation for non-payment) may result in losing those rights because of negligence – comp. Article I, Section 53 SŠZ (for checks comp. Article II, Section 40 SŠZ). For these so-called maintaining acts in bill of exchange SŠZ presupposes presentment of the original bill of exchange at a certain time in a certain place.

This rather ceremonial conception need not always be convenient for creditors. The construction of presentment and protestation of bill of exchange a result of the situation in the past and collides with the interests of today's trade to

[1] The Geneva Conventions concerned with bills, notes and checks unfortunately did not succeed in establishing a unitary world law on those negotiable instruments. The Geneva law was not fully adopted in the countries of Anglo-American sphere.
[2] Act No 191/1950 Coll. on Bills of Exchange and Checks (hereinafter "SŠZ").

make quick and informal transactions. Therefore holders seek (and find) ways to get rid of that burden legally or factually: bills of exchange often include "without protestation" clauses (then it is not necessary to protest them[3]), the place of payment is situated in the seat of the creditor (the actual physical presentment of bill of exchange cannot be then verified) or even the creditor calmly relies on failure of evidence of the debtor who objects in vain that the duly presentment has not taken place (pursuant to Article I, Section 46, Para 2 SŠZ failure to present the bill of exchange must be proven by the person claiming that)[4].

In any case there is a general rule that the physical presentment of a bill of exchange in a relatively short period[5] is one of the creditor's duties and not fulfilling it may lead to foreclosure of all recourse rights from the bill of exchange.[6]

However, in certain circumstances the timely presentment of a bill of exchange or a check may be barred by insurmountable obstacles which result in a legal or actual impossibility to make the respective acts – these are the cases of vis major. The principle of the impossibilium nulla es obligation, which comes to mind of every lawyer in such cases and which would relieve the holder of the duty to perform the maintaining act, cannot be applied here.

It is because maintaining acts are not a real contractual or legal duty of the holder of bill of exchange. If they are barred by vis major this is not the impossibility of performance which could relieve the holder. As Hermann-Otavský[7] rightly points out the "duty" of presentment or protestation of bill of exchange may be taken into consideration only with a certain terminological license as it is in fact the conditions of recourse, a ritual (often empty and economically ineffective one) which must be performed by the holder to exert or to maintain his recourse.

The cases of vis major are regulated in bills of exchange law by Article I, Section 54, SŠZ: (1) Should the presentment of the bill of exchange or the drawing up protest within the prescribed limits of time be prevented by an insurmountable obstacle (legal regulation by any State or other case of vis major), these limits of time shall be extended. (2) The holder is bound to give notice without delay of the case of vis major to his endorser and to specify this notice, which he must date and sign, on the bill or on an allonge; in other respects the provisions of Article 45 shall apply. (3) When vis major has terminated, the holder must without delay present the bill of exchange for acceptance or payment and, if need be, draw up the protest. (4) If vis major continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary. (5) In the case of bills of exchange drawn at sight or at a fixed period after sight, the time limit of thirty days shall run from the date on which the holder has given notice of vis major to his endorser; the notice can be given even before the expiration of the time for presentment. In the case of bills of exchange drawn at the certain time after sight, the time limit of thirty days shall be added to the period after sight specified in the

[3] This applies of course with the exception of special kinds of protests which are not affected in any way by the "without protestation" clause.

[4] To make the picture complete we should add that presentment or protest are not necessary in the situation when there has already been a protest for non-acceptance of the bill of exchange by the drawee (comp. Article I, Section 44, Para 4 SŠZ).

[5[ Comp. Article I, Section 34, Para 1, Section 35, Para 1, and Section 38, Para I SŠZ.

[6] Comp. again Article I, Section 53 SŠZ.

[7] Hermann-Otavský, K. *Die höhere Gewalt im Wechselrechte nach dem Gesetze vom 30. November 1912,* Wien, Manz Verlag 1913, p. 2.

bills of exchange. (6) Facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the bill of exchange or drawing up the protest are not deemed to constitute case of vis major.

This provision is a special regulation. As it results from the following explanation vis major in bills of exchange law does not correspond to vis major as understood normally, which causes considerable complications (explained hereinafter).

A seemingly obsolete regulation of insurmountable obstacles to presentment and protestation became quite topical during devastating floods affecting the Czech Republic and Slovakia in the past decade. Those were undoubtedly the cases of vis major in the meaning of Article I, Section 54, SŠZ.

Impacts of the above mentioned provision are also often discussed in the situations when the holder of a bill of exchange failed to fulfill his duty of presentment within the prescribed time due to some objective circumstances and these circumstances are personal ones. An example may be an injury preventing the holder from performing the respective maintaining acts in time. In such cases the application of relieving provisions of Article I, Section 54, SŠZ, is problematic. Similarly, there are debatable situations when the holder, who lost his rights of recourse, is claiming that he suddenly fell ill and could not present the bill of exchange or could not have it protested asking the court to take that into consideration.

Therefore this paper aims to make an analysis of the cited provision in relation to vis major affecting a limited circle of person, or a single person. Regarding the almost identical wording of the regulation of vis major in bills of exchange and checks[8] it is possible to apply most of what follows hereinafter to checks, too.

## II. THE GENESIS OF THE RESPECTIVE LEGAL REGULATION

Vis major and its impact on rights derived from bill of exchange were for a long time one of the most controversial and variously regulated issues of the law of bills of exchange. It was only the large unification of bills of exchange law carried out due to the Hague and Geneva conferences that ensured a relatively unified approach to vis major and its impact on maintaining acts.

The existing legal regulation is historically the result of a successful attempt to soften harsh impacts of vis major on the law of bills of exchange. It was especially the German legal area in which theorists first tended to hold the opinion that consequences of vis major should fully be borne by holders of bills of exchange and such doctrinal opinion was only being changed due to war events, definitively after the First World War.[9]

The usual argument was the so-called strictness of bills of exchange, a two-wedged weapon functioning as an extraordinary disadvantage of the holder of a bill of exchange. For example Grünhut[10] argued that the creditor should be in disadvantage because of

[8] The wordings of the respective provisions, i.e. Article I, Section 54, and Article II, Section 48, SŠZ, are almost identical. The difference is only in the commencement and duration of the period after which relieving effects of vis major start.

[9] According to Kizlink, K., Spišiak, J. *Zmenkové právo podľa zákona č. 225/1941 Sl. z.*, Bratislava, 1944, p. 321.

[10] Grünhut, H. *Lehrbuch des Wechselrechts*, Wien, Duncker a Humblot 1900, p. 341.

equality of parties: if the debtor seeking recourse is liable to the holder even if the main debtor did not pay due to vis major it is only fair when, on the contrary, vis major consequences barring preconditions of the recourse are borne by the holder. Other authors (e.g. Einert) substantiated strictness of diligence provisions by the principle of "casus sentit dominus" (danger is borne by the debtor). Others point out legal uncertainty caused by taking vis major in consideration.

None of the above mentioned arguments may be regarded as sufficiently persuasive. "Strictness of bill of exchange" is a universal and suggestive formula[11], a pseudo-argument which can justify perhaps any opinion and any approach. As a suggestive language convention – one of those in which emptiness of thought resides so frequently – "strictness of bill of exchange" is a convenient way of escaping to the world of empty generalizations. Its wobbly basis allows us to argue in the same "persuasive" manner to the contrary, i.e. that consequences of vis major should be borne by the recourse debtor who signed the bill of exchange after all guaranteeing payment of the bill of exchange, taking into account the possibility of the holder taking an action against him and possibly influencing his position in advance – for example by an exhonorating clause in the endorsement. The argument of equality of parties is not persuasive, either: if only because the impacts of both the situations mentioned by Grünhut cannot be put on the same footing (not paying the bill of exchange by the direct debtor and not presenting the bill of exchange for payment). Losing rights of recourse without being at fault and without a possibility to foresee it is unjust at first sight[12] and therefore makes it also possible to exclude the principle that danger should be borne by the holder (this principle actually applies to property rights and we do not find it in obligations in this form). We also have to accept a certain uncertainty of evidence which is always necessarily produced by vis major and the necessity of proving it.

Despite these traditional objections the German Imperial Court held for long the opinion that with a bill of exchange where the respective maintaining acts could not be performed, for example due to war, rights of recourse are lost. The formalist German opinion caused considerable damage to the national economy and provoked a legal uncertainty, especially at the time the French-German war in 1870-1871[13]. However, even then a more liberal trend arose in case law and later also in legislations of other states respecting the interests of holders. In the Romance and Anglo-American area effects of vis major had traditionally been regulated in a different manner – far more favourably for the holder of a bill of exchange – he did not lose rights from the bill of exchange[14]. The more moderate approach proved to be right by the fact that this more reasonable conception won its way forever.

The current regulation of vis major in SŠZ is patterned upon the respective provisions of the Unified rules of bills of exchange which were adopted at two Hague conferences on bills of exchange taking place in 1910 and 1912. Vis major is regulated in the first draft in Article 67 and in the second draft of the Unified rules of bills of exchange in Article 53.

When dealing with the issue of vis major most authorities stated that the then existing German and Austrian regulations were characteristic of being overly strict and could not be recommended for their strictness as models.

[11] Kotásek, J. *Úvod do směnečného práva (Introduction to the law of bills of exchange)* MU Brno, 2002, p. 21.
[12] The respective presentment is usually useless and purely formal in the event of vis major. If the obstacle is insurmountable for the holder of bill of exchange it may be expected that the same applies for payment by the drawee or the maker of promissory note.

The only disagreement was about the consequences vis major should have. The conference delegates were split even on this issue. The first group supported the conception of immediate recourse, i.e. in the event of vis major the holder should have a chance to make recourse even without having performed maintaining acts. Vis major should have immediate relieving (remissory) effects. The opposite group insisted on the necessity to perform maintaining acts even later due to vis major. Vis major should then have had dilatory effects. Only in the case of obstacles lasting for more than three months the holder should have right of recourse even without presentment and protest[15]. The latter won its way and the three-month period was shortened to thirty days as a compromise.

The above mentioned Hague model was followed by the special Austrian Act No 241/1912 Coll. of 30 November 1912[16] (Gesetz über den Einfluss der höheren Gewalt auf die Vornahme wechselrechtlicher Handlungen[17]) and also by Section 100 of the Czechslovak Act on Bills of Exchange No 1/1928 Coll. z.a n. The Geneva conference returned to the draft of its Hague predecessor and so the Article 54 of the Unified Act on Bills of Exchange is then identical with the earlier Hague predecessor[18] apart from some exceptions which will be dealt with hereinafter.

So the above mentioned Hague model was also adopted with minor differences[19] in the current regulation included in Article I, Para 54, SŠZ.

## III. THE DEFINITION OF VIS MAJOR IN BILLS OF EXCHANGE LAW

Vis major in bills of exchange is not defined unequivocally in Article I, Para 54, SŠZ. The positive definition is understandably general and is only illustrated by one demonstrative example. The text, a result of long negotiations, shows necessarily consequences known from contract law – the participants (here the delegates) agree on a text which is so general and so open to various interpretations that it allows each party to see and apply it in its

[13] Kizlink, K., Spišiak, J. Zmenkové právo podľa zákona č. 255/1941 Sl. z., Bratislava, Právnická jednoty v Bratislavě 1944, p. 320. Meyer (Meyer, F. *Der Entwurf eines einheitlichen Wechselgesetzes nebst Begründung,* Leipzig, A. Deichertsche Verlagsbuchhandlung 1909, p. 50) even brings information about several protest petitions from business circles.

[14] A detailed outline is given by Meyer, F. *Der Entwurf eines einheitlichen Wechselgesetzes nebst Begründung,* Leipzig, A. Deichertsche Verlagsbuchhandlung 1909, pp. 47–56.

[15] Regarding such long time limits those would be extraordinary cases.

[16] As Hermann-Otavský points out (Hermann-Otavský, K. *Die höhere Gewalt im Wechselrechte nach dem Gesetze vom 30. November 1912,* Vienna, Manz Verlag 1913, p. 14) the notorious occasion legis was wars in the Balkans.

[17] The law on the impact of vis major on performing the acts related to bills of exchange. In Hungary, there was the 1912 Act No LXIV concerning also checks and business vouchers which had the same content as far as law of bills of exchange is concerned.

[18] Pursuant to Article 22, Reservations to JZS, each of the High Contract Parties is entitled to take extraordinary measures of general nature to extend time limits for maintaining measure in relation to recourse and to the extending of maturity. The above mentioned reservation is among the privileged ones which may be used by contract parties anytime – even after ratification or joining the Convention on Unified Law of Bills of Exchange – comp. in detail Article I, Para 4 and 5, Convention.

[19] The difference is for example that the existing regulation mentions a legal directive of the state as an insurmountable obstacle.

own way. The consensus is only apparent and must be a cause of future disagreements. As we will see hereinafter there is a similar situation with the legal definition of vis major in bills of exchange.

From the text of the Act it is clear that vis major in bills of exchange should be "an insurmountable obstacle" preventing the presentment or protestation of a bill of exchange. The Act only mentions as an example a legal provision of a state, i.e. an obstacle of juristic nature. According to the negative definition of Paragraph 6 "facts of personal nature concerning only the holder or the person authorized by him to present the bill of exchange or to draw up a protest" should not be the case of vis major in the sense of Article I, Para 54, SŠZ.

From the above mentioned we may deduce the following attributes of vis major in bills of exchange:

1. Objective character

Article I, Para 54, SŠZ, mentions the duration and the end of vis major excluding some "facts" at the same time. Vis major must then be a real and objectively verifiable state of affairs, not a hearsay, a legend or a mere opinion of the holder that presentment is impossible. Personal beliefs, apprehensions and motives are not important for deciding whether vis major in bills of exchange is at issue.

Vis major cannot be, of course, defined with the help of purely subjective facts existing "above" or "beyond" the world of external and observable facts. Despite that the concept of vis major cannot be built up so clearly and unequivocally as similar definitions in natural or technical sciences. To a certain extent we have to take some internal aspects into consideration. It is not the case of the commencing of vis major as the holder of a bill of exchange benefits from it even if he did not have knowledge of obstacles preventing the presentment for payment or the protestation.

What will be more difficult is determining the time when an obstacle ceased to exist in which case the holder must immediately present the bill of exchange for acceptance or payment or to make a protest pursuant to Article I, Section 54, Para 3. An ordinary holder of a bill of exchange will often have to rely on secondary sources, i.e. media. It would be unjust if he was blamed for not presenting the bill of exchange in time after the obstacle had ceased to exist when he relied on the media still reporting the opposite – for example the floods not subsiding in the respective territory. The holder surely is not supposed to circle in a boat round the place of presentation waiting for the water to subside in order to present the bill of exchange immediately[20]. We should admit a certain necessary delay with which the positive news about the obstacle ceasing to exist may come across to the holder. In practice, the solution may be a sensitive interpretation of the concept of "immediately" even if in order to consider that period we have to be first clear about whether vis major ceased to exist. We have to accept that in many cases it will not be possible to determine unequivocally the moment of the obstacle ceasing to exist: it is often very difficult to specify the end of a natural

[20] This is important for remissory effects of vis major in bills of exchange (on this see hereinafter), i.e. in the case of obstacles lasting within thirty days. With longer time limits SŠZ does not insist on immediate presentment or protest.

insurmountable obstacle and it is also difficult to get certain information about that. Under these circumstances precedence should be given to protection of good faith of an abstract holder of a bill of exchange who relied for example on public information sources.

The holder will benefit from effects of vis major even if he had no knowledge of vis major and he did not perform the respective act for some other reason, for example because he forgot to do so. Vis major in bills of exchange also arises when the holder thought the period had already been missed. It does not depend on whether it was a foreseeable event subject to a relative coincidence and statistical laws of randomness (in Teilhard de Chardin's words "a planned coincidence") or whether it was an extraordinary and unforeseeable phenomenon beyond all human imagination.

Given the fact that vis major is not dependent on the person claiming it we may finally come to an obvious conclusion: vis major and its effects cannot be "negotiated" between parties. Such an agreement could be possibly interpreted as an agreement on delaying maturity which is not allowed by SŠZ (comp. Article I, Section 74, SŠZ). There might also be an agreement on another place of payment or protestation. Such an agreement would be relevant as the acts to be performed in a certain place indicated in the bill of exchange may be performed in another place if the parties consent with that. If the performance of the act is confirmed in writing (for example by protestation) the consent, too, is recorded in the confirmation[21].

2. Insurmountability of obstacle

The obstacle should be insurmountable, which cannot, of course, be interpreted literally or subjectively. Presentment or protestation cannot be performed absolutely only rarely as in the case of moratoria, i.e. legal constraints. In all other cases of vis major in bills of exchange we will almost always have to come to the conclusion that if seen clearly technically those acts were performable in the end but at the cost of unreasonable strain, immense expenses or unreasonable danger.

The solution lies then in proportionality. Insurmountability of obstacle must be taken from the viewpoint of expenses, effort and carefulness that may be reasonably required from the holder in such a case. The measure should an *abstract* drawer and not the actual parties and their options.

3. Obstacle to presentment or protestation of bill of exchange

An obstacle prevents the presentment of a bill of exchange for payment or the protestation of a bill of exchange[22] and not other acts related to bills of exchange (basically, it does not concern for example the presentment for accepting a bill of exchange). Insurmountability of obstacle need not be checked by a vain attempt to present or to protest the bill of exchange even if this may often be sensible from the viewpoint of evidence.

[21] Pursuant to Article I, Section 88, SŠZ.

[22] For this reason the destroying of a bill of exchange is not vis major in bills of exchange even if the destroying was due to vis major. The holder of the bill of exchange has then only one option – to redeem the bill of exchange.

An interesting problem is when the holder achieves the presentment or protestation despite the effects of vis major (the maintaining acts would then be performed only due to a coincidence or at the cost of highly unreasonable expenses). In the sense of the saying "coming earlier does not mean coming in time" the debtor could object that the respective act was not performed in time. This could be seemingly supported by the text of the respective legal provision according to which "statutory time limits are extended". However, the extending does not necessarily mean "postponing" or "stopping" so in such cases we have to presume that the act has been performed properly.

4. Time aspect

For the effects presupposed in Article I, Paragraph 54, SŠZ, i.e. the postponement of time limits or their complete abolishment after thirty days, it is necessary for the obstacle to arise before the start of the period of presentment or protestation or in the course of performing them. The obstacle may arise as late as the last day of the respective period and the holder will benefit from it even if he was not able to perform presentment or protestation in time.

5. Unambiguous borderline between personal and general vis major

Pursuant to legal regulation, vis major in bills of exchange will undoubtedly occur if there will be such natural or social phenomena that they prevent the presentment or protestation of a bill of exchange affecting a wider circle of persons[23] and are also usually publicly known: these are for example floods, earthquakes, avalanches, fires, railway accidents, multiple crashes, epidemics, strikes, blockades, terrorist attacks, war conflicts and war operations, etc. SŠZ also expressly mentions legal restrictions of a foreign country[24] as an example of vis major.

However, pursuant to Article I, Para 54, Sub-para 6, SŠZ, vis major is not "facts concerning only the holder or the person authorized by the holder to present or protest a bill of exchange".[25] It is precisely this negative restriction that causes interpretation difficulties.

The difference between these purely personal facts and material obstacles is not unambiguous in some cases. These ambiguities may be demonstrated by the already mentioned example of a holder of a bill of exchange or an authorized presenter falling ill. A serious and sudden illness depriving the holder of the chance to look for a representative for the respective maintaining act will not be regarded according to the mechanical interpretation as vis major in bills of exchange because it concerns "only the personality of the holder"[26]. If an illness affects a larger circle of persons it is then an epidemic, i.e. an obstacle of the nature of vis major in bills of exchange with dilatory and later also remissory effects. A seri-

[23] The fact that the obstacle concerns more persons is actually one of the relatively safe predictors confirming the conclusion that it is vis major in exchange of bills.
[24] SŠZ differs by this from the original "Hague" wording or form Para 1000, Act No 1/1928, Coll. Due to Article I, Para 54, Sub-para 1, SŠZ, we need not draw the same conclusion by interpretation.
[25] On more details concerning that exception see Meyer, F. *Der Entwurf eines einheitlichen Wechselgesetzes nebst Begründung,* Leipzig, A. Deichertsche Verlagsbuchhandlung 1909, p. 52.
[26] That conclusion is achieved, but without any reasoning, by for example Šikl, H. *Soustavné výklady na právo směnečné,* Praha, Česká akademie věd a umění 1927.

ous accident caused by clashing with a wild animal is not supposed to be vis major in bills of exchange as it only affects the person of the holder whereas the identically unavoidable and accidental disasters, without anyone being at fault, such as those happening in chain collisions on motorways are vis major in law of bills of exchange. Such a conclusion may be rightly considered as contradictory and unacceptable.

According to the author of this paper it is necessary to accept a restrained interpretation of "circumstances concerning only the person of the holder or the person authorized by the holder" to execute the respective powers if we emphasize the word "only" included in Section 6. An illness or an accident of the holder or the person authorized to present or protest the bill of exchange may be regarded as vis major if we use the restrictive interpretation of Section 6 pursuant to Article I, Section 54, SŠZ, as these are obstacles that could also have affected another potential holder. So even seemingly personal facts may be vis major if they could have affected every other person – an example may be an injury caused by a plant pot falling on the pavement or someone being struck by a lightning[27].

According to this approach the barrier of a purely personal nature, i.e. an obstacle concerning "only the person" would only be such an obstacle that would arise due to the influence of the respective person and as a consequence of his specific situation. Moreover, it could be possible to make a distinction between the situations when the cause of the obstacle was really a particular person (an accident caused by drunkenness of the holder or self-injury) and the situations when the disqualification is due to external uninfluenceable circumstances (being thus vis major in bills of exchange). In such a situation we have to accept evidence difficulties necessarily caused by this sophisticated and "subjectivizing" approach. This approach cannot be considered a prevailing one but we should prefer it for a lot of reasons.

The aforesaid subjective approach can also be supported by a historical interpretation, i.e. an interpretation which takes the origin of the respective rule into consideration[28]. As mentioned above the existing regulation in Article I, Section 54, Para 6, SŠZ, was patterned upon the draft of the Unified Rules of Bills of Exchange worked out in two Hague conferences on bills of exchange. Article 67 of the first draft still mentions "personal facts" („persönliche Tatsachen", „faits personnels"). On the contrary, the second draft of 1912 mentions "purely personal facts" („rein persönliche Tatsachen", „faits purement personnels")[29]. Thus, the current usage concerns facts related to "persons only".

The question whether any purpose was pursued by that may be answered "yes" and not only by using a fictional rational lawmaker. It follows from the legal literature that adding the word "purely" was a result of efforts to meet a requirement of French representatives who suggested recognizing as vis major also the circumstances that concerned only an individual. The suggestion of the French delegates was not then accepted but the aforesaid

[27] Rouček, F. *Československý zákon směnečný* (The Czechoslovak Act on Bills of Exchange), Praha, Československý kompas 1928, p. 381.

[28] Justified objections to the historical interpretation (comp. Knapp, V. *Teorie práva*, Plzeň, ZČU 1994, p. 86 or Lorenz, K. *Methodenlehre der Rechstswissenschaft*, 2nd edition. Berlin, Springer Verlag 1969, p. 308–311) may perhaps be refuted in the given case by the fact that the final text was not approved by lay people from a national parliament but by a panel of experts of the Hague conference on bills of exchange. The Czech parliament only mechanically adopted a previously written text when approving SŠZ.

[29] Hermann-Otavský, K. *Die höhere Gewalt im Wechselrechte nach dem Gesetze vom 30. November 1912*, Vienna, Manz Verlag 1913, pp. 16 and 61.

addendum at least ensures or is supposed to ensure that the interpretation of restricting provisions of the law will be as restrictive as possible[30]. Therefore even the argument *e ratione legis,* i.e. an interpretation according to the known or presupposed intention of the lawmaker, supports a more restrained interpretation and a more "person-oriented" approach of vis major in bills of exchange.

The objectivity of vis major has then its limits due to the necessity to find a rational compromise between the interests of the creditor and the debtor. The creditor wants to keep rights of recourse despite not performing (temporarily) maintaining acts. For the debtor there may only be one legitimate interest – to resolve as quickly as possible the question whether he will be inflicted as an indirect debtor. Attempts to get rid completely of liability for the bill of exchange (understandably, the wish of every rational and economically thinking participant) cannot be considered legitimate. The drawer or endorser should achieve that primarily by a respective exonerating clause (comp. Article I, Section 9 and Section 15, Para 1, SŠZ) and not by vis major, i.e. an external unifluenceable circumstance. If the participant wishes not to be bound by the bill of exchange he should not sign the bill, or he should make use of some of the relieving clauses provided by the law.

From this constellation of interests – being aware of the fact that the creditor faces a total and irreparable loss of rights of recourse whereas the debtor only faces a temporary uncertainty about a possible recourse – it is apparent that precedence should be given to the restrictive interpretation of the Para 6 of the analyzed regulation and we should take more into account the cases of vis major that are not of clearly general nature. Nothing could then be lost on claims required by the law from the holder of bill of exchange (to do all he can to perform maintaining acts in a short time). However, in practice only possibilities of the holder to actually perform those acts will be taken into account. An abuse of vis major by the creditor is not quite likely as the burden of proving an obstacle will be borne by the holder of the bill of exchange – in the situation of the time limits being formally expired.

## IV. DILATORY EFFECTS

After defining vis major in bills of exchange we may focus on its impacts. The first consequence of insurmountable obstacles to the presentment or protest is a legal prolongation of time limits prescribed for respective maintaining acts. If the timely presentment or protest of bill of exchange is prevented by an insurmountable obstacle, either a factual or legal one, the holder is obliged to notify his endorser of it and time limits for these acts are prolonged regardless of fulfilling that notification duty,. The consequence of an obstacle is not then interrupting or stopping time limits but only their extension.

In that sense we speak about a dilatory (suspending, prorogative, extending) effect of vis major. After its disappearance the holder is obliged to perform immediately the resptective acts – to present the bill of exchange for payment or to protest it[31].

[30] Šikl, H. *Soustavné výklady na právo směnečné,* Praha, Česká akademie věd a umění 1927, p. 223.
[31] Special rules had to be established for sight bills and time sight bills. Their maturity is directly or indirectly determined by presentment. The holder is supposed to have a choice to make the bill mature even in the event of vis major. With sight bills and time sight bills there is a thirty-day period since the day on which the holder notified his endorser of the occurring of vis major (the notice may be made already before the expiry of the period for presentment). With time bills the thirty-day period is extended by the time after sight as it was stated in the bill.

## V. REMISSORY EFFECTS

If vis major lasts for more than thirty days the law intervenes to the detriment of debtors recognizing remissory (relieving) effects of vis major[32]. In such a case the holder may perform recourse even without having presented or protested the bill of exchange in time – it is the so-called immediate recourse. The period is thirty days since maturity (i.e. not a month) and the day of maturity is not included in the period pursuant to Article I, Section 7, SŠZ.

The compromise in the form of the thirty-day period reflects the general experience that vis major obstacles do not last for a long time and rarely exceed the above mentioned number of days. At the same time those thirty days are not such a long time that could considerably endanger the interests of the creditor to have the bill of exchange performed[33].

Now it is not necessary for the holder to perform recourse immediately after the disappearing of the obstacle – compare Article I, Section 54, Para 3 and 4, SŠZ. As for limitation of the bill of exchange, vis major effects do not have any influence on it. Maturity itself is not affected by the obstacle and limitation is generally counted as in any other bill of exchange, i.e. since the day of maturity pursuant to Article I, Section 70, SŠZ[34]. The problem of interest from the bill of exchange remains disputed (whether it should be calculated since the date of maturity or whether since the date of the rights related the bill of exchange being asserted). The Hague conference left that aspect within jurisdictions of the participating states. There seems to be a prevailing standpoint in literature that in the case of immediate payment by the direct debtor it is not possible to demand payment of interest since the day of maturity[35]. However, if the payment is not done the holder must provide the interest as one may suppose that the debtor would not pay within the due period[36].

## VI. DUTY OF NOTIFICATION

To make the picture complete we also have to mention duty of notification in the event of vis major related to bills of exchange. If vis major occurs the holder has a duty to notify his endorser about it, to write the notice in the bill of exchange or the allonge attaching his signature with the respective date. In other cases the provisions about the notification of unpaid (so-called "needy") bills of exchange[37] are used – this means, among others, that the notified predecessor has a duty to notify his predecessor, etc.

The holder has a duty to notify only his immediate predecessor about vis major or his aval but not the drawer. If the holder does not have a predecessor, i.e. the bill of exchange

[32] Reasons for obstacles may vary – even if it is not much probable in practice – without their legal consequences being changed. An example may be declaring quarantine in a territory affected by floods.
[33] Interpreted according to Kizlink, K., Spišiak, J. *Zmenkové právo podľa zákona č. 255/1941 Sl. z.*, Bratislava, Právnická jednoty v Bratislavě 1944, p. 325.
[34] The same is stated by Stranz, M. *Wechselgesetz,* Berlin, Walter der Gruyter 1952, p. 302.
[35] Baumbach, A. Hefermehl. W. *Wechselgesetz und Scheckgesetz.* München : C. H. Beck, 1997, p. 355.
[36] Kizlink, K., Spišiak, J. *Zmenkové právo podľa zákona č. 255/1941 Sl. z.*, Bratislava, 1944, p. 326.
[37] More details in Kotásek, J., Pokorná, J., Raban, P. a kol. *Kurs obchodního práva, Právo cenných papírů,* Praha, C.H.Beck 2003, p. 420an.

has not been endorsed and remains in the payee's hands there is no one to be notified and the duty of notification does not exist[38]. The notice should briefly specify the circumstances of vis major. The four-day period prescribed for notification for "needy" bills of exchange does not hold here[39]; the law establishes the period quite vaguely when the holder has a duty to notify his predecessor about vis major "immediately" pursuant to Article I, Sectio 54, Para 2, SŠZ. According to circumstances the period of notification may be longer than the "general" four-day period. Failure to fulfil the duty of notification does not affect recourse rights from the bill of exchange but it may result in a claim for damages pursuant to Article I, Section 45, Para 6, SŠZ. Notification of vis major does not replace a general notification with "needy" bills of exchange. Thus if the drawee refuses to accept or to honour the bill of exchange after the disappearing of insurmountable obstacles the holder has to notify again; this time he will announce the fact that the bill of exchange has not been accepted (honoured).

Besides, the holder has a duty to write the note on the bill and the allonge attaching his signature and the respective date. As for the placement of the written note about vis major it holds that the note may be situated on the bill of exchange (face or reverse), its copy (duplicate) or the allonge. Vis major is regularly recorded on reverse of the bill where there is more space available. The record includes three requisites: the information itself, i.e. that the predecessor has been informed about the existing obstacle (stating the nature of the obstacle), the day of the sending of the information and the holder's signature. As with all other statements in the bill of exchange the text of the given record need not be made in one's own hand, it is only the signature of the notifying holder that has to be in his own hand.

*Resumé*

*Should the presentment or the protest of the bill of exchange (or promissory note and cheque) be prevented within the prescribed limits of time by an insurmountable obstacle (e.g. by a legal regulation of any State or by vis major of another kind), these limits of time shall be extended. In this article, the author focuses in detail on these effects – the prolongation of the given time limits, the option of immediate recourse, the holder's duty of notification, etc. The main attention is paid to an analysis of the legal definition of vis major and to the definition of how it differs from the generally understood concept of vis major when facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the bill of exchange or the drawing up of the protest are not deemed to constitute the case of vis major. Using a detailed historical interpretation the author supports a restrictive interpretation of the given rule.*

[38] Despite the law not prescribing it the holder, in his own interest, should inform the participants of the bill of exchange about an obstacle caused by vis major even in those cases.
[39] Comp. Article I, Section 45, Para 1, SŠZ.