TANULMÁNY

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Excessive formalism in the Czech Bill of Exchange Case Law

I. INTRODUCTION

In most countries on the Continent the legal regulation of bills and checks is based on the model „Geneva" law (The Uniform Law of Bills of Exchange) which was one of the results of the Geneva Conference held in 1930. The Czech, Slovak and Hungarian laws are no exceptions in this regard. In these countries the relevant provisions concerning bills of exchange adopt the Uniform Law of Bills of Exchange (or the Uniform Law of Checks) and differences are almost negligible.

It is remarkable how diametrically different interpretations of the scholarly literature and courts may be in individual countries of the „Geneva law" although the texts of the respective regulations are essentially identical. It is also interesting to watch how the judicial decisions reflect the already cancelled national legislation, which has been stubbornly maintained in the form of Juristenrecht even after the adoption of the „Geneva" model, or how a broader national legal regulation makes its way affecting the application of a seemingly „isolated" special provision on bills of exchange.

A comparison with the foreign case law shows that both the doctrine and judicial practice of the post-communist countries advocate more formal and rigid attitudes concerning many issues of the law of bills of exchange. The aim of this paper is to introduce some interesting decisions from the Czech Republic and the Slovak Republic to Hungarian readers which concern in particular the formalities of bills of exchange. Mostly, they are an example of excessive formalism which, in the opinion of the author, should have some limits even in such a peculiar institute as the bill of exchange is.

II. TOWARDS THE INTERPRETATION OF THE TEXT OF A BILL OF EXCHANGE – SHOULD IT REALLY BE SO STRICT?

The term „strictness of bills of exchange" – rigor cambialis (in German Wechselstrenge) has become very popular in the (not only Czech and Slovak) legal doctrine and jurisprudence. Rigor cambialis is an archetype which is mentioned in almost all textbooks of exchange law or commen-

taries on the bill of exchange regulations, usually in the introductory historical or general passages. Its origins can be found in procedural law and especially in the provisions on personal bond which threatened every debtor from a bill of exchange.[1]

Normally, we come across the distinction between the material[2] and formal rigor cambialis. The material rigor cambialis means the characteristics that determine the quality of the bill itself. The key one is the exclusion of objections of bill debtors under Art. 17 of the Uniform Law of Bills of Exchange, or the exclusion of objections of debtors in other special cases (with blank bills cf. Art. 10, with avals cf. Art. 32). This also includes the way in which the text of a bill is „read". The obligations from a bill of exchange are exclusively governed by the instrument. Its interpretation is conducted objectively ignoring the circumstances that lie outside the instrument (*quod non est in cambio non est in mundo*). In principle, what is decisive is the typical and usual meaning of the bill statement, not the aims and objectives of the participants.What is crucial for an interpretation is the bill of exchange itself and other circumstances can be taken into account only if they had to be known to any third party, or only if there is a dispute between the original parties to the contract on the issuance of the bill of exchange[3].[4]

„Rigor cambialis" is obviously rather a metaphor, not a doctrinally correct generalization of the properties of the bill of exchange which we could safely rely on.[5] Using this metaphor is problematic, though, if we extend it to the formal requirements on the bill of exchange. Particulars of the bill of exchange can hardly be considered „strict" without also labeling any legislation „strict" which has that misplaced ambition to establish for its addressees the requirements of a security. In addition, if we compare the requirements for a bill of exchange with the formal requirements imposed in Slovak or Czech law on certificated bonds, among others, we may consider the bill of exchange to be a highly flexible and benevolent security with an extraordinary degree of tolerance for mistakes and omissions of their participants.

What other security drawn for the money performance can be valid even without stating the maturity date and the name of the drawer, with the sum indicated in one document in three different numerical and at the same time

[1] Brožowsky, 1857, p. 6: *„Die gesetzliche Bestimmung gegen einen Wechselverpflichteten im Falle der Nichterfüllung seiner Verbindlichkeit die persönliche Haft verhängen zu können, nennt man Wechselstrenge"*

[2] According to Baumbach – Hefermehl – Casper, 2008, p. 54.

[3] Cf. the decision of the Austrian OGH from 23 February 2009 8 Ob 18/09v „Der Grundsatz der Wechselstrenge bedeutet, dass sich im Allgemeinen die Auslegung der Wechselurkunde daran zu orientieren hat, wie sie von einem am Wechselbegebungsvertrag nicht beteiligten Dritten nachvollzogen werden kann. Davon kann dann abgewichen werden, wenn sich die Parteien des Wechselbegebungsvertrags gegenüber stehen, da insofern dann auch auf außerhalb der Urkunde liegende Umstände zurückgegriffen werden kann."

[4] Towards this see *Pflug,* +1984, Nr. 148, pp. 1-26.

[5] Therefore the critique of "rigorcambialis" is quite justified in *Joost,* 1977, pp. 1394-1351.

verbal forms or – under certain circumstances – even without mentioning the place of drawing and maturity? Yes, it is the bill of exchange.

In what follows I will try to demonstrate, using examples from the Czech case law, the absurdity of some formalistic approaches to the interpretation of the text of bills of exchange and I will also deal with those ambiguous cases that have no clear solutions.

III. FALSE INFORMATION IN THE TEXT

A relatively banal question whether the information in the bill must meet the criterion of truthfulness has also become the subject of discussions in the Czech and Slovak law. The formal validity of the bill is not in principle barred by the fact that some information in the bill is not true. If, for example, the date of the drawing differs from the actual date of signing the bill, this is irrelevant to the validity of the bill (in the case of checks this „untruth" is expressly taken into consideration, cf. Art. 28 of Act on Checks), the same applies to another place of drawing.

In 2008, the Slovak Supreme Court[6] declared a bill invalid on the grounds that on the day of its drawing the drawer „was clearly abroad" and so he could not have drawn the bill on the given day at the given location (sic!). The Slovak Supreme Court closed the case with a barely believable statement that „a legal relationship from the bill could not arise between the parties." It is very hard to find arguments for this conclusion and the decision is completely indefensible. By this, the Slovak Supreme Court also departed, for no clear reasons, from the existing case law conciliatory toward false information in bills.[7]

Such an arbitrary and unjustified decision contrasts with the well-reasoned conclusion of the Czech Supreme Court which in 2010[8] judged a similar case – it was found that the drawer had resided abroad on the day of the alleged drawing of the bill. The court concluded, among others, that „it is inconceivable for the court to examine, based on an objection of the debtor, whether the formally indicated date of drawing is the date when the bill was actually drawn. Such an examination, which has no meaning in terms of functionality of the bill, would create uncertainty as to the actual date of issue, and the validity of the bill. If each endorsee had to examine whether the bill was actually drawn on the indicated day the circulation of bills would essentially be made impossible." The court further rejected that the date of drawing a bill would have to be also the day when the bill was actually drawn, stating that „it is sufficient that on that particu-

[6] The judgment of the Slovak Supreme Court, 1 Obo 151/2007. The text of the judgment is available at http://www.supcourt.gov.sk.
[7] Cf. e.g. the judgment of the Slovak Supreme Court, 1 M ob do 13/2004. The text of the judgment is available at http://www.supcourt.gov.sk.
[8] The judgment of the Supreme Court, 28 Cdo 3071/2010.

lar day the bill could have actually been drawn (it must therefore be an existing date). Aninvented date of drawing does not therefore make the bill invalid."

The data in the bill do not have to be true, then, it is sufficient if they are possible. Generally, it also applies to substantive effects of the signature, of course, if we leave aside the non-standard cases such as the signing of a promissory note by a minor who post-dates it until after reaching adulthood – then of course, in terms of substantive effects, the actual date of drawing is decisive (without the post-dating having any effect on the validity of the bill).

IV. PROBLEMS WITH FORMS

The text of the bill often arises by completing and signing preprinted bill forms. The transparent and standardized design of the forms provides the participants with a good orientation in the text and prevents omissions of essential requirements. The compressing of the data in a relatively small area and required duplication or a greater detail of certain requirements also prevents, to some extent, falsification of the text or adding clauses and statements.

Nevertheless, certain difficulties are associated with the use of bill forms. Forms prevent many difficulties but sometimes they gave rise to them. For example, there are questionable cases where the filled-out text comes into conflict with the pre-printed words in the form. A typical example is the drawer's anti-assignment clause of (cf. Art. 11 of the Act on Bills of Exchange). If a bill contains such aclause – usually saying „not to order" it becomes a security to name and is not transferable by endorsements but by assigning the claim. If the drawer added a clause into the text of the form without striking off the preprinted words „to order" then there are two contradictory entries in the bill: „to order" and „not to order", one preprinted and the other inscribed or stamped in later.

Some legal experts consider such bills null and void for vagueness of the transfer. It is not clear whether it is a registered security (transferrable by cession), or a security to order (transferred by endorsement[9]). However, the opposite view is logical, too, because from the inscription it is clear that the drawer's aim was to make the bill a security to name ("rektasměnka" in Czech). The text is then interpreted with regard to the will of the drawer that it is a valid security to name ("rektasměnka"). In the past the case law was not settled in that respect, nowadays a negative opinion seems to prevail: If the clauses „to order" and „not to order" are simultaneously indicated in the bill, then it is an invalid bill.[10]

[9] Kotásek, 2001, No. 1.

[10] Cf. the judgment of the High Court in Prague, 9 Cmo 342/2003.

The Czech law, or generally the Geneva Law of Bills of Exchange, does not know the solution that can be found in the *Uniform Commercial Code*[11] in the United States which is based on the principle that in case of conflicting data the handwritten text takes precedence over the pre-printed or typewritten text. According to the UCC, in similar problems with anti-assignment clauses the inscribed data would be decisive, indirectly substituting the printed one.

As a similar regulation is missing in the „Geneva Law of Bills of Exchange" a conclusion about the validity of a bill with the combined clauses „to order / not to order" is a trip onto a somewhat shaky ground: if we give greater importance to the handwritten data than to the preprinted one, how then we will handle bills completed to the euro and not having the preprinted „CZK" (Czech crown) struck off, or other similar cases? If we hold the opinion that the formulation „to order / not to order" is allowed in the bill, we will have to take such bills as valid, if we always prefer the explicitly added data. For the reasons stated above, it will not be reasonable, though.

Behind the more formal approach there is also another motive: to protect the borrowers signed in the form who would be less protected against an unauthorized alteration of the text of the bill (if the added text were always preferred to the form).

In other cases, however, there only seems to be a conflict with the form. In 2001[12] the Supreme Court dealt with a bill containing in the box of the date of maturity the following preprinted text: On 19. The former line was filled out with the typewritten '20th September „and the latter one with „2001" following the data of 19. The participants did not strike the year preprinted in the form and the preprinted data of „19" was followed by 2001 as the year of maturity 2001. The bill was then – at least in the eyes of the borrower – due on '20th September 192001" and because of that a legal action was (somewhat) premature.

The Czech Supreme Court dealt with this comical argument gracefully: „[...] there is no room for consideration presented by the appellants according to whom the maturity of the bill was determined by the 20th day of September 192001. It is evident that this not the case where a part of the data (19) was preprinted and the other part (2001) inscribed in order to mean that only the sum of the two figures is the year in which the bill is to be paid for. The conclusion that the year is not 192001 but actually and only 2001 is also supported (...) by the graphical difference of the text of the form and the text inscribed in the form when the bill was drawn, regardless of the fact that in general no party to the bill can be assumed, also due to the graphical form of the data of the maturity date of the bill, to believe that the bill will become due in more than 190,000 years)."

[11] § 3–114 UCC (Contradictory terms of instrument) says: „If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and word prevail over numbers."

[12] In the judgment 29 Cdo 945/2009.

V. BOXES IN BILLS OF EXCHANGE

Perhaps the most illustrious example in the Czech law of an overly formalistic approach to the text of bills of exchange is the decisions relating to boxes in bills of exchange. A cautionary example may be the judgment of the High Court in Prague from 2010.[13] The Court declared a bill of exchange invalid because some of the data constituting the mandatory content of the bill was „put to separate boxes formed by uninterrupted lines." The overall graphical breakdown of the instrument was according to the court „unnecessarily confusing and illogical, breaking down the given requirements of the bill of exchange to individual data that lack a mutual bond." According to the Hight Court, what is missing is „the bond of the drawer's signature to [...] the promise of the drawer to pay the bill money". Put simply: if there is any data of the bill in a box it is not considered part of the bill; the box disrupts the continuity of the text and the respective data is lost in it as in a black hole.

Unfortunately, this was not a rare and isolated judicial decision as courts in the Czech Republic decided similarly in other cases, too. However, one can commonly find preprinted forms[14] that have, either for decorative reasons or for easier orientation, boxes for some requirements of the bills. As commonly understood, these boxes in bills are never aimed at excluding a specific text from the entire bill context, on the contrary, the box integrates the text even more into the instrument. Neither the box interferes with the cohesion of the text, on the contrary, in most cases, it streamlines the text.

A sensible participant, when filling out the bill, would not have dreamed that perhaps the text in the box should not be part of the entire bill – after all, it clearly is in the bill. The same – albeit less so resolutely – may be said about the bills that are made by the participants themselves, i.e. without the use of purchased forms. If perhaps a box extraordinarily means the separation of the boxed text, it will follow from the data content in the box or from the practice, not from its actual use (an example can be the separation of the text of the contract on filling out a blank bill and the bill itself).

The above-mentioned decisions were unfortunately joined, even if only partly, by the Czech Supreme Court[15] which judged the validity of a bill the text of which was divided into several boxes: „although it cannot be inferred from the graphic design of the bill that the drawer, by placing the individual data into boxes, wanted them to be excluded (exempted) from the text of the instrument, it is clear that the design and layout of the boxes (consisting of a series of vertical and horizontal lines), including the preprinted requirements of the bill and the data inscribed in these boxes, render the text of the bill statement (...) incoherent,

[13] The judgment of the High Court in Prague, 8 Cmo 84/2010.

[14] The Czech law as well as the Hungarian or Slovak law do not prescribe using a special form for drawing bills.

[15] The judgment of the Czech Supreme Court, 29 Cdo 5250/2009.

the consequence of which is the inevitable conclusion of invalidity of the bill."

As a result, this decision looks like the similar formalistic decisions of the High Court in Prague. The absurd „black hole" argument may be gone, but it may survive – disguised under a more rationally worded requirement of „cohesion of the text of the bill".

Against the above mentioned decision of the Supreme Court a constitutional complaint was filed by the plaintiff. Hopefully, the Constitutional Court judgment[16] in this case may be considered the definitive end to the practice of downright rejecting of boxes in bills for formal reasons. The Constitutional Court stated, among others, the following: „From the form of the judged bill the overall cohesion and logical sequence of individual clauses of the bill are quite clear despite a series of divided vertical and horizontal lines, the bill contains all the particulars required by the law and it undoubtedly shows the drawer's unconditional promise to pay the owner of the bill, in a particular place and at a particular time, the amount indicated in the bill."

According to the Constitutional Court, the bill in question is not an accidental bunch of individual clauses without a mutual linguistic cohesion but a comprehensive text the content of which is the bill statement. From the bill the drawer's promise „I will pay for this bill" is quite obvious, the promise being included in the text of the instrument, and this instrument also contains the previous data of the place and day of the bill drawing as well as the following data of maturity, the name of the person to whom payment is to be made, the bill amount and the drawer's signature (including the names and addresses of the drawer).

As the Court also stated in the reasoning of the judgment, „from the fact that the above mentioned data are placed in 'boxes' one cannot conclude that the meaning of these boxes is the elimination (exclusion) of these data from the text of the instrument. In the given matter the condition of covering the function of the drawer's signature is also met since the correspondence of the signature with the bill text results from its location, in accordance with the law, below all the clauses of the bill, and the correspondence of the drawer's signature is established by the outer boundary of the bill. The judgment of the High Court on the invalidity of the bill because of the incoherent text of the bill statement is considered by the Constitutional Court to be a formalistic one. [...] It is true that in accordance with the law of bills of exchange the Constitutional Court considers it improper to divide excessively the text into individual boxes but to draw the conclusion of invalidity of the bill only for these reasons is considered possible only in the event that such intervention completely removes – cancels – the meaning of the coherent bill statement and the resulting text loses its unambiguous meaning. Even in such a strictly formalized legal act such as a bill of exchange it is not possible to overlook entirely the actual content of one's will declared in this form."

[16] The judgment of the Czech Constitutional Court, III. ÚS 3660/11.

VI. MULTILINGUALISM OF BILLS

The legal regulation of bills within the Geneva system requires that the bill should contain in its text a clause that is to be expressed in the language in which the instrument is written. The designation of the instrument to be a bill must be formulated in the language in which the entire document is written. From the singular („language") it is evident that the bill is to be drawn only in one language, but the question is how rigid we will be with this requirement in the current cosmopolitan world.

The legislation of the First Czechoslovak Republic (The Czechoslovak Law of Bills of Exchange no. 1/1928 Sb. z.a n.) reasonably tamed greater linguistic ambitions when it established, in § 3, that the designation of the instrument as a bill has to be expressed only in „the language which is used for declaring the payment order". Language compliance was then limited to two key requirements – the bill clause and the order – and the rest of the text could therefore be in other languages without any problem.[17]

The „Geneva Law" is not so benevolent, on the other hand, it is the task of the courts to find reasonable limits for linguistic demands put on the bill text. A good signal can be multilingual forms used mainly in banking practice which, strictly speaking, include multiple languages but the Czech courts accept them.

However, it is not permissible to combine multiple, even if similar, languages in one instrument.[18] Unfortunately, this also applies to so close languages such as Czech and Slovak. Adding a Czech text to a Slovak form (and vice versa) will disrupt the unity of the text. Whether this will lead to a total disqualification of the instrument as a bill is a matter for further consideration. Petty and irrelevant linguistic diversions will perhaps be considered irrelevant by sensible judges.

In 2010, the Supreme Court[19] dealt with the validity of a bill which was written in the Czech language, the bill was for the „CHF" currency, and in words the currency was formulated in English – „swissfranks" (i.e with a grammatical mistake). The Supreme Court did not find the „CHF" designation problematic as it corresponded to the code for the Swiss franc in accordance with the ČSO ISO 4217 currency and fund codes issued in December of 2002, which is the Czech version of the International Standard ISO 4217:2001. However, the „swissfranks" designation in the bill written in Czech was refused by the court and the bill was declared invalid due to disruption of the linguistic unity. I do not agree with this decision. It is a pity that the court did not deal in more detail with the objection of the appellant who argued with the admissibility of multilingual bills (this objection was assessed by the court to be „legally irrelevant" because „it is not the case

[17] Except for a bill drawn in the Hebrew language or writing, cf. § 109 of this Act.
[18] The judgment of the Supreme Court, 29 Cdo 427/2009.
[19] Ibid.

where a continuous text of the bill was written in one language and in the same instrument there was a translation of the text into another language").

We intuitively attribute the same meaning to a data in English – it is a redundant informative wording like another text in a multilingual form. It is therefore a false multilingual bill where the recourse to the (bad) English language was redundant because the currency was already determined by the abbreviation „CHF". The term „swissfranks" could have been easily considered as legally irrelevant quirk of the drawer. We can only hope that the Czech courts will go in a different direction when dealing with false multilingual bills.

The negative conclusion of the Czech Supreme Court sharply contrasts with the benevolence of German or Austrian courts that also accept true multi-lingual bills. I use this term for such bills where the expressions in a foreign language are not a duplication (i.e. the translation of any of the information written in the language of the bill) but the only expression of the given data. The above mentioned case law in principle only insists on the bill having the text of the payment order and bill clauses in one language. Therefore a bill like this would be permissible: „At Oct 14, 1963 pay this Bill of exchange to the order auf eigene Siebzehntausend Deutsche Mark," although the clause to order is partly expressed in German and the date of drawing was indicated in the same language.[20]

An example of a more open approach to true multilingual bills of exchange may be the case where a German text was used in an otherwise Spanish-written bill. The German BGH[21] approved this bill on the grounds which may be of interest to Czech or Hungarian readers. The court mentioned in support of its opinion the views expressed at the Geneva Conference[22] according to which the Art. I, No. 1 and Art. 75 No. 1, requiring the bill clause to be written in the language in which the instrument was drawn up, were commonly understood in the way that it is the language match of the clause with the payment order or promise which is decisive. In the rest of the text the linguistic unity is not a prerequisite of a formally valid bill any more. A conclusion to the contrary would lead, according to the participants in the Geneva conference, to the revocation of a number of bills, which contradicts the needs of the business.

With regard to the above mentioned, one can only hope that the Czech Supreme Court will reconsider its overly strict practice in the future and when there appear in redundant data in another language in a Czech-written bill it will no longer conclude that the bill is invalid.

[20] Baumbach – Hefermehl – Casper, 2008, p. 113.
[21] The judgment of BGH from 7 December 1981, BGHZ 82, 200.
[22] Kupka, 1930, No. 18, p. 128, and p. 1177.

VII. BILLS PLACED TO CREDITORS

A big debate (which still continues) was caused in the Czech Republic by the question of how you can make the bill payable at the creditor's place. Reasons for choosing such a site are obvious, a bill payable at the headquarters of the creditor is very comfortable for him eliminating the difficulties and problems associated with the need to present or protest the bill in another place. Disputes are conducted on the admissibility of a circumlocutory indication of the place of payment by the words „at the headquarters of the creditor", „at the headquarters of the owner", „at the headquarters of the remitter", etc.

Generally, it is necessary to refuse such determination of the place of payment as it is contrary to the principle of unchangeability of the place of payment and is also against the principle of interpretation of bill statements only from the instrument itself. So if we interpret „at the headquarters of the creditor" in the way that it is any seat of any prospective creditor, or „at the headquarters of the remitter" that it means any (including the changed) seat of the first creditor, the instrument will not of course be a valid bill. In this respect, there is no fundamental difference between „payable at the creditor's place" or „payable at the remitter's place" – both cause uncertainty about whether the place of payment is to be changed and they must be rejected on principle.

However, there may be exceptions. The maturity identified by the words „at the headquarters of the remitter" may, under certain conditions, be accepted in a bill. It is certainly the case in a situation where the bill is payable at the headquarters of the remitter and at the same time this place is indicated in the same section (e.g. „payable at the headquarters of the remitter, Václavskénám. 1, Prague"). It is the detailed address indicated after or below the questionable expression or within the same section that clears all ambiguities and thus corrects everything; the expression „at the headquarters of remitter' is then actually redundant without making no harm.

A more complicated situation is where a clause (or its interpretation) tries to be connected with another location data in the bill. If it is possible, without any trouble, to find out the location from other details in the bill, one may interpret the data so that it refers to this particular place indicated in the bill. The place of payment is then the place indicated in another part of the bill (e.g. following the remitter) and this place then remains constant regardless of who the actual owner of the bill will be, or regardless of whether the remitter meanwhile changed his location. For example, there is given a specific seat of the remitter in the bill and in the box of the place of payment it is stated: „the seat of the remitter."

Approving such a bill is not a violation of the principle of unchangeability of the place of payment or of the principle of *quod non est in cambio non est in mundo.* The basis of a more benevolent approach is „only" in the willingness to interpret „at the seat of the remitter" within the context of the entire bill and the data in it. It is of course a question to what extent this „verbal abbreviation" is an artificial construct aimed at maintaining the validity of the bill – a construct that

tries not to see the efforts and willingness of the participants (impermissibly!) to localize the place of payment comfortably always to the current owner.[23]

While the lower courts take mainly a negative stand to the validity of bills with such locations, the Czech Supreme Court[24] in these situations courageously tends to take a more benevolent approach. In the given case the bill contained the following text: „I will pay for this promissory note, when being submitted, the amount of CZK 54,544 to the company E. L., s. r. o., the seat of the creditor being the place of payment." According to the court „if the bill bears an indication, certainly and understandably, of the creditor's seat and the information that the creditor's seat is the place where payment is to be made, the legal conclusion that the bill is invalid due to the vagueness of the place of payment cannot be upheld". One cannot draw only on the text according to which the creditor's seat is the place of payment without simultaneously taking into account that this seat is directly mentioned in the bill. The above mentioned decision can therefore be considered correct.

VIII. PROBLEMATIC DATA CONCERNING MATURITY

The Uniform Act on Bills of Exchange provides in Art. 33 an exhaustive list of options how to determine the maturity of a bill. The given enumeration of bill maturity options is a closed one. Other options than those listed in Art. I, § 33, Para. 1, are not permitted. Errors in determining the maturity of bills are relatively common in the Czech Republic, most often based on the use of the preposition „to". If a promissory note is payable within a certain period (e.g. by „30 June 2003") then it is invalid according to the Czech Supreme Court.[25]

According to the Czech case law, too precise data may also lead to invalidity of bills. Bills where the maturity is determined not only by a particular day but also by an hour („Pay on 24 December 2013 at 12.00") are therefore not admissible[26]. According to the High Court in Prague the smallest unit of time is, in accordance with the Act on Bills of Exchange and Cheques, a day and any more accurate determination of maturity (e.g. an hour) is inadmissible. These bills appear in practice quite often, being an understandable result of the common hypercorrection of lay persons when they draw bills. However, hour and minute details could also be taken as harmless informative data – this looser approach, more tolerant to the participants' mistakes, has not been established yet, unfortunately. The argument that „the smallest unit of time" is the day may well be used in favor of the bill validity.

[23] Kotásek, 2013, No. 65.
[24] In the judgments sp. zn. 29 Odo 1053/2004 and sp. zn. 29 Odo 232/2006.
[25] The judgment of the Supreme Court, 29 Cdo 3362/2010.
[26] Cf. the judgment of the Supreme Court in Prague, 5 Cmo13/1997.

The question is whether we can see a sign of turnover in the Supreme Court decision of 2011[27] in which the Court reviewed the validity of a bill with the following indication of the place of payment: „Brno, Rosická Street No. 1, first floor, door No. 1," which was immediately followed by the time determination „9.00-16.00". As for the detailed time determination the Supreme Court argued that if it is connected only to the place of payment (or domicile) therefore it has no other meaning than an informative one. The above mentioned decision is thus, rather than a diversion, the confirmation of a negative opinion on the bills of exchange with a more detailed (i.e. indicating hours or minutes) indication of maturity. As for hourly data indicating the maturity, the opinion of the Czech courts seems to be constant – bills with such details are not valid.

IX. INDICATING THE REMITTER

An indispensable requirement of each bill is an indication of the remitter, i.e. a person to whom or to whose order the money is to be paid. From that follows that it is impossible to draw a bill as a bearer security; bills where the drawer orders the drawee to pay „to the owner thereof" or „to the payee" are not inadmissible. As the law insists on indicating the name of the transferee it is excluded the possibility in the Geneva Law of Bills that the bill should take the form of a bearer security.[28]

If an indication of the creditor is missing, the instrument cannot be regarded a bill, while the remitter cannot be alternatively found out in the first endorsement of the bill. The German case law is quite broadminded in this respect as it is exactly the way in which it determines the missing remitter in bills of exchange to order of the drawer himself[29] – provided the first endorsement was undoubtedly the first one, of course. According to the German case law this is apparent e.g. when the first endorsement is at the top and there is no space between this and the edgeof the document.

This concept can be called, with an exaggeration, „geometric naivety". The fact that there is no space in front of the first endorsement does not mean that it was really the first one. In particular, however, the endorsement is not part of the basic text of the bill and therefore it cannot be used for patching the missing data in it.

Disputes in the Czech Republic traditionally arise in the case of bills with an alternative clause to bearer, such as "Pay to Mr. Karel Nový or to the owner". The German and Austrian case law (in the past as well as at present) recognize these

[27] Cf. the judgment of the Supreme Court, 29 Cdo 2162/2010.
[28] A different situation is e.g. with checks – cf. Art. II, § 5, Para. 1, Sub-para. c), or in the Anglo-American law on bills of exchange where "bills to bearer" are common [§ 3–104 (a) UCC].
[29] The judgment of the German BGH *WM 1977, 1376*, 1377. Also Baumbach – Hefermehl – Casper, 2008, p. 113.

bills valid sincethey take the clause „or to the owner" as a variant of the clause „to order", i.e. as a harmless expression of transferability of the bill.[30]

In it not surprising that Czech courts take the opposite, stricter, attitude, which can be documented by a decision of the High Court in Prague: „A clause „or to the payee" put after the name of the remitter in the bill causes absolute nullity of such a bill due to its vagueness."[31]

In any case, I consider bills with the clause „possibly to another proper assignee of the bill" after an indication of the remitter valid; the clause only says that the bill is transferable (the phrase „or to his order" after the name of the remitter has the same effect). A clause such as „or to the owner" could then be assessed in the same manner.

X. THE CONCLUSION

The above mentioned cases show that an interpretation based on the idea of „formal rigor", according to which the interpretation of the data in the bill is to be (or at least could be) stricter and more rigid than it is in conventional legal acts, can easily result in absurd and funny conclusions. If we really should take formal requirements for bills „strictly" it would need a more convincing argumentation than just repeating the mantra of rigor cambialis or applying it automatically.

When interpreting the bill statements one should take into account their overall context and their typical meaning. An interpretation is to be done in principle objectively from the view of the potential acquirer of the bill. It should not, for its own sake, „punish" small formal errors or deficiencies which can be, with a little good will, resolved by preferring the bill validity (if it is not inconsistent with its nature of course).

The Czech courts only start to deviate gradually from the formalist „dances" of the past two decades. One can only hope that most of the decisions presented above will become a remembrance to the fact that „rigor cambialis" concerning formal requirements of bills was not an appropriate metaphor for the characteristics of the bills but a confusing and unclear term that could justify even the most absurd conclusions.

[30] Kapfer, 1969, p. 39; Stranz, 1952, p. 50.
[31] The High Court in Prague, 9 Cmo 240/97.

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