The stability of commercial transactions is essential in the context of contemporary commercial relations, since it is a guarantee for execution of undertaken rights and obligations. Therefore, from a legal point of view, a valid transaction ensures full compliance with the requirements of applicable law. In this regard, the issue of invalidity of commercial transactions is relevant both from a theoretical and from a practical perspective. This determines the author’s scientific interest in the examination of basic laws which govern said legal phenomenon.

The object of study in this article is the invalidity of commercial transactions, following the system of commercial legislation. The main aim of the author is to analyze the legislation and to draw scientific conclusions that can be applied in the interpretation of legislation.

Invalidity as a legal phenomenon is the subject of theoretical research in civil law, which regulates its four forms – nullity, voidability, relative and pending invalidity. The grounds for invalidity are subject to the casuistic rules set out in Art. 26 and 27 of the OCA. A basic requirement for invalidity is the presence of a “deficiency”/defect/, constituting a violation of the law, as a result of which a transaction is not able to produce the effect desired by the parties. The existence of fault or damages to a legal entity is irrelevant from a legal point of view.

With the adoption of the special commercial legislation the specific grounds for invalidity were also regulated, corresponding to the characteristics of public relations in the commercial area. In principle, they concern various types of commercial transactions, not just contracts. The grounds stipulated in the CA should also consider the characteristics of the specific transaction in view of its type. It should be emphasized that in the absence of a special law, the civil law is a subsidiary source of commercial law by virtue of an express provision in Art. 288 of the Act. Therefore, the types of invalidity governed by the OCA concern also commercial transactions, which in practice are most often treated as null and void.

The specific grounds for invalidity in the CA relate to commercial transactions, statements of the parties and their form of objectification. According to Art. 293, para. 2 of the CA when the will, related to the conclusion, performance or termination of the commercial transaction has not been expressed in the required form, it is considered void. The rule is further developed in Art. 293, para. 3 of the Commercial Act, under

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2 Obligations and Contracts Act.
3 Tadjer, B., citation, Writings, p. 237.
4 Commercial Act.
which, if the other party has received a verbal declaration of intent, but has not challenged its validity, it cannot refer to the invalidity of the transaction at a later time. In theoretical aspect it is assumed that a party’s lack of reaction is a sign of approval of the transaction.

The basic theoretical rule applying specifically on contracts as a form of bilateral transactions is that there are at least two opposite wills, which coincide on the essential terms of the transaction. Under the civil law, the lack of stated will on the essential terms of a contract means a lack of a deal. The Commercial Act contains a significant variation with respect to commercial sale contracts. The lack of stated will on the transaction price, regardless of its announcement as an essential condition, does not make the transaction null. There is a partial invalidity of the contract, where the missing clause is replaced by a mandatory legal provision. An irrefutable presumption has been introduced under which it is assumed that the contract is concluded at a “regular price.” As can be seen from the legal definition, this is the price usually paid under similar and usual circumstances for the same amount and type of goods. The variation from the general regime of invalidity of transactions has been introduced in order to ensure speed and reliability of sales in trade relations.

In some cases the CA provides for a mixed factual composition of the transaction, consisting of two elements: civil and administrative law. The civil element includes the requirement that the parties express their will, respectively consent on the contracts, while the administrative element is expressed in the requirement of authorization or approval by a public authority. According to Art. 295, Paragraph 1 of the Commercial Act a transaction shall take effect provided that said authorization or approval is granted. On these grounds, the legal theory defines the authorization /approval/ as statements of will determining the legal effect of the transaction. The statement of will of the public authority is not independent but is layered onto the wills of the parties. Pending the said statement of will we are faced with an incomplete factual composition, which is a ground for initial nullity of the transaction, with the result that it is unable to produce the effect desired by the parties. Our case law has accepted that if there is a need for authorization of the transaction, the trader has two alternative options. On the one hand there is the right to accept the conditions related to the authorization or to deny its conclusion in case the requirements are unacceptable. One of the most common hypotheses for granting authorization is in relation to the powers of the Competition Protection Commission granted to it pursuant to a separate law, when there is a sale of companies or equity that can result in monopolies on the market.

The Commercial Act does not contain a provision on the timing of a public authority’s statement of will, on which the transaction is dependent. Formal logic determines the conclusion that the authorization precedes the conclusion of the

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6 Nedelcheva, B., Sukareva, Zl., Karanikolov L., F. Rachev. A brief course on commercial law. UNWE, S., 2002
7 This is a formal lack of consent which under art. 26 of the OCA is grounds for nullity
9 In this sense Ruling No. 135/14.11.2000 of the Competition Protection Commission
transaction, while the approval is granted when there is agreement between the contracting parties. According to our legal practice concerning such authorization it should be assumed that it is enough that the authorization exists as at the date of the transaction. The essential thing in this case is that the authorization relates to the specific disposition transaction, individualized by subject and parties. The situation is similar in case of confirmation of the transaction by a third party, pursuant to Art. 296 para. 1 of the Commercial Act. The main difference from transacting with a requirement for authorization or approval lies in the capacity of the third party. It is the subject of our private law rather than of a civil or administrative body. Hence the second difference, namely the statement of will of a third party is civil in nature and does not contain the characteristics of an administrative act. The transaction concluded under the confirmation requirement falls under a suspensive condition. Until confirmation is given, the rights and obligations are pending. The transaction is in an indeterminate state until fulfilment of the condition, namely the confirmation of a third party. Nevertheless the transaction has an independent character and meets the requirements for a specific type of transaction. The statement of will of the third party is additional and it adds to the wills of the parties. From that point they form a whole, resulting in the occurrence of the legal effect. The deal binds the parties and creates a corresponding liability. The party which has undertaken to produce a result is legally obliged to inform the other party thereof. The notification term shall be three months, unless otherwise stated. After its expiry, the party which has not received confirmation of the result acquires the right to withdraw from the deal.

Commercial transactions are concluded in written form or otherwise, if provided by the law. This rule corresponds to the general provisions of the civil law. As a rule, commercial transactions are informal, in order to ensure fast trade. In some cases, the form is a condition so that the transaction has legal effect, e.g. a commercial agency contract, commercial sale and repurchase, sale of payment, promissory note, etc. The parties to commercial transactions are entitled to determine the form of the transaction between themselves, as long as they do not violate the mandatory legislation. In theory it is assumed that the eligibility of parties to determine the form of the transaction does not include the possibility to provide a “more streamlined form than the statutory”. In the presence of such a situation, the transaction should be treated as null and void.

There is no specific rule on the required form for amendments in commercial transactions. It is assumed in the case law that “when a certain form is required for a commercial transaction, it applies also to the amendments to it.” This rule should be shared also from a theoretical point of view, due to the explicit text in Art. 293 paragraph

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13 See Ruling on administrative case No. 37/99, ruled on 26 October 1999.
6 of the Commercial Act. It should be emphasized that the above-mentioned legal requirements relate to the form of the transaction in terms of its validity. The form that is necessary to prove the transaction is outside the set of problems, given the special rules in the CPC\textsuperscript{14}.

The Commercial Act considers the written form within a wider content. It comprises not only the need for a written document/contract, title deed/ that objectifies the statements of the parties, but also cases where the statement is technically recorded in a way that can be reproduced. In statements made by fax or telex, the written form is fulfilled, if the books and documents that reflect the performance of these devices exclude the incorrect reproduction of the statement. The main civil rule is that in the absence of the required form of the transaction, it qualifies as null and for that reason it does not give rise to a legal effect. The rule is mandatory according to the express provision of Art. 26, para. 2 of the OCA. By way of derogation of the above decision, the CA provides for inadmissibility of the claim by a party to refer to the nullity of the transaction if it can be concluded that the party has not challenged the validity of the statement / Art. 293, paragraph 3 of the CA/. The exemption applies to transactions whose subject are rights in rem over immovable property. Such transactions are subject to the civil law, with a view of the protection of property rights. Therefore, the consequences of failure to comply with the form of the transactions are determined by its subject matter. On this basis, the CA regulates the relations concerning commercial transactions relating to movable property – goods, while the OCA governs commercial transactions relating to real estate property. Concerning the commercial nature the presumption laid down in Art. 286, paragraph 3 of the Commercial Act should be accounted for, which reflects also on the law applicable to a particular transaction\textsuperscript{15}. As concerns the admissibility of remedying a commercial transaction through its execution, the answer is not unequivocal. It is assumed that the performance under a void contract does not remedy the missing required form, pursuant to Art. 26 of the OCA, except in the case of Art. 293, para. 3 of the CA\textsuperscript{16}. Under our civil law, a transaction concluded without representative powers or by exceeding them has no legal effect unless it is confirmed/ratified/ by the principal. In civil relations the legal consequence is pending invalidity, and in exceptional cases the transaction can be remedied with an additional statement of will by the misrepresented person. Relations in commercial law are regulated in a different way. According to Art. 301 of the Commercial Act, in such cases the transaction is valid unless the implicitly represented trader rejects it immediately after becoming aware of it. It is assumed that the lack of opposition by the trader amounts to a tacit acknowledgment of the contract\textsuperscript{17}. With a

\textsuperscript{14} Civil Procedure Code.

\textsuperscript{15} See Ruling No.1039 dated 31.10.2008 under civil case No.2625/2007, G.K., 3rd civil department of the Supreme Court of Cassation.

\textsuperscript{16} See Ruling dated 05.06.2007 under administrative case No. 83/2006 of the Court of Arbitration at the Bulgarian Chamber of Industry and Commerce. Published in the Book “Case law of the Court of Arbitration at the Bulgarian Chamber of Industry and Commerce 2006 – 2007.”

\textsuperscript{17} See Ruling No.34 dated 22.02.2010 under business case No.588/2009, 2nd business department of the Supreme Court of Cassation.
view of legal safety and the protection of the transactions, the law requires the active opposition by the misrepresented trader expressed “immediately”, namely “within a reasonable period”. Opposition to perform legal acts without representative powers upon submission of a claim is not equivalent to the requirement that the opposition is expressed “immediately upon becoming aware “pursuant to Art. 301 of the CA. The judicial practice in the country is also in this line and by its virtue the presumption of implied consent of the trader with a transaction concluded without representative powers has been provided for under Art. 301 of the Commercial Act. Unlike our civil law, where in the absence of representative powers or in case of exceeding them there is pending invalidity of the transaction /Art. 42 of OCA/ until the express confirmation by the misrepresented person, in commercial transactions inaction and silence are presumed consent of will for confirmation. In commercial transactions there is also a pending nullity, but it exists up to the time of becoming aware and the lack of opposition by the trader on whose behalf the transaction was concluded without representative powers. The legislator has bound this immediate opposition with the moment of becoming aware of the conclusion of the transaction.

More different is the treatment of “strict necessity” as grounds for invalidation of contracts, according to Art. 297 of the CA. In legal theory this concept is interpreted as the occurrence of adverse circumstances, most often a lack of money, forcing one party to sign the contract. Thus, the conditions under which a contract is concluded are significantly different from normal and customary conditions. In civil relations these grounds aim to restore the equivalence in relations between the parties on the principle of justice. Therefore, claims on these grounds are allowed within 1 year of becoming aware. In commercial relations where both parties are traders, the scope of these grounds is excluded. Only in case the commercial transaction is of the unilateral kind, the party that is not a trader is eligible for invalidation of the transaction under the civil law.

In conclusion, the following conclusions can be drawn from the comparison between the different grounds for the invalidity of commercial transactions and the arrangements in our civil law.

Firstly, on the one hand, invalid commercial transactions are in the category of voidable transactions. Their rehabilitation is allowed in the absence of opposition from the party that has the right to make the transaction void.

Secondly, the grounds for invalidity of transactions provided for in the OCA, retain their legal significance also for commercial transactions in the part where there is no special legislation.

Thirdly, the consequences of nullity are determined by the subject of the contract and / or the nature of the transaction: unilateral or bilateral. Basically it should be borne in mind that deals related to real estate property are protected by the legal

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19 The content that is inferred in the unilateral transaction within the meaning of the specific division of the Commercial Act is in case that only one party has business capacity.
provisions and on these grounds they are also formal, according to the commercial legislation.

Fourthly, the legal consequences of an invalid deal or a deal made void according to the legal provisions are identical and similar, like in civil transactions.

In summary of the above the author assumes that the application of the general civil law in the matter concerning the invalidity of commercial transactions is the dominant source of regulating the problem areas. The Commercial Act stipulates certain specific grounds which take precedence when referring to a particular type of transaction /commercial sale/ or in situations in which the conclusion, respectively, the form of a transaction deviates from the general civil law.

NULLITY OF COMMERCIAL TRANSACTIONS

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Abstract

In the article there is discussed the issue of the nullity of commercial transactions by contrasting it with the general principles in accordance with civil legislation. There are analyzed the special hypotheses according to the Commercial Law and are pointed out their specific consequences.

The main conclusion is in the qualification of the invalid commercial transactions of the category of voidable type of transactions. On these grounds there is the legal opportunity for their revitalisation. As regards the legal consequences there is the universal application of the general rules of law also with respect to commercial transactions that have been declared invalid.

*Keywords*: commercial transactions, nullity, voidability.