1 Introduction

The current increase in international shipments and the consequential number of lawsuits and decisions highlights the need for the knowledge of traffic rights of the Contracting States of the performed transport. The increasing number of different bodies involved in the international transport (carriers, consignors, intermodal transport operators, logistics companies etc.) increases the risk of entitlement/non-entitlement to claim compensation for damage in the given country.

From this can be assumed that liability arises simultaneously with the arising of liability, which is the case of taking something for transport.

For the purposes of transport it is true that liability is a sanction for the breach of liability or for the rise of legally important facts which the damage is connected with. The threat of sanctions can be considered as a potential liability phase, meaning a certain possibility of sanctions.

Efficient use of the rules determining the liability of carriers is the basis of traffic right. The liability of carriers for damage, loss, failure to comply with delivery period is a problem not only in terms of the particular consignee but the carriers themselves.

Analyzing international transport legislation is primarily needed to determine the risks which can be addressed in general, regardless of the specifications of the different national legal systems and transport types.

It is necessary to analyze in particular [1], [2]:

- The extent of the carrier's liability for the loss or damage of goods from the time of taking the goods to the place of delivery.
- In case that the arisen liability is non-absolute, what requirements must be fulfilled so that the operator is exempt from liability.
- The extent of service provided for liability within the context of liability relations. Is it the obligation of full compensation for the damages or does compensation obligations have to be limited.
• Determination of the procedural aspects, rules or the determination of the law which the accusation for such breach of a contractual obligation is subject to.
• Defense possibilities.
• Limitation period.
• Determination of who will bear the burden of proof.

Prior to the analysis, it is necessary to give the individual international agreements and conventions in force applied in international transport, which are [2-4]:

• rail transport - Bern Convention, the Warsaw Pact,
• road transport - CMR Convention,
• Water transport - the Hague Rules, the Hague - Visby Rules, Hamburg Rules, the rules of Rotterdam, CMNI,
• Air transport - Warsaw Convention, the Montreal conventions.

2 Analysis of the extent of liability of the carrier in the different types of transport

When evaluating the analyses it is necessary to take into account the effect of factors such as social justice and satisfaction, although to a lesser extent in freight transport than in passenger transport where the interest is in protecting the health and life of the transported passengers.

Due to specificities of business relations, contractual freedom and theoretical equality of contractors, prevalent in developing internationally acceptable unified version is the effort to find a certain equilibrium point in the environment antagonistic interests. These interests appear to exist only in the relation carrier - consignor, but in the background there are the interests of another important subject, which is the state. States have an eminent interest in a functioning system of freight transport and subsequently they benefit from these activities directly or indirectly (tolls, excise taxes, etc.). The costs for the transport of goods are the major expenditure items of carriers. The amount is ultimately reflected also in the consumer prices [1].

Based on the basic obligations of the carrier in the transport contract - the transport performed properly and in time, it can be concluded that the carrier is liable, if the transport is not executed properly, i.e. if the consignment is not delivered intact to the authorized consignee or if the deadline set for the transport is exceeded. Therefore we distinguish:
• liability for damage to the consignment,
• liability for exceeding the transportation time.

The specific character of the carrier’s liability lies in the fact that this liability is based on an objective principle. The carrier is liable for damage incurred from the moment of taking the consignment until the moment of delivering the consignment to the consignee. Thus, the carrier is responsible for the outcome of its activities. Liberating reasons to relieve the carrier from liability are [1], [3], [4]:

• force majeure, i.e. a circumstance which the carrier could not have avoided or overcome.
• damage caused by the consignor or consignee e.g. when loading, by poor fixation of goods or when unloading cargo,
• consignment error, error or unsuitability of the packaging,
• specific characteristics of the consignment (corrosion of metal, glass refraction, etc.).

If the carrier proves that the damage occurred at least for one of those reasons, he is exempted from liability for it. The legal calculation of liberating reasons is exhaustive, and therefore transport timetables cannot expand the liberating reasons.

The carrier compensates, if his liability is not excluded, only for the damages and only in cash. The carrier does not compensate for lost income. Consignees do not have the right to claim damages by restoring into the previous condition. If the carrier exceeds the transportation time, he is liable to the consignee with material sanctions. The carrier must pay the accounted material sanctions, regardless of whether the consignee suffered damage on the consignment or not.

The amount of the penalty is determined in the corresponding transport regulations. The carrier is also liable for other damages which occurred as a result of exceeding the transport time. The carrier, in such case, is liable for the damage even when the consignment arrived intact, but the recipient "suffered" other damage. The amount of such damage compensation is limited by the amount of carriage fees and the carrier may include the material sanctions which he had to pay for exceeding the transportation time.
3 Claiming of rights of the consignee from the transport contract

Specificity in the claiming of rights from the transport contract is the obligation to claim rights at the carrier concerned. The consignee cannot claim his right at the arbitration without firstly claiming his rights at the carrier. The claim must be lodged in time, i.e. depending on the provisions of the transport regulations of the carrier. The claim must be accompanied by documents which are determined in the corresponding transport regulations. Original transport documents must be enclosed. If the carrier rejects the claim or meet the claims only partially, or if the carrier does not meet the complaint within the appointed time, the consignee may address his claims to the commerce arbitration.

3.1 Liability of contracting parties in railway transport

In case of total or partial loss of goods, the carrier is without further compensation obliged to pay compensation, which is calculated according to prices on the stock exchange or according to the market prices, if neither is available, then according to the general value of the goods of the same kind and quality at the day and place of taking the goods for transport. The maximum amount of compensation is 17 SDR per kilogram of gross weight.

The value of the consignment is determined by the stock exchange price, if there is no stock market price, then according to the current market price and if there is neither the stock exchange price nor the current market price, then according to the general value of the goods of the same kind and quality [3], [4].

In case of loss of a railway vehicle, an intermodal transport unit or their parts transported on own wheels, the maximum compensation without further compensation, is the average value of the vehicle, intermodal transport unit or its parts at the day and place of loss. If the day and place of loss cannot be determined, the maximum compensation is the amount of the day and place of receiving.

The carrier also pays the carriage fees, customs duty and other costs paid in connection with the transport of the consignment which has been lost, except for excise duties for goods transported with tax exemption.

The carrier cannot refer to the limitation of liability if it is not proven that the loss in the circumstances of the case are not due to causes which were decisive for the permitted values.

When transporting multiple pieces of goods on one waybill, the loss is calculated for each piece of the consignment separately, if their weight in the waybill is stated separately or if it can be ascertained otherwise. In case of the total loss of the goods or
the loss of individual parts, when calculating the amount of compensation no reductions due to the loss of the goods is taken into account [3-5].

In case of damage caused by exceeding the transport time, including defects, the carrier is obliged to pay compensation, which may not exceed the quadruple of the carriage fees.

3.2 Liability of contracting parties in road transport

The carrier in accordance with the provisions of the CMR Convention is obliged to pay compensation for total or partial loss of the consignment incurred from the moment of taking the consignment for transport to the moment of its delivery. The compensation shall be calculated from the value of the consignment at the place and time of its acceptance for transportation. The value of the consignment is determined by the stock exchange price, if there is no stock market price, then according to the current market price and if there is neither the stock exchange price nor the current market price, then according to the general value of the goods of the same kind and quality. The CMR Convention contains the detailed provisions for the definition of the carrier's liability that are in some respects very different from the provisions of the carrier's liability in the national legal provisions. The CMR Convention provides that the compensation shall not exceed the determined amount per kilogram of missing gross weight. In the original version of the CMR Convention the carrier's liability was depending on the value of the gold franc. The approval of the Protocol to the Convention on the Contract for the International Carriage of Goods by Road modifying Article 23 and its subsequent ratification (possibility of ratification since 1978) resulted in a significant reduction of the liability of carriers in the contracting country, because the gold franc is replaced by the unit of Special Drawing Rights (SDR) [1], [5], [6].

It can be therefore assumed that according to the CMR Convention an international carrier is obliged to compensate the owner of the goods transported for each kilogram of destroyed, damaged or lost goods by the amount of 8.33 SDR, i.e. based on the exchange rate of the SDR and EUR. In addition he must pay for the freight fees, customs fees and other expenses associated with the transport of the consignment.

3.3 Liability of contracting parties in water transport

In connection with the liability of the contracting parties – the carrier and the consignee - it is necessary to state that [1], [6-8]:

- the carrier is liable for:
  - the vessel’s call for loading,
The consignee is liable for:

- proper informing of the carrier about the type and characteristics of the cargo intended for transportation,
- timely delivery of cargo to be transported.

If the vessel is called by the carrier for loading with a delay of more than 8 days, he shall pay to the consignee the actual costs for the period of the storage of goods (except for 2 days) to a maximum of 1% of transport fees per day. The consignee/sender after 8 days from the agreed date of the vessel’s call has the right to terminate the transport contract.

If the carrier fails to deliver the cargo within 8 days after the agreed date or delivers the cargo in a smaller quantity (volume) as agreed in the order for carriage, the carrier has the right to terminate the contract of carriage (refuse the carriage), and claim from the carrier a penalty of 50% of the value of the transport fees for the entire undelivered amount or claim a penalty for the delay of the vessel.

If the consignee informs the carrier at least 10 days before the agreed date of delivery that he is not able to meet the deadline, the penalty will be reduced by one third.

The consignee is relieved from the liability of paying the penalty as above mentioned if [1], [2]:

- the originally determined cargo to be transported in the same port and date was replaced by another cargo without affecting the contract value of the transport fees, additional costs and maintaining the suitability of the called vessel to carry this type of replaced cargo,
- the originally determined cargo to transport in the same port and date the consignee based on the consent of the carrier is replaced by another cargo and another port in the direction of the original voyage, without affecting the contract value of the transport fees and the date of transport.

The carrier is responsible for the timely and proper delivery of cargo from the port of departure to the port of destination in accordance with the delivery terms.

The carrier is responsible for the taken cargo to transport, from the moment of taking the cargo on the ship (loading) and ends at the moment the cargo is delivered by the vessels (unloading), what shall be confirmed by filling in a corresponding form.
The carrier is liable for the accepted or delivered cargo from the moment of taking the cargo from the warehouse and ends at the moment the cargo is delivered to the warehouse, what shall be confirmed on a corresponding warehouse document.

The carrier is liable for damage caused by the loss or damage of the freight within the scope of its actual value. The value of consignment shall be determined according to the data from the tax document (invoice) of the consignee.

The carrier is liable for the damage caused by the loss, damage or destruction of the cargo, if it was caused by the following obstacles that could be prevented [1], [3-5]:

- natural disasters (force majeure), other imminent danger and unforeseeable circumstances on the Danube (earthquake, dense fog, floating ice, low or high water level etc.),
- measures and regulation of state and administration authorities (arrest, detention, quarantine etc.),
- acts of war and other violent actions (diversity, mutiny, piracy, terrorism, etc.),
- organized activity of workers and employees (strike, passive resistance etc.),
- negligent or intentional action of the consignee,
- hidden defects,
- natural feature of the freight to lose its original properties (oxidation, corrosion, temperature effects etc.) or the destruction of the cargo caused by rodents, insects and the like.
- natural loss of freight,
- damage to the cargo at the time of loading / unloading carried out by the own means of the consignee.

The carrier is not liable for the incomplete, damaged or deteriorated cargo if the recipient does not prove the fault of the carrier in cases where [1], [3]:

- the cargo was transported to the port of unloading with intact seals of the consignor / consignee on cargo compartments, seals of another company authorized by the consignor/consignee, seals of a neutral competent organization authorized by the carrier, seals of the customs authorities or seals of border customs authorities,
- when the original seals have been broken in border inspection of the vessel during the voyage,
the cargo was properly (solid) delivered with an intact container, with no apparent sign of opening during the transport,

transported cargo was accompanied.

If the consignee does not inform the carrier about dangerous characteristics of the cargo or if the cargo was handed over with giving a false name and the carrier at the time of takeover had no opportunity to verify the characteristics of such a cargo and in case of circumstances of the endangerment of the ship, other cargo or passengers, the carrier may unload the cargo at any time, dispose of or destroy without paying compensation and transferring all costs to the consignee.

If dangerous characteristics of the cargo are detected prior to loading of the vessel, the carrier has the right to refuse to take such cargo and claim compensation. If dangerous characteristics of the cargo are detected during transport or unloading with its subsequent destruction or disposal, the consignor/consignee shall pay the carrier the full value of the transport fees, including compensation for the unloading, destruction or disposal of the cargo.

### 3.4 Liability of the contracting parties in air transport

The maximum compensation (damage, loss of goods or delay) by the air carrier is 17 SDR per 1 kg gross weight. Unless the consignor has made, when handing the goods over to the carrier, a special declaration of interest in delivering the goods at the place of destination and has paid an additional amount if the case requires to do so. In this case, the carrier will be obliged to pay an amount not exceeding the declared amount, unless he proves that this amount is greater than the consignor's actual interest in the delivery at the place of destination [1], [6], [7].

### 3.5 Liability of the contracting parties in the sea transport

The UN Convention on Contracts for the international carriage of goods (wholly or partly) by sea - Rotterdam Rules determine the responsibility primarily of the carrier for the transportation of cargo. The time of the carrier’s liability begins from the moment the carrier or the performing party takes the cargo for transportation and ends at the moment the cargo is delivered to the consignee. To determine the amount of compensation in case of loss or damage of the cargo, decisive is the value of the cargo at the place and time of delivery.

The value of the cargo depends on the stock exchange value, if the cargo (goods) does not have a stock exchange value, then on its market value, and if none of these values can be identified, the value of the cargo is the general value of the goods of the same kind and quality at the place of delivery.
In case of delay, the entitlement to compensation ceases, if no claim was addressed due to the late delivery of the cargo within 21 days from the date of delivery of the cargo. If complaints are applied in relation to the performing party that has delivered the cargo, it has the same effect as if it was applied to the carrier himself. This also applies in reverse. The scope of the carrier's liability is limited by this Convention, to 875 SDR per transported unit or 3 SDR per kilogram of gross weight depending on which amount is higher.

The carrier has the possibility to agree with the consignor a higher liability limit, the consignee also has the right to declare in the transport contract a higher value of the consignment.

The carrier's liability for loss due to delayed delivery of the cargo is limited to 2.5 times the transport fees.

3.6 Liability of the carrier in the FIATA FBL

FIATA FBL (FIATA B/L) is the most significant and elaborate transport document. FIATA FBL as a bill of lading enables the delivery of the transported cargo if the original of the bill of lading is presented. FIATA FBL can be issued as a document transferable, as well as a document non-transferable. FIATA FBL is negotiable if not labeled "nonnegotiable". It may be issued as a marine bill of lading (B/L). In terms of time the consignor’s liability determined within the section between the takeover and delivery of the consignment. FIATA FBL terms precisely define the conditions for the liability of the shipper.

If the consignor issues the FIATA FBL document, he is fully liable for the performance of the transport, the so-called limited liability of the carrier, as determined by the corresponding international convention or according to the mandatory provisions of the particular law of the country where the bill of lading was issued.

The unusual form of liability of the consignor is based on the "UNCTAD/ICC Rules for Multimodal Transport Documents" issued by the International Chamber of Commerce ICC. If the multimodal transport involves water transport, the consignor pays compensation to the consignment of 2 SDR per kg gross weight up to a maximum of 666.67 SDR per package or transport unit in case of loss or damage. However, if the multimodal transport is not performed also by water transport, the compensation paid by the consignor is set at 8.33 SDR per kilogram of gross weight. If it is possible to precisely determine the starting point of the damage or loss of the consignment in the given state, the consignor’s liability and compensation for damage
is determined by the national or international law, applicable to the given type of transport [1].

If the contracting parties expressly stated in the contract, the consignor as the issuer of the FIATA FBL document may also be liable for an eventual delay in delivery of the consignee. The maximum limit of this liability is then up to twice the total amount of the multimodal transport fees.

The summary of compensation in international transport according to the transport type in accordance with international conventions in force is shown in Table No. 1.

Tab. 1 The summary of compensation in international transport according to the transport type in accordance with international conventions in force

<table>
<thead>
<tr>
<th>Sea transport</th>
<th>River transport</th>
<th>Road transport</th>
<th>Rail transport</th>
<th>Air transport</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Hague - Visby Rules</td>
<td>the Hague Rules</td>
<td>the rules of Rotterdam</td>
<td>CMNI</td>
<td>COTIF/CIM</td>
</tr>
<tr>
<td>2 SDR/kg or maximum 667 SDR pcs</td>
<td>2,5 SDR/kg or 835 SDR pcs</td>
<td>875 SDR consignment or 3 SDR/kg</td>
<td>666,67 SDR/pcs or 2 SDR/kg or 1500 + 25000 container/volume</td>
<td>8,33 SDR/kg</td>
</tr>
</tbody>
</table>

Source: [1]

Recommendations for international carriers based on the analysis [1], [8-10]:

- require from the consignor a written order of transport,
- ensure a "perfect" condition of the vehicle,
- insist on the completeness of the waybill by the consignor,
- comprehensive verification of the cooperating carriers on the transport,
- careful inspection of the consignment during loading (possible photo documentation)
- determination of contractual penalties beyond international conventions in the transport contract,
- definition of the claims when providing special transport,
- use the possibilities of insurance protection,
- in case of litigation solving it out of court.
4 Conclusion

Effects of globalization, which significantly affect international relations, trade and transport as well is becoming an important element of a comprehensive system of international business, meeting the needs of entities of the transport market. It is essential to distinguish between the extent of damages and entitlement to damages. Extent of damages may be limited while maintaining a corrective fair trade and good manners, and such entitlement to damages in the specified extend cannot be waived.

References


Resume

The current increase in international shipments and the consequential number of lawsuits and decisions highlights the need for the knowledge of traffic rights of the Contracting States of the performed transport. The increasing number of different bodies involved in the international transport (carriers, consignors, intermodal transport operators, logistics companies etc.) increases the risk of entitlement/non-entitlement to claim compensation for damage in the given country.

Key words

International transport, liability, carrier

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