LIABILITY OF THE CARRIER IN THE TRANSPORT CONTRACT

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Abstract: *The development of modern society is inconceivable without the activity of transporters, which has increased greatly in recent years. It was even said that there was the notion or even the phenomenon of mega transporter, which was determined by the "globalization of production and the internationalization of trade (Botea, 2013, p.10)." The French lawyer Louis Josserand stated even in 1926 that transport is an indispensable element of life, offering the opportunity to know and perceive, to assimilate as much as possible from what human civilization provides us. The liability of the carrier for damages caused by his deed or the deed of other persons is based on a result obligation originating on the contract. Damage, alteration, degradation of goods by destruction, theft, fires, road accidents, delay of transport attract the carrier's liability and obligation to repair the damage. In addition, the liability is also borne in the case of non-performance of the transport, in which case the principle of the full reparation of the damage, that is, the loss suffered and the unfulfilled benefit is applicable. It is also possible to include in the transport contract a criminal clause establishing a conventional compensation that will be higher than the real value of the goods. In general, analysis of the carrier's liability is made in the light of the provisions of the Civil Code, the common law in the matter and the specific legislation of each type of transport. In addition, in the road transport, the provisions of the Geneva Convention on the International Carriage of Goods by Road were analyzed. With regard to the applicable law, in the provisions of the law on the implementation of the Civil Code, in this case art. 141 states that "the liability of the carrier is governed by the law in force at the time of the occurrence of the event which caused the damage, even if it was known by the passenger, the consignor or the consignee, as the case may be, after the entry into force of the Civil Code". There may also be limitations on carrier liability or exemptions from liability, which are stipulated in the Civil Code, yet the clauses that remove or reduce the liability established by law in the burden of the carrier are considered unwritten. The carrier's liability analysis is based on the provisions of the Civil Code, the common law in the field, and the Geneva Convention on the International Carriage of Goods by Road.*

Keywords: *liability; damage; alteration; deterioration; delay of transport; compensation.*

JEL classification: *K12; K15; K33.*

1. Introduction

Legal liability has a sanction or remedy purpose. In the contract of transport, the violation of obligations entails contractual, patrimonial liability. Tort liability is also not excluded. Tort liability may result from the breach of general obligations based on the professional status of the carrier (Stanciu, 2015, p. 88). For example, the carrier

has the obligation to accept any transport request because it is in a standing offer position to contract to the public. Art. 1958 par. 3 Civil Code: "The carrier providing his services to the public must transport any person requesting his services and any goods the transport of which is requested, unless he has a valid reason for refusal." Reasons for refusal would be: the transport of dangerous goods, no means of loading, and no seals on the loaded goods (Căpăţână, Stancu, 2002, pp. 201-202). The accidents committed by the carrier or his / her agents in carrying out the transport activity, which cause damage to third parties, are also related to the tort liability (Piperea, 2013, p. 45).
The provisions of the Civil Code on liability in general and the liability of the carrier, in particular, shall be supplemented by those of the special regulations of each type of transport (for example, the carrier's liability for domestic road freight transport is governed by the Civil Code by G.O. 27/2011 on Road Transport and the Convention on the Contract for the International Carriage of Goods by Road - CMR Convention. The international documents ratified by our country in the field of transport have priority over the provisions of the Civil Code).
Contractual liability occurs when a transport contract is concluded between the parties. The general terms of the carrier's contractual liability are: the illicit deed causing damages (action, omission), the degree of guilt (regardless of fault, wilful misconduct, negligence, the injured party will respond), the damage (material or moral), the causal link (the damage is the result of the unlawful deed). Contractual liability penalizes the harm to a contractual partner's claim, that is, the non-performance by the carrier of the obligation to which it is bound or the act of delaying the fulfilment of the result obligation, assumed upon the conclusion of the contract (Afrăsinie, comment on art. 1984, 2012, p. 348).
The liability of the carrier will arise for non-compliance with contractual obligations such as: he use of an improper means of transport, refused by the consignor (the sender), the omission of weighing when it is mandatory (e.g. in air transport), the non-insurance of the goods against the risk of evasion, the issue of the transport document to the consignor, observance of the order of dispatches, crossing of the pre-established route, preservation of the goods during transport, execution of the transport in due time, identification, approval of the consignee, release of the cargo and, where appropriate, unloading the goods (Piperea, 2013, pp. 31-34).
Art. 1984 of Civil Code provides that *"the carrier shall be liable for the damage caused by the total or partial loss of the goods, by alteration or deterioration, occurring during their transport, subject to the provisions of Art. 1959, as well as late delivery of goods."*
With regard to *total or partial loss, alteration or damage of goods,* liability arises because of the breach of the carrier's duty of care in respect of the goods transported (*the debtor of a determined individual asset is released by its surrender in the state in which it was at the time of the obligation - art. 1482 of Civil Code*). Liability will be involved during the execution of the shipment that is between the handover of the goods for carriage and the takeover by the consignee (the quantitative determination of the transported goods is made according to the same rules both for loading and unloading. If the seal was broken at the moment of arrival at the destination, the liability for the lack of quantity is attributed to the carrier) (C.A. Ploiești, sec. com. and cont. adm., dec. 481/2000, in R.D.C. no 5/2003, p. 210, Afrăsinie, comment on art. 1984, 2012, p. 351)

♦ Art. 1985 establishes that the damage is remedied by covering the actual value of lost property or lost parts of the goods carried. Consideration is given to the value of the goods at the place and time of handover. In practice, derogation from the principle of full reparation of the loss, i.e. the actual loss and the unrealized benefit, is introduced. The carrier will also reimburse the price of the transport or ancillary services and the transport costs, in proportion to the value of the lost goods (the value of the damage caused to the consignor due to the fault of the carrier is given by the actual amount of the lost product, as it would have been received from the sale of the product. However, it cannot include the excise duty on lost goods, not being possible to be claimed for a product that has not been sold, C.S.J. s. com., decision no 3232/2002, in R.R.D.A no 5/2003, pp. 107-108).
The parties may set in the carriage contract another value of the asset, in which case the indemnity shall be calculated in relation to it. As a penalty, if the real value of the item at the place and time of delivery is lower, the compensation is calculated in relation to that latter value. It is a civil sanction because the false declaration of value is not the offense of false statements, it may be considered as a crime of deception (Afrăsinie, comment on art. 1987, 2012, p. 352).
The alteration or deterioration of the goods entails liability of the carrier who will repair the damage also by reference to the real value of the goods. As in the case above, the carrier will also reimburse the cost of the carriage or ancillary services and the transport costs in proportion to the value of the lost goods.
The provisions of the CMR (Convention on the Contract for the International Carriage of Goods by Road - *Convention relative au contract de transport international de merchandises par route,* signed at Geneva on 19 May 1956, to which Romania has adhered by Decree 451 of 1972, available online: https://www.untrr.ro) are applied to road transports according to Art. 77 from G.O. 27/2011 on road transport (Official Gazette no 625 of 2 September 2011). The carrier shall be liable for the total or partial loss or damage resulting from the moment of receipt of the goods and the release as well as for the delay in release (Article 17 paragraph 1). When the carrier is charged with the compensation for the total or partial loss of the cargo, it is calculated by the value of the goods at the place and time of their receipt for transport. The value of the commodity is determined on the basis of the stock exchange rate, or in the absence of it on the basis of the current market price, or in the absence of both on the basis of the usual value of goods of the same kind and of the same quality. However, it is shown in art. 23 of the Convention, the compensation may not exceed 8,33 units of account per kilogram of gross weight missing (The unit of account refers to SDR, Special Drawing Rights, an International Monetary Fund currency, a monetary instrument with role of account and reserve, which is calculated on the basis of a currency basket consisting of the main currencies: US dollar, Japanese yen, British pound and Euro).
Both, the transport charge and the customs duty, as well as the other costs incurred shall be refunded, in full, in the case of total loss and, proportionate, in the case of partial loss. No other damages will be due.
The liability of the carrier may be aggravated when, in accordance with Article 26 of the CMR, it can, in return for a price supplement, set the amount due in the event of loss, damage or delay.
In the event of an accident, under the CMR Convention, the carrier pays the value of the cargo depreciation, but the compensation must not exceed the amount that would have been payable in the event of total loss, if the total execution was impaired

by the damage or the amount that should have been paid in the case of loss of the impaired part, if only a part of the expedition was damaged by damage.
Interest may also be claimed in the event of damage (Article 27 of the CMR). Their value is set at 5% per annum and flows from the day of the written complaint addressed to the carrier (or from the day of legal action if there is no claim).
It has been argued that if only a part of the cargo is damaged but there is a link between it and the rest of the cargo (for example damage to essential parts of an installation), the whole load is considered to be impaired. Compensation will be equal to the one that would be due to total expedition loss (Crauciuc, Manolache, 1990, p. 68).
It is ideal to determine what is the depreciated part of the commodity that is the subject of the shipment and whether the goods can be divided so that the affected part can be separated (Tănasă, available online: https://www.juridice.ro).
♦ *The delay in the delivery* of the goods refers to the arrival of the goods to the recipient after the term stipulated in the contract or the one stipulated in the special law. If they do not exist, reference is made to the practices of the parties and the applicable practices (Cotuțiu, 2014, p. 119.). These rules are found in the provisions of art. 1969 of Civil Code. Liability is committed objectively without the need for proof of the person's fault (Cotuțiu, 2016, p. 38). The carrier will be liable within the limits and conditions set by the special law.
The late arrival of goods to the consignee does not extinguish the right to compensation by deduction. The penalty of deferral applies only to shipments with qualitative deficiencies or degradation of goods (Piperea, 2013, p. 57).
Art. 23 point (5) of the CMR provides that "in the event of delay, if the person entitled shows that the delay results in damage, the carrier is liable to pay damages, which may not exceed the price of the carriage". Higher compensation may be claimed in the event of the declaration of the value of the goods or of a particular interest at handover. Thus, the consignor may state in the consignment note (it is the transport document issued by the consignor accompanying the cargo and proves the conclusion of the transport contract) against payment of a price supplement agreed by the parties of the contract of carriage, a value of the goods exceeding the limit of 8,33 units of account per kilogram.
According to art. 1992, "the carrier is also liable for the damage caused by the failure to carry out the transport or by exceeding the transport term". In practice, this is the legal basis on which a carrier who has not been present at upload cannot be required to pay the price difference which the recipient of the transport service would have to pay to another carrier for the provision of that transport service (Iacob-Anca, online, legeaz.net/noul-cod-civil/art-1990-agravarea-raspunderii-contractul-de-transport-de-bunuri-contractul-de-transport). Thus, the doctrine speaks outside of the liability causes showed above and the failure to transport. It is considered that the damage caused by the non-performance of the transport, being qualified as a result obligation, imputes the responsibility of the transporter, regardless of his fault (Baias, Chelaru, Constantinovici, Macovei, 2014, p. 1489, Cotuțiu, 2014, p. 120.). In this case, the principle of full reparation of the damage, that is the loss suffered and the unrealized benefit, would be applicable. If the carrier has collected the price of the carriage or its accessories, it will have to return them.
If the person entitled receives the goods without reservation, no further claims may be made against the carrier as a result of the partial loss, alteration or deterioration of the goods or for failure to observe the transport term. Moreover, the same

regulation stipulated by art. 1994 par. 2 states that "if the partial loss or alteration or deterioration could not be discovered upon receipt of the good, the entitled party may claim damages to the carrier even if the goods were unconditionally received. The damages may be claimed only if the person entitled has brought to the knowledge of the carrier the loss or alteration or deterioration as soon as it has been discovered, but not later than 5 days after receiving the goods, and for perishable goods or livestock, not later than 6 hours after their receipt." This deferral term applies to partial loss, alteration or deterioration, not applying as we have shown in the case of damage incurred due to delay.

♦Most authors agree with the possibility of inserting in a transport contract a criminal clause that would establish a conventional compensation, which will have a higher value than the real value of the goods. It is shown (Cotuțiu, 2014, p. 124.) that in this case there is no need to prove the extent of the damage and, moreover, will receive a compensation greater than the real value of the goods (Article 1541 of the Civil Code establishes the cases where the amount of the penalty may be reduced when the main obligation was partially enforced and that execution was profitable to the creditor or where the penalty is manifestly excessive in relation to the damage that could have been foreseen by the parties at the conclusion of the contract).

♦A special situation concerns the carrier's ability to refuse to transport documents, money, securities, jewellery or other valuable goods (this is a ground for refusal regulated by law, given the general presumption that the carrier providing its services to the public can only refuse the shipment for reasons of reasonable denial). "If, however, this type of transport is accepted, in the event of loss, deterioration or alteration, the carrier will only cover the declared value. If the goods have been declared differently or have a higher value, the carrier is relieved of any liability" (Article 1988 Civil Code). In practice, the right to compensation is lost if the consignor attempts to take advantage of the carrier's fault. In addition, it specifies that the compensation provided for by the special law cannot be exceeded under any circumstances. The benefit of the law given to the carrier will not apply if he acts with intent or gross negligence, regardless of the bad faith of the consignor (As well as remarked by Prof. Cotuţiu, 2016, p. 43, the legislature benefits the carrier in good faith in relation to the good faith consignor but prefers the bad faith consignor to the bad faith carrier).

By contrast, the CMR also states that the carrier is not entitled to prevail from the established limitations of compensation if the loss or damage has been caused by wilful misconduct or fault which is ascribable to him or his agents or to any person whose services he uses for the execution of the transport.

♦By reference to the mandate contract, the Civil Code (Article 1993) regulates the liability of the carrier for the collection of the repayments (the reimbursement is the delivery system for a commodity, according to which the consignee is obliged to pay the consignor the equivalent of the goods or the transport tax) with which the consignor has struck transport and for carrying out the customs operations (The commercial invoice, the transport documents according to the means of transport, the documents of the carriers and any additional documents requested shall be presented at the customs control of the documents.)

The carrier may be required to collect, in addition to the transport price and the equivalent of the incidental services and customs duties of import, export, transit or other charges that are necessary for the fulfilment of the principal obligation (Cotuțiu, 2016, p. 44). In the same sense, art. 1983 establishes the liability of the carrier to

the consignor and the previous carriers in the event of handing over the goods to the consignee without receiving the sums owed to him, to the previous carriers or to the consignor. “The carrier may also require the consignee to pay the sum the latter owed, recording the difference claimed by the carrier to a credit institution” (Article 1980, paragraph 2). If he fails to fulfil these obligations, the carrier shall also lose the right of regression. However, the carrier will still have the right to take action against the consignee, even if the latter has taken the goods carried.

♦The analysis of carrier liability also involves the case under Art. 1961 par. 3, relating to the transport document. “The carrier shall be liable to third parties for damages caused by the defects of the property, any omission, inadequacy or inaccuracy of the particulars in the transport document or additional documents”. In fact, in these cases there is a contractual liability of the consignor to the carrier, but to third parties the liability is assumed by the carrier (liability for the deed of another, which in fact benefits the third party who will directly incur the carrier, not having to make efforts to discover the consignor to take action against it). However, the latter has a right of recourse against the consignor.

The carrier is liable as a commissioner for the consequences of the missing or inaccurate use of the documents mentioned in the consignment note (delivered or accompanying). In this case, he will be liable for damages that will not exceed the amount in case of loss of goods (Article 11 of the CMR). Moreover, similar to the provisions of the Civil Code, art. 10 CMR establishes the consignor's responsibility towards the carrier for damage to persons, material or other goods as well as the expenses due to the defective packaging. However, the carrier is liable in this case if the defects were apparent or he knew them and did not make any reservations about it.

The carrier will also be liable if he does not execute the instructions regarding the dispatcher's disposal right (stopping the shipment, changing the consignee). Liability is against the person entitled to claim the damage caused by that fact.

2. Limitation of carrier liability. Exonerating Causes of Liability.

The carrier cannot exclude or limit his liability except in the cases stipulated by law, according to art. 1959 par. 1 Civil Code. The clause which removes or limits the liability established by law to the carrier is considered unwritten (the unwritten clauses are invalid).

However, *"the carrier shall not be liable if the total or partial loss or, as the case may be, the alteration or deterioration occurred due to:*

a) any facts relating to the loading or unloading of the property if that operation was carried out by the consignor or the consignee;

b) lack or defect of the packaging, if, considering the external aspect, it could not be observed after receiving the goods for transportation;

c) dispatch under inappropriate, inaccurate or incomplete name of goods excluded from transport or admitted to transport only under certain conditions, as well as the failure of the consignor to observe the safety measures provided for the latter;

d) facts related to the loading or unloading of the property, if this operation was done by the consignor or the consignee;

e) *natural events inherent in transport in open vehicles if, according to the provisions of the special law or the contract, the goods have to be transported in such way;*
f) *the nature of the goods being transported, if they expose them to loss or damage by crushing, breaking, rusting, spontaneous interior alteration and the like;*
g) *weight loss, whatever the distance travelled, if and to the extent that the goods carried are those which, by their very nature, suffer from such a loss;*
h) *the inherent danger of the transport of livestock;*
i) *the fact that the consignor's agent, who accompanies the goods during the transport, has not taken the necessary measures to ensure the preservation of the good;*
j) *any other circumstance stipulated by the special law".*

Changes in property due to, for example, depreciation related to their nature, death of animals during transportation, damage to perishable goods, damage to property due to packaging, exceed the carrier's duty of preservation, therefore the latter is exonerated from liability (if, due to the lack or defect of the package, the goods are wholly or partly lost or damaged, the carrier may be relieved of liability under the conditions of art. 1991 and 1995 Civil Code, Afrăsinie, 2012, comment on art.1966, p. 336).

The carrier is relieved of liability if it proves that the total or partial loss or alteration, the damage occurred due to an intentional or deliberate act by the consignor or the consignee, the instructions given by them, the force majeure or the deed of a third party for whom the carrier is not held liable (the "on my own risk" clause inserted by the shipper into the contract of carriage does not exempt the carrier from liability for the loss or destruction of the goods entrusted, since it is found that the loss or destruction in fact stemmed from the negligence of the carrier's agents, Cas, dec. 944/1927, M. Afrăsinie, comment on art. 1995, p. 355). With regard to the transport of dangerous goods, the carrier is relieved of liability in the event of damage caused by the carrier if the consignor gave them without informing the carrier of their nature (the transport of a dangerous cargo - ammonium nitrate, without notification to the driver and the provision of a specialized escort, is the fault of both the shipping and the producing company (the consignor) C.A. Galați, decision no 130/2008, online, www.portal.just.ro).

The act of a third party can lead to exoneration if it meets the characters of force majeure (e.g. theft of goods during transport does not relieve the carrier of liability because it is considered not to have taken all measures to prevent this event - the theft of goods does not relieve the responsible carrier, ICCJ, decision no 3197/10.11.2013, online, http://legeaz.net/spete-civil-iccj-2013/decizia-3197-2013).

If we bring into question the manufacturing defects of the means of transport used, even if they are not related to the carrier, he cannot invoke the defect because he has the obligation to check the technical parameters of operation at all times (Piperea, p. 56). Hidden defects relieve him of liability.

There is also exoneration of liability for the transport of valuables, jewellery, money, unless the carrier is informed of the nature and value of the goods.

The state of necessity removes the unlawful character of the act, but does not remove the liability of the carrier in its entirety, and it must cover the damage (Piperea, p. 49).

The transport activity may be prohibited or suspended by law (e.g. embargo), in which case the carrier is not liable.
Exceeding the term of delivery or unloading entails the obligation of the transport beneficiary to pay the immobilization duties (for example, to comply with customs formalities), even if it is not caused by his fault (Rusu, 2007, p. 149 - C.S.J, decision no 648/2000, Dreptul 7/2001, p. 16.).
In the chapter on carrier liability, the CMR determines that the carrier is relieved of liability if the loss, damage, delay has been caused by the fault of the person entitled to the cargo, an order of his own, a defect in the goods or circumstances that the carrier could not avoid and whose consequences could not prevent them.
However, the carrier cannot rely on his liability exoneration to release him or her, the failure of the vehicle or the fault of the person who rented the vehicle.
In addition, CMR stipulates in Art. 29 that the carrier cannot prevail on the provisions which relieve it or limit its liability if the damage is the result of the wilful misconduct or fault attributable to the carrier or its agents.
♦ In the case of *successive or combined shipments*, the action for damages may be directed, according to art. 1999 Civil Code, against the carrier who signed the contract of carriage or the last carrier (the successive shipment is performed by at least two successive carriers using the same mode of transport and in the combined transport a carrier or several successive carriers use different modes of transport). The liability can be interpreted as a joint liability. If, for example, the cargo damage can be accurately located on the route and the successive carriers are independent, the liability can be divisible (Piperea, p. 57).
Also in multimodal freight transport the liability is joint, but each carrier is liable according to the type of transport performed. Compensation will be paid in proportion to the due part of the contract of carriage. In the event that one of the carriers acts intentionally or gross negligence resulting in damage, it will bear all compensation.
Article 36 of CMR states that, in the case of transport by successive carriers under the same contract, the liability of road carriers shall be assumed for the entire carriage performed. The action for loss, damage or delay shall be brought against the first carrier, the last carrier or the carrier on whose route the damage incurred. The liable for the damage has a regression action against the other carriers (plus interest or expense incurred).
In the event of a carrier being prevented, the carrier may ask the consignor for instructions. If he does not receive any response, he can carry the goods to the consignee, even by modifying the itinerary. If the deed is not imputable to it, it is entitled to the consideration of the transportation according to art. 1971 par. 1 Civil Code. The consignor must be informed without delay of the transport. When dealing with the obstacle to transport, the Code no longer mentions the fortuitous case or force majeure. However, this could only be due to natural disasters, floods, snowfalls, seizures of merchandise, derailment, strikes and other such events that subsume the idea of fortuitous and force majeure as defined by art. 1351 Civil Code. (Afrăsinie, comment on art.1971 p. 340).

3. Aggravating the liability of the carrier's

The liability of the carrier may also be *aggravated* if he has acted with intentional intent or gross negligence. He will owe the damages, so that exemptions and limitations of liability will no longer apply. According to art. 1355 of the Civil Code, "it

is not possible to exclude or limit by unilateral conventions or acts the liability for the material damage caused to another by an act committed intentionally or by gross negligence".
At the litigation level, the carrier's fault is presumed. In the event of non-delivery or non-performance of the transport, the carrier is the one who has to be relieved of liability. However, the claiming creditor is required to provide evidence of his claims for the carrier's liability.
CMR also stipulates that the carrier has the burden of proof when it wants to prove that the damage occurred due to the fault of a person who has the right to dispose of the goods, a defect in the goods or other circumstances that he could not avoid or prevent.
♦ In passenger transport, the carrier liability is of a contractual nature. The duration of liability is limited by the moments when the passenger gets in the means of transport and leaves it. Like the transport of goods, the assumed obligation is one of the results. The passenger must be transported safely and undamaged to the destination. Thus, the carrier shall respond, unless it proves to be force majeure, the deed of a third party or the fault of the victim.
"The carrier is responsible for the death or injury of the bodily integrity or the health of the traveller" (Article 2004 Civil Code). When the injury is due to the fault of the carrier, the damages include the costs of treatment and transport plus the sums needed to compensate for the damage caused, for example for incapacity to work. In case of death, the carrier will cover the costs of funeral, transport of the body. He is also liable for the delay or damage caused by faulty transport. It is responsible for damages caused by its or its employees' health or the damage caused by the means of transport.
It is exonerated from liability if the damage is due even to the traveller who acted intentionally or with gross negligence. No liability will arise even when the damage is due to the traveller's state of health, the deed of a third party for which he is not held responsible or of the major force.
In this case either the clauses that remove or limit the liability of the carrier cannot be legally accepted.
The Romanian courts have, in recent times, paid compensation for the non-patrimonial damages suffered during the transport, on the grounds that the carrier has not fulfilled its obligation to guarantee the protection of passengers (Afrăsinie, comment on art. 2004, p. 359).
As regarding the luggage of travellers (suitcases, baby carriages, musical instruments, skis, caged animals, etc.), the liability of the carrier will be incurred unless the damage was caused by their defect, the fault of the traveller or the force majeure. The hand baggage has another regime with regard to the liability of the carrier, which will be engaged only if its intention or fault is proven.
The amount of the compensation is limited to the declared value or to the nature, their usual content and other such elements, according to the circumstances, if their value has not been declared.
The passenger or luggage carrier of successive or combined transport is liable for the death, injury of the passenger's bodily integrity or health, for the loss or damage of luggage or other property. The person liable is the carrier on whose route the death occurred.
Liability for the delay or interruption of the carriage shall only occur if the delay persists until the end of the entire shipment (Article 2006 paragraph 3 of the Civil

Code). The provisions of the Article 199 paragraph 3, mentioned above, also apply to this type of transport.

4. Conclusions

The liability of the carrier has a complex regulation, both at the level of our legislation and the international conventions to which Romania is a party.

The carrier, as the debtor of his contractual obligations, is protected by the Civil Code, as long as he has good faith. As we have seen, the legislation contains inclusive exonerating clauses or clauses limiting the carrier liability. The analysis of carrier liability must be made taking into account either both combined or multimodal transports, which can generally be qualified as joint liability. In passenger and luggage transport as well as in freight, the liability of the carrier is both contractual and tortuous.

In each type of transport, whether we are talking about road, air, sea, the Civil Code provisions, common law in the field, is supplemented with the provisions of the special laws.

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