Revista de Științe Politice. Revue des Sciences Politiques • No. 66 • 2020: 66 - 82

ORIGINAL PAPER

Some Considerations on the Effects of the Contract for the Carriage of Goods as Provided by the Romanian Civil Code

Sevastian Cercel[1)], Ștefan Scurtu[2)]

Abstract
The object of the carriage contract is the provision of services. Synallagmatic in nature, this contract gives rise to mutual and interdependent obligations for both contracting parties; as a result of the conclusion of the contract, the contracting parties become a creditor and a debtor at the same time. The obligation of the carrier to take the goods to the destination is considered the characteristic obligation of the carriage contract, according to which the contract is defined and qualified; the other obligations (to store the goods entrusted for carriage, to load or unload the goods, to ensure their protection, etc.) are accessory, being subordinated to the main obligation. The payment of the price of the carriage and of the accessory services provided by the carrier are due by the consignor and are paid upon delivery of the goods for the carriage, unless otherwise provided by contract or special law.

Keywords: *carrier; consignor; destination; characteristic obligation; accessory obligations; carriage of goods; payment of the price.*

[1)] *Professor, PhD, University of Craiova, Faculty of Law, Law Specialization, Academy of Juridical Sciences in Romania, Centre for Private Law Studies and Research, Phone: 040351177100, Email: sevastiancercel@yahoo.com.
**Professor, PhD, University of Craiova, Faculty of Law, Law Specialization, Centre for Private Law Studies and Research, Phone: 040351177100, Email: stefan_scurtu@yahoo.com.

1. The notion of effects of the civil juridical act

In the doctrine, in an attempt to define the effects of the civil juridical act, it was stated that "the effects of the civil juridical act are precisely the rights and obligations forming the content of the concrete civil legal relation whose source is that juridical act" (Beleiu, Pop, 1975: 356). In other words, "there is an identity between the content of the civil legal relation and the effects of the civil juridical act, in the sense that both refer to the rights and obligations of the parties" (Dogaru, Cercel, 2007: 155).

Therefore, while analyzing the effects of the contract for the carriage of goods, we take into account the rights and obligations that this contract gives rise to for the carriage contract participants. The contracting parties (ie the carrier and the consignor) and the consignee are considered to be carriage contract participants if the latter is a third party to the contract concluded between the carrier and the consignor. Traditionally, the rights and obligations of the participants in the contract for the carriage of goods are analyzed in the light of the three important moments of the performance of the carriage contract: the dispatch of the goods, their movement to the destination, and the arrival of the goods at the destination. These rights and obligations can be divided as follows: a) rights and obligations of the consignor; b) rights and obligations of the carrier; c) rights and obligations of the consignee. We will focus on the most relevant of them.

2. Rights and obligations of the consignor at the point of dispatch of the goods

a) The consignor's obligation to deliver the goods for carriage. Pursuant to art. 1967 of the Civil Code, the consignor must deliver the goods in the place and under the terms agreed to by the contractual clauses or, in their absence, in accordance with the established practices between the parties or the customs.

The place of delivery of the goods differs depending on the technical particularities of the consignment; depending on these particularities, in the contract they conclude, the carrier and the consignor establish the place of delivery of the goods by the consignor so as to be transported to the destination. For example, in the case of rail transport, the goods are usually handed over at the railway station (by way of exception, if the consignor has a railway to the premises of its warehouse, the goods can be handed over there); in the case of maritime transport, the goods are handed over in that place of the port agreed to by the contracting parties; in the case of air transport, the goods are delivered at the airport; in the case of road transport, the goods are handed over at the consignor's warehouse.

The consignor is liable toward the carrier for the damage caused by a defect in the property item and, indirectly, toward third parties for the damage resulting from such a cause, as the carrier whose liability would be entailed for such damage has a right of recovery against the consignor.

b) The obligation of the consignor to fill in and hand over the transport document to the carrier. With the delivery of the goods, the consignor has the obligation to fill in and hand over the transport document to the carrier (art. 1967 of the Civil Code), as well as all additional customs, sanitary, fiscal and other similar documents necessary for the transport, as provided by law (art. 1961 of the Civil Code).

It should be noted that the Civil Code enshrined the generic name of "transport document" to designate the carriage contract. The transport document is regulated in the Civil Code, which constitutes the general regulatory framework, but also in various

special laws that regulate transports according to the modes of transport; these special laws establish the name and content of various types of transport documents.

According to content, the carriage contract is a bilateral or synallagmatic contract characterized by the fact that it gives rise, on the part of both parties, from the date of its conclusion, to mutual and interdependent obligations, as the obligation of each party has its legal cause in the obligation of the other party; as a result, the contract for the carriage of goods generates effects specific to synallagmatic contracts, such as: i) the right of either contracting party to refuse the performance of his obligation, as long as the other party does not perform his own obligations (the non adimpleti contractus exception); ii) the right of the party that has performed his own obligation to request the rescission of the contract, in case of non-performance of the obligation of the other party due to causes imputable to him; iii) bearing the risk of the contract by the party whose obligation becomes impossible to perform due to force majeure (Stătescu, Bîrsan, 2008: 27; Pop, Popa, Vidu, 2012: 73-74).

According to the Civil Code, the transport document is signed by the consignor and must include, inter alia, information on the identity of the consignor, the carrier and the consignee and, where applicable, the person who must pay for the carriage. The transport document also mentions the place and date of receiving the goods, the point of departure and destination, the price and time of the carriage, the nature, quantity, volume or mass and the apparent condition of the goods when handing them over for carriage, the dangerous nature of the goods, if any, as well as the additional documents that have been handed over and accompany the carriage. The parties may agree to insert other mentions in the transport document (art. 1961 par. 2 of the Civil Code).

These mandatory mentions of the transport document, listed by law, are of particular importance in the performance of the carriage contract.

Thus, the identification of the consignor enables the carrier to know the person who is entitled to exercise his right to dispose of the goods during the transport, namely to suspend the transport, to request the return of the goods or to change the original consignee, possibly to know the person from whom he must request instructions in case of impediment to the carriage of the goods; also, the identification of the consignee is necessary in order to know the person entitled to receive the transported goods, person that the carrier must notify about the arrival of the goods and then hand them over to.

Regulating the negotiable transport document (art. 1964 of the Civil Code), the law allows a carriage contract to mention only the place of destination (in the case of the bearer transport document), the carrier being obliged in such a case to deliver the transported goods to the person who will have the legitimate possession of the transport document (Cristoforeanu, 1925: 127).

The identification of the carrier is important because in this way the consignor/consignee will know the person whose liability is entailed in case of loss or damage of the goods handed over for carriage or in case of late delivery; knowledge of the headquarters of the parties is also important for determining the territorial jurisdiction of the court that decides on the possible disputes between the carriage contract participants.

Determining the date of reception of the goods by the carrier is important because it is then that the performance of the carriage contract usually begins, and the delay in the delivery of the goods gives the right to moratory damages.

The identification of the goods handed over for carriage (nature, quantity, volume or mass of the goods handed over for carriage) is of great significance in

determining the compensation for the loss or damage of the goods and for identifying the goods at the destination for their delivery to the entitled one.

The nature of the goods handed over for carriage will have a decisive role in choosing the means of transport to be made available by the carrier; for example, some goods must be transported under certain temperature conditions, flammable products require means of transport with certain technical characteristics, the transport of live animals requires means of transport with ventilation facilities. The consignor has the obligation to check whether the means of transport provided by the carrier corresponds to the carriage in proper conditions, in order to see whether it is appropriate in relation to the nature of the goods to be transported and whether the means of transport comply with safety rules (closing systems for shutters, tightness of the loading space, etc.). The shortcomings of the means of transport must be brought to the attention of the carrier, who assumes the risk of the loss, damage or theft of the goods handed over for carriage (Căpățînă, 2000: 79).

The mention of the quantity of goods handed over for carriage is made showing the weight, volume, number of meters, number of pieces and any other specific elements.

If the nature of the goods requires that they be packed, the obligation to pack them lies with the consignor. The packaging must comply with the requirements of the carrier or national or international standards. Proper packaging is one that prevents the loss and damage of goods, facilitates their identification, handling and storage. Where goods are transported in parcels, each parcel must include information on the name/designation of the consignor and the place of dispatch, the name/designation of the consignee and the place of destination, the name, quality and quantity of the goods, the date of delivery for carriage, the route and other information useful for moving the goods to their destination; for example, for certain goods it is mentioned that they must be protected from moisture, or they must be handled or stored in a certain position (Ciobanu, 2000: 206-207).

The point of departure and the point of destination must be mentioned in order to establish the correct itinerary and to determine the time required for carriage; moreover, it is necessary to indicate the term of the transport so as to know whether the carrier has fulfilled its obligation to carry the goods within the time limit.

The consignor is liable toward the carrier for damage caused by any omission, inadequacy or inaccuracy of the particulars in the transport document or, where applicable, in the supplementary documents, and the carrier whose liability would be incurred by third parties for damage resulting from such a cause has the right of recovery against the consignor.

The transport document is drawn up in at least 3 copies, one for the carrier, one for the consignor and another that accompanies the goods transported to the destination (art. 1962 par. 1 of the Civil Code).

If a transport document has not been drawn up, the carrier must issue to the consignor, at his request, a receipt for the goods for carriage, which must contain all the information that the legislature has provided for the transport document to contain (art. 1962 par. 2 of the Civil Code). In the case of the road transport of goods, it is not accepted to draw up a receipt attesting the reception of the goods for carriage, but it is mandatory to draw up the transport document.

The transport document, respectively the receipt, proves until the contrary proof the reception of the goods for carriage, their nature, quantity and apparent condition (art. 1962 par. 3 of the Civil Code).

When the consignor hands over several packages for transport, the carrier has the right to request a transport document for each package (art. 1963 of the Civil Code). As a rule, the transport document is nominative, its content identifying the parties to the carriage contract and the consignee; the nominative transport document is not negotiable, so it is non-transferable.

The transport document may be negotiable if the contracting parties or the special law so provide. If it is negotiable, the order transport document is transferred by endorsement, and the bearer one by remittance (art. 1964 of the Civil Code). The negotiable transport document is found mainly in maritime and river transport.

By regulating the order or bearer transport document, the Civil Code takes over the provisions of the special law on bills of exchange and promissory notes. In this respect, it is provided that when the transport document is of the order or bearer type, the ownership of the transported goods is transferred by the effect of the transmission of this document. The form and effects of the endorsements, the cancellation and replacement of the transport document are subject to the provisions on bills of exchange and promissory notes. The last endorsee of a series of endorsements who holds the title is considered the owner. The debtor who fulfils his obligation resulting from the title is released only if there is no fraud or fault on his part (art. 1965 of the Civil Code).

c) The obligation to load the merchandise in the means of transport may lie with the consignor or the carrier.

If the loading of the merchandise lies with the consignor, he must take into account the capacity of the means of transport, both in terms of weight and volume; the failure to comply with the loading capacity of the means of transport results in the consignor being penalized, whether it is an overload or an underload.

With regard to the placement of goods in the interior space of the means of transport, it was said that this operation must meet several requirements: to make full use of the entire payload capacity of the means of transport, not to endanger its stability and to ensure the stability of the load. In order to meet these requirements, the consignor must follow the instructions of the carrier, the latter having the obligation to supervise and guide the operation of placing the goods in the means of transport (Căpățînă, 2000: 82-83).

Also, after the completion of the loading operation, the consignor has the obligation to take preventive measures to discover possible thefts of goods; for example, he will apply his own seals to closed means of transport, if they are used entirely by the consignor, or will mark the goods loaded in open means of transport; these measures will be mentioned in the transport document.

d) The consignor's obligation to pay the price of the carriage. According to the law, the price of transport and ancillary services provided by the carrier are due by the consignor and are paid upon delivery of the goods for the carriage; the contract or the special law may provide that their payment shall lie with the consignee (art. 1978 par. 1 of the Civil Code).

Instead, the price of ancillary services and expenses incurred during the transport is due by the consignee, unless otherwise provided by contract or special law (art. 1978 par. 4 of the Civil Code).

The transport price represents the payment due to the carrier for his service which mainly consists in moving the goods to the destination; although it is an essential element of the contract of carriage, the price is not an element of validity; in case there is no information on the price of the transport, the carrier has to administer evidence of its amount (Scurtu, 2003: 44).

Ancillary services may be provided by the carrier during transport-related operations, such as loading/unloading operations (if they were the responsibility of the carrier), storage of the goods, handling for customs clearance, transhipment, load checking, use of tarpaulins, approval, etc. (Cristoforeanu, 1925: 130; Căpățînă, 1995: 60).

The price may be set by the contracting parties or set unilaterally by the carrier; there are also situations where the price is established by law or by the competent authorities (for example, in the case of rail transport with the public transport operator).

In any situation, the transport price is established taking into account objective elements, such as: the nature of the goods to be transported, their weight or volume, the distance to cover, speed, type and capacity of the means of transport (Cristoforeanu , 1925: 130; Căpățînă, 1995: 60).

As shown above, the contract for the carriage of goods being a synallagmatic contract, if the consignor does not pay the price of the carriage, the carrier may suspend the consignment.

The doctrine has emphasized that, in order for the carrier to be entitled to raise the objection of non-performance of the transport, the mutual obligations of the parties must be based on the same contract and even the partial non-fulfilment of the consignor's obligation must be sufficiently important. The exception of the failure to perform the contract, therefore the suspension of the performance of the transport, loses its meaning when the consignor fulfils his obligation to pay the price (Căpățînă, 2000: 86).

Also, if the consignor does not pay the price of the transport, the carrier may request the rescission of the contract and the payment of damages.

If the price is paid at the destination, the carrier will hand over the goods if the consignee pays (art. 1978 par. 3 of the Civil Code), therefore the law establishes in favour of the carrier a right of retention over these goods until the payment of the transport price, thus guaranteeing the realization of the retentor's claim; as a consequence, the carrier will have the possibility of enforcement for the realization of his claim and a right of privilege over the price obtained from the sale of the transported goods, since, pursuant to art. 2339(1)(b) of the Civil Code, in the case of movable property "the claim of the one who exercises a right of retention shall be privileged with respect to the goods over which the right of retention is exercised, as long as this right subsists".

Even if it has been agreed that the price of the transport should be paid at the destination, the consignor may pay the price provisionally, at the time of delivery of the goods for carriage, with the obligation for the carrier to ask the consignee, upon reception of the goods, to pay the transport price so that the amount shall be sent to the consignor; such a transport is called "cash on delivery" (E Cristoforeanu, 1925: 130).

The reimbursement may refer not only to the price of the transport, but also to the price of the transported goods; in this situation, the carrier has the obligation not to release the goods to the consignee until he pays the amount with which the goods are encumbered (Cristoforeanu, 1925: 131); if this obligation is not complied with, the

carrier must compensate the consignor. For example, art. 42 of the Regulation on rail transport in Romania (published in the Official Gazette of Romania, part I, no. 16 bis/9.o1.2008), having as a marginal title "Reimbursements and disbursements" provides that "(1) The consignor may load his shipment with a refund up to a value equal to the value of the goods. 2. The amount of the refund shall be made available to the consignor within 30 days of payment by the consignee. (3) If the goods have been delivered to the consignee without having received the refund before, the railway operator shall pay to the consignor the amount of the damage up to the maximum amount of the refund, retaining his right of action against the consignee".

If the goods are not of the same nature as those described in the transport document or their value is higher, the carrier is entitled to the price he would have charged if he had known these circumstances, the provisions of the special law being applicable in this case (art. 1978 par. 3 of the Civil Code).

3. Rights and obligations of the carrier during the carriage of the goods

During the movement of the goods to the destination, the carrier has the following essential obligations: the obligation to perform the transports in the order of receiving the goods for carriage; the obligation to move on the route established by the contract of carriage; the obligation to perform the transport within the set time limit; the obligation to preserve the goods during the carriage.

a) The obligation of the carrier to carry out the transports in the order of receiving the goods for transport. This obligation was expressly provided by art. 419 of the Romanian Commercial Code. The contemporary doctrine of those legal provisions showed that the legislator's choice was justified by reasons of social justice, ie by the need not to create a privileged situation for some consignors to the detriment of others (Scurtu, 2003: 51).

It was has been shown that this obligation of the carrier is justified both in the situation where the contract of carriage does not provide for a term of performance of the transport and in the situation where the contract provides such a term. The argument for the latter hypothesis relates to the fact that when establishing the term of performance of the transport the carrier took into account both the ideal time in which the transport can be performed and the delays that may be caused by various situations, such as congested traffic; for this reason, the carrier provides a maximum time limit for transport, and if the transport order is followed, the transport is more likely to be performed in a minimum time, thus earning the time difference usually included as tolerance in the calculation of the transport duration (Cristoforeanu, 1925, 140; Căpățână, 1995: 100-101).

The Romanian Civil Code does not expressly regulate this obligation of the carrier, but the doctrine promotes the idea that it is implied and can be deduced from the provisions of art. 1170 of the Civil Code, on the good faith in which the parties must act both when negotiating and concluding the contract, as well as during its performance (Stanciu, 2015: 123).

At present, if the carrier does not observe this implied obligation, the liability for damage to the beneficiary of the transport falls within the law of torts.

The carrier cannot be held liable if he changes the normal order of the carriage for justified reasons. The Commercial Code gave the following examples of such good reasons: if the nature of the goods to be transported justifies the derogation; if the derogation is based on the "destination" organization of the carrier's activity; if the

carrier was prevented by any fortuitous event or force majeure from performing a transport (for details, see Scurtu, 2003: 52-53). We consider that such cases still justify the breach by the carrier of the obligation to perform the transports in the order of receiving the goods for carriage.

b) The obligation of the carrier to move on the route established by the public conditions of transport or by the carriage contract. In the case of regular transport, the transport conditions are imposed by the carrier, who informs the public in various ways (for example, by posting them at the carrier's headquarters, by posting on the website), the beneficiary of such transport having the choice of accepting or not those conditions; in the case of such transport, the itinerary of the carrier is pre-established and the consignor accepts it when he agrees to the contractual conditions pre-established by the carrier.

In the case of occasional transport, the itinerary of the carrier is established by mutual agreement of the parties.

In the event that an itinerary has been set, either by the public transport conditions of the carrier or by the contract negotiated by the parties, the carrier is not entitled to unilaterally change the set itinerary, unless he has to follow another route for reasons of force majeure (Cristoforeanu, 1925: 140).

If he fails to comply with this obligation (derived either from the standard contract or from the negotiated contract), the carrier is liable toward the beneficiary of the transport only if, for that reason, damage has occurred.

In the event that no itinerary has been set and there are several practicable routes to the destination, the carrier has the obligation to make the transport on the shortest route, because it is assumed that the transport is thus faster and cheaper (Scurtu, 2003: 56).

c) The obligation of the carrier to perform the transport within the established time limit. Pursuant to art. 1961of the Civil Code, one of the mentions that the transport document must contain is the one regarding the term of performing the transport.

Art. 1969 of the Civil Code, on the term of transport, stipulates that the transport must be performed within the time limit set by the parties, and if the time limit within which the transport must be made has not been determined by the parties, the court will assess the duration of this term while taking into account the practices established between the parties, the customs applied in the place of departure and, in their absence, the circumstances under which the carriage took place (in the latter case, the court will take into account such elements as the particulars of the transported goods, of the transport operator, the concrete conditions in which the transport was performed, the regulations of other similar carriers (Cristoforeanu, 1925: 146; Căpățînă, 1995: 104).

Some carriers, such as CFR Marfă, have time limits for carrying out the transport established by the legislature or the competent authorities, applicable in the situation where the consignor and the transport operator have not agreed on the term of performance of the transport contract; in accordance with art. 2 of G.O. no. 7/2005 for the approval of the Regulation on rail transport in Romania, republished, and art. 5 of G.D. no. 367/2007 on the organization and functioning of the Ministry of Transport, with subsequent amendments, the Minister of Transport issued order no. 655 of 19 July 19 2007, published in the Official Gazette of Romania, Part I, of 9 January 2008, approving the Uniform Norms on transportation on Romanian railways (see http://legislatie.just.ro/Public/DetaliiDocument/88461); other carriers establish them

unilaterally and make them known to the public with the other contractual conditions (Scurtu, 2003: 56).

The doctrine has expressed the view that, on the basis of fairness, time limits should be the same for all consignors when they have been set by legal regulations or publications; the other carriers may set different time limits for the same type of goods, without being liable toward the disadvantaged, unless they act in bad faith (ie they intended to favour one consignor to the detriment of another); the basis of the carrier's liability, in this situation, falls within the law of tort (Cristoforeanu, 1925: 147).

Regardless of the fact that the term for carrying out the transport was or not set by the parties, it usually starts to run from the moment the consignor handed over the goods to the carrier (Cristoforeanu, 1925: 131; O. Căpățînă, 1995: 59.) If the carrier does not perform the transport within the established term, he is liable for the damage caused to the beneficiary (art. 1992 of the Civil Code).

d) The carrier's guard obligation. Traditionally, the obligation of the carrier to ensure the quantitative and qualitative integrity of the things received for carriage, throughout the transport, has been addressed in the doctrine as "guard obligation"; it has been shown that, from the point of view of the guard obligation that the carrier has for the goods entrusted to him for carriage, the Civil Code assimilates him with a depositary, invoking the provisions of art. 1473 of the old Civil Code, situation in which the rules of the necessary deposit were applied to the carrier.

After the entry into force of the new Civil Code, an opinion was expressed that a distinction must be made between the obligation to guard things, which lies with the carrier in the sense of art. 1377 of the Civil Code, and the obligation to preserve things (Stanciu, 2015: 127). We consider that it is inappropriate to extend the meaning of the "notion of guard", referred to in art. 1377 of the Civil Code to the carrier's guard obligation; art. 1377 of the Civil Code specifies that the notion of guard referred to by the legislature when regulating tort liability for damage caused by things presupposes that two cumulative conditions should be met, namely: the responsible person should independently exercise control and supervision over the thing and, secondly, he should make use of it in his own interest; or, in the case of the carrier, these conditions are not met.

It is obvious that the meaning of the carrier's obligation to guard the things that have been handed over to him for carriage is to ensure their preservation; therefore, the new Civil Code, while regulating the carrier's "impossibility of handing over the goods", specifies that the obligations of the carrier are those pertaining to the free deposit (art. 1981 par. 3 of the Civil Code). But, like a depositary, the same rules must be applied to the carrier, namely: i) the carrier shall be liable for any fault (similarly to the necessary deposit); ii) the carrier must also be liable for damage caused by the fault of his agents; iii) the carrier shall also be liable for damage caused by third parties.

4. Rights and obligations of the consignor during the carriage of the goods

a) The right of the consignor to renounce the carriage contract and to modify it. The general rule on the effects of the contract is that of the binding force of the contract, enshrined in art. 1272(1) of the Civil Code ("The validly concluded contract shall have the force of the law between the contracting parties"). The consequence of this rule is the irrevocability of the contract; in other words, the contract is modified or terminated only by mutual agreement of the parties or for reasons authorized by law (art. 1270 par. 2 of the Civil Code).

In the matter of the contract for the carriage of goods, the legislature derogated from the principle of the irrevocability of the contract, authorizing the consignor to renounce the contract or to unilaterally modify it. This right of the consignor is regulated under art. 1970 and art. 1973 of the Civil Code.

Thus, pursuant to art. 1970 of the Civil Code, the consignor may suspend the transport and request the return of the goods or their delivery to a person other than the one mentioned in the transport document or may dispose as he deems appropriate.

Such a derogation was enshrined in the Commercial Code of 1887, the doctrine bringing, in support of that derogation, convincing arguments, which can be reiterated to justify the provisions of art. 1970 of the Civil Code:

i) thus, it was said that by enshrining this right the interests of the consignor were better satisfied because he could change the destination, directing the goods to a better market or he might have the interest to stop the transport because the consignee died (respectively dissolved), or became bankrupt before the merchandise reached the destination; also, if the goods were alienated during the transport, the buyer subrogating himself in all the rights of the seller, he might be interested in changing the destination of the merchandise (Cristoforeanu, 1925: 148; O. Căpățînă, 1995: 107).

ii) Secondly, the existence of this right of the consignor does not affect the rights and interests of the carrier and does not increase his obligations (the carrier will retain the right to be remunerated for services rendered and the right of retaining the merchandise until the price of the transport is paid. His obligations remain the same: to carry the thing to its destination within the established time limit and to keep the merchandise in good condition during the carriage. Moreover, the carrier will only execute the counter-order if its execution does not cause any disturbance in the functioning of his service).

iii) It was also emphasized that the execution of the counter-order did not affect the rights of the consignee, because, under the law, the consignee has no right over the merchandise before it has arrived at the destination.

Pursuant to art. 1970(2) of the Civil Code, in order to exercise the right of counter-order, the transport document signed by the carrier or a receipt must be presented, if such a document has been issued; for the validity of the counter-order, the law requires that the changes resulting from the counter-order be entered in the transport document or on the receipt under a new signature of the carrier. In the absence of a distinction of the legislature, this rule is applicable both to the nominative transport document and to the order or bearer one. The carrier is liable for all damage caused to the consignee or endorsee by executing the counter-order that was given in violation of this rule.

The order given by the consignor by the counter-order is mandatory for the carrier; he can only refuse to execute the counter-order only on justified grounds, such as, for example, the following: i) the fact that the execution of the consignor's order would cause a significant disturbance to the carrier's activity; ii) if, in case he changed his place of destination, the increase in taxes and expenses was not guaranteed by the value of the goods or otherwise; iii) if upon receipt of the counter-order, its execution was no longer possible (in the same sense, see Stănescu, Stănescu, in Baias, Chelaru, Constantinovici, Macovei (coordinators), 2012: 1984). The carrier has the obligation to notify without delay the one from whom the counter-order emanates about the refusal of execution (art. 1975 of the Civil Code).

The consignor who has exercised his right of counter-order is obliged to pay the expenses and the value of the damage, which are the immediate consequence of this counter-order, to the carrier.

Pursuant to art. 1973 of the Civil Code, the consignor has the right, by a subsequent written order, to modify the carriage contract as follows: i) to withdraw before departure the goods to be transported; ii) to stop them during the transport; iii) to postpone the delivery to the consignee; iv) to order their return to the place of departure; v) to change the person of the consignee or the place of destination; vi) to order another modification of the conditions of performance of the transport.

The consignor may not give any further order which has the effect of dividing the transport, unless otherwise provided by special law.

The consignor who gave a subsequent order is obliged to pay to the carrier, as the case may be, the following: i) the price of the completed part of the transport; ii) taxes due; iii) expenses incurred by the execution of the subsequent order; iv) compensation for any damage suffered.

Pursuant to art. 1970(3) of the Civil Code, the consignor's right to counter-order ceases from the moment the consignee requested the delivery of the goods. From that moment, the right to give counter-orders to the carrier passes to the consignee.

Also, the consignor's right to modify the contract of carriage expires as soon as the consignee has expressed his will to exercise his rights resulting from the contract of carriage (the consignee acquires the rights and obligations arising from the contract of carriage by accepting the contract or the transported goods) or as soon as the consignor has handed over the duplicate of the transport document to the consignee. From that moment, the right to modify the carriage contract by subsequent order passes to the consignee (art. 1974 of the Civil Code).

b) The right of the consignor notified of the occurrence of an impediment to the performance of the transport to terminate the contract. According to the law (art. 1971 of the Civil Code), in case of impediment to the transport, the carrier has the right to ask the consignor for instructions or, in the absence of a response from him, to transport the goods to the destination, modifying the itinerary. In the latter case, if it was not an act imputable to him, the carrier is entitled to the price of the transport, to ancillary charges and to expenses, on the route actually covered, as well as to the modification, accordingly, of the term of performance of the transport. If there is no other transport route or if, for other reasons, the continuation of the transport is not possible, the carrier shall proceed according to the instructions given by the consignor through the transport document in case of impediment to the transport, and in their absence or if the instructions cannot be executed, the impediment shall be brought to the attention of the consignor without delay, and instructions shall be required. The consignor notified of the occurrence of the impediment may terminate the contract by covering the carrier' incurred expenses and the price of the transport in proportion to the distance covered.

Since art. 420 of the Romanian Commercial Code, currently repealed, had similar provisions, the legal doctrine has raised the question of whether the carrier has the right to terminate the carriage contract if the continuation of the carriage is not possible. The proponents of an affirmative answer have argued that if such a right is recognized to the consignor, it must also be recognized to the carrier, for reasons of fairness, so as not to have to keep his warehouses occupied with the consignor's belongings for too long. Others have objected, however, that by storing the thing in his warehouses, the carrier does not suffer any damage because storage fees will be paid to

him, as well as unloading expenses, etc. An opinion has emerged, namely that, in the absence of a provision of the law, this should not, as a matter of principle, be recognized to the carrier, too. However, if the reason for the interruption of the traffic tends to be permanent and the carrier is forced to close his warehouses, he may ask the consignor to rescind the contract, and if the latter refuses he may store the things in public warehouses under the consignor's responsibility or when there is not such possibility and the consignor refuses to take his goods by paying the expenses, to sell them by public auction in order to recover the expenses, and to make the resulting difference available to the consignor. Also, when the thing is subject to inevitable destruction or alteration, the carrier may sell the thing at the expense of the consignor, without notifying him, working as a negotiorum gestor (Cristoforeanu, 1925: 157-158).

Making valuable use of the opinions expressed in the specialized literature and the judicial practice in the field, the legislature provides in the new Civil Code that if within 5 days from sending the notification regarding the impediment of the transport the consignor does not give, under the special law, instructions that can be executed and nor does he inform him of the termination of the contract, the carrier may keep the goods in storage or may deposit them with a third party. In case the storage is not possible or the goods may be altered or damaged or their value may not cover the transport price, ancillary taxes and expenses, the carrier will capitalize on the goods, in accordance with the provisions of the law. When the goods have been sold, the price, after deducting the financial rights of the carrier, must be made available to the consignor, and if the price is lower than the financial rights of the carrier, the consignor must pay the difference. If the impediment to the transport ceased before the arrival of the consignor's instructions, the goods are transferred to the destination, without waiting for these instructions, the consignor being notified without delay (art. 1972 of the Civil Code); (regarding the regulatory differences between the provisions of art. 420 of the Romanian Commercial Code and the provisions of art. 1971-1972 of the Civil Code, see Stanciu, 2015: 113-114).

5. Rights and obligations of the parties at the destination

a) The obligation of the carrier to inform the consignee about the arrival of the goods. Once the goods have reached their destination, the carriage contract is not discharged; it is considered to be in progress until the transport is accepted by the consignee or until the expiry of the delivery term. In order to deliver the goods that have reached their destination, the carrier has the obligation to notify the consignee of the arrival of the goods and of the deadline for taking them over, if the delivery is not made at his domicile or headquarters (art. 1976 par. 3 of the Civil Code.).

The law does not require the written form of notification to the consignee, but the relevant customs require this form. By notifying the consignee, the carrier delays the taking over of the goods within a certain time limit; the failure to comply with this time limit has as a consequence the consignee's obligation to bear the costs incurred by the carrier for storing and preserving the goods.

b) The obligation of the carrier to identify the consignee. This obligation of the carrier is fulfilled depending on the nature of the transport document, which can be nominative, order or bearer.

In the case of the nominative transport document, the person of the consignee is indicated by name, and the carrier has all the necessary data (name/designation and domicile/residence) for his endorsement and identification for the purpose of handing

over the goods. As the person of the consignee is indicated by name, the carrier is not obliged to require the consignee to present the duplicate of the transport document to deliver the goods (as in the case of the order or bearer transport document), because no other person could subsequently use this document to request the delivery of the goods; even if the transported goods were the subject of an assignment, by the will of the consignor or consignee, the assignment is not enforceable to the carrier until the assignee has notified the carrier (Cristoforeanu, 1925: 170).

In the case of the order transport document, in order to identify the consignee, it is necessary for the carrier to verify the regularity of the endorsement by which the transport document was sent; in the doctrine it was stated that "in the absence of the endorsement, the person entitled to obtain the cargo is the initial receiver himself, nominated as such in the bill of lading. If the consignee, acting as an endorser, transfers the bill of lading to another person (endorsee), the acquirer will be entitled to claim the release of the goods from the carrier. The first endorsee may in turn transfer by endorsement the same bill of lading to a third party, which acquires the quality of endorsee, holder as such of the transported goods (...). The existence of an uninterrupted series of endorsements legitimizes the last endorsee to capitalize on the rights over the transported goods" (Cristoforeanu, 1925: 118-119; in the same sense, see Căpățînă, 1995: 118).

In the case of the bearer transport document, the person who is in the legitimate possession of the transport document is entitled to claim the goods at the destination, operating the presumption that the possession of the bearer title is legitimate; the carrier only has the obligation to identify by name and domicile the person who presents the bearer title so as to know to whom he must send the goods arrival notice and hand over the transported goods (Căpățînă, 1995: 118).

Both the holder of the order transport document and the holder of the bearer transport document is obliged to send it to the carrier when taking over the transported goods (art. 1976 par. 1 of the Civil Code).

According to the law, the carrier has the obligation to make the transported goods available to the consignee or holder of the order or bearer transport document, in the place and terms indicated in the contract or, failing that, according to the established practices between the parties or the customs. The delivery of the transported goods is made at the domicile or headquarters of the consignee, unless otherwise arising from the contract, from the practices established between the parties or the customs (art. 1976 par. 1 of the Civil Code).

The carrier is entitled not to deliver the transported goods to the consignee in the following cases: i) if the consignee does not pay to the carrier the amounts due under the contract (ie transport, storage, customs expenses, etc.) and any reimbursements with which the transport was encumbered, as provided by law; in case of disagreement on the amount due, the consignee may take over the transported goods if he pays to the carrier the amount he claims to owe to the latter and records the difference claimed by the carrier to a credit institution (art. 1980 par. 1 of the Civil Code); ii) if the holder of the order or bearer transport document refuses to transmit the document to the carrier (art. 1976 par. 1 of the Civil Code); iii) if the goods are seized at the request of a third party; iv) if the sanitary, customs regulations, etc. impose certain restrictive control measures and formalities, the carrier having the obligation to comply with these regulations (Cristoforeanu, 1925: 118-119).

According to the law, the carrier cannot hand over the transported goods in the following situations: if the consignee cannot be found, he refuses or neglects the taking over of the goods or if there are misunderstandings regarding the taking over of the goods between several receivers or for any reason, through no fault of his own; in any of these situations, the carrier must immediately request instructions from the consignor, who has the obligation to send them to him within 15 days, under the penalty of returning the goods to the consignor, at his expense, or of their selling by the carrier, as the case may be. When there is an emergency or the goods are perishable, the carrier will retransfer the goods to the consignor, at his expense, or will sell them, according to the law in force, without requesting instructions from the consignor. At the end of the storage period or at the expiry of the term for receiving the consignor's instructions, the obligations of the carrier are those characterizing the free deposit, with the obligation for the consignor to reimburse in full the costs of preservation and storage of the goods (art. 1981of the Civil Code).

For the damage caused by the delay of the consignee in taking over the transported goods, the carrier will be compensated by the consignee or consignor, as the case may be (art. 1981 par. 4 of the Civil Code).

c) The right of the consignee to verify the transport document. The legal doctrine has shown that the consignee has the right to request the transport document from the carrier, indicating that this aims to examine in advance the documents accompanying the transport to see if the formalities required by customs, health, police, etc. laws have been met, if the transport of the goods has been carried out in the conditions laid down in the transport document, as well as to examine the transport document to see if he agrees with all the conditions laid down therein. In this case, requesting the carrier to present the transport document in order to examine its content does not mean accepting the contract. However, if the consignee asked the carrier to submit the transport document, without pointing out the purpose, it is inferred that he accepted the contract of carriage (Cristoforeanu, 1925: 179; in the same sense, see Căpățînă, 1995: 129).

d) The right of the consignee to verify the goods that were transported. Pursuant to art. 1979 (1) of the Civil Code, upon receipt of the transported goods, the consignee has the right (not the obligation) to request to ascertain, at his expense, their identity, quantity and condition, for the purpose of pre-establishing evidence against the carrier for quantitative and qualitative deficiencies caused to the goods during the carriage and of verifying the observance of the contractual obligations by the shipper. According to the majority of the doctrine, this verification of the transported goods does not have the legal value of the acceptance of the carriage contract by the consignee; depending on the result of the verification, the consignee may or may not accept to receive the goods.

A doctrinal view shows that the carrier, too, has the right to verify quantitatively and qualitatively the transported goods; the argument relates to the fact that, since the law does not prohibit this right, it can be exercised, especially since it is in line with the carrier's right to check the thing when it is handed over by the shipper to see if the mentions in the transport document are accurate. The latter right can be exercised by the carrier during the transport or at the destination, whenever he has a suspicion that the mentions in the transport document are not real (Cristoforeanu, 1925: 176-177).

If the existence of some defects is established, the expenses incurred by the consignee lie with the carrier.

The verification of the goods by the consignee will be done in accordance with the mutual agreement of the parties. In case of disagreement between the consignee and the carrier on the quality or condition of the merchandise, the court, at the request of either party, may order, while observing the procedure provided by law for the presidential order, a declaration of its condition by one or more experts appointed ex officio. The same decision may order the seizure of the merchandise or its storage in a public warehouse or, failing that, in another place to be determined. If the storage of the merchandise could cause great damage or would cause significant expenses, it may even be ordered to sell it at the expense of the person to whom it belongs, under the conditions determined by the decision. The sale decision must be communicated, before its execution, to the other party or to his representative, if either of them is in the locality; otherwise, the decision will be communicated within 3 days from its execution (art. 1979 par. 4-7 of the Civil Code). The party who did not make use of the legal provisions relating to the ascertainment of the condition of the goods must, in the event of a contestation, establish both the identity of the merchandise and its defects.

e) The obligation of the consignee to pay the price of the carriage and ancillary services. Pursuant to art. 1978 of the Civil Code, the price of the carriage and ancillary services provided by the carrier are due by the consignor and are paid upon delivery of goods for carriage, unless otherwise provided by contract or special law, as appropriate. If the goods are not of the same kind as those described in the transport document or their value is higher, the carrier is entitled to the price he would have charged if he had known these circumstances, the provisions of the special law being applicable in this case.

As an exception, the price may be paid at the destination, in which case the carrier will deliver the goods if the consignee pays it. The price of ancillary services and expenses incurred during the carriage is due by the consignee, unless otherwise provided by contract or special law.

If the consignee pays the amounts due according to the contract and any reimbursements with which the transport was encumbered, the carrier has the obligation to hand over the transported goods (art. 1978 par. 3 of the Civil Code).

In case of disagreement on the amount due (the price, ancillary expenses or reimbursement are contested), the consignee may take over the transported goods if he pays to the carrier the amount he claims to owe to the latter and records the difference claimed by the carrier to a credit institution (art. 1980 of the Civil Code).

Pursuant to art. 1983 of the Civil Code, the carrier who delivers the transported goods without collecting from the consignee the amounts owed to him, to previous carriers or consignor or without claiming from the consignor the recording of the amount over which there are misunderstandings loses the right of recovery and is liable toward the consignor and previous carriers for all amounts due to them. This text of the law concerns the situation in which the carrier had to collect a refund for the consignor, or the carrier, the last in a row of carriers, had to collect the price of the carriage, ancillary services and other expenses even for previous carriers (Stănescu, Stănescu, in Baias, Chelaru, Constantinovici, Macovei (coordinators), 2012: 1993).

In all cases, however, the carrier has an action against the consignee, even if he has taken the transported goods.

Conclusions

Renouncing the dualism of private law, the new Romanian Civil Code establishes a unitary system of regulation, its norms aiming not only at the relations between simple individuals, but also those between professionals. On 1 October 2011, with the entry into force of the new Civil Code, both the old Civil Code and the Commercial Code of 1887 (or a large part of it) became history, even if some of their provisions survived for a while or others have not yet been repealed.

We do not judge the legislature's option, but it is meritorious that it took over in the new Civil Code a significant part of the solutions enshrined by the old codes, by case law and doctrine. It also adopted, in the regulation of some institutions, solutions that are enshrined in the international conventions to which Romania is a party.

One of the contracts generously regulated by the new Civil Code is the carriage contract; its provisions constitute the general regulatory framework in such complex matters of carriage contracts, which, given the technical particularities of different categories of transport, are regulated in detail by special laws.

In the matter of the carriage contract as well, the new Civil Code took over the viable ideas of the Commercial Code of 1887 and took into account the valuable solutions proposed by the legal doctrine and judicial practice.

As an example, we give the regulation of the carrier's obligation to carry the goods in the order of receiving these goods, the carrier's obligation to travel on the route established by contract, the carrier's obligation to perform the transport within the set time limit, the consignor's obligation to entrust the carrier with the transport documents, the consignor's right to unilaterally modify the carriage contract, the limited liability of the carrier in case of loss or damage of the transported goods or in case of late delivery.

References :

Baias, Fl. A., Chelaru, E., Constantinovici A., Macovei I. (coordinators) (2012). *Noul Cod Civil. Comentariu pe articole* (The new Civil Code. Comments by articles), art.1-2264, Bucharest: C.H. Beck Publishing House.

Beleiu, Gh., Pop A. (1975). *Drept civil* (Civil law), Bucharest: University of Bucharest Printing House, 1975.

Căpăţînă, O. (1995). *Contractul comercial de transport* (The commercial carriage contract), Bucharest: Lumina Lex Publishing House.

Căpăţînă, O., Stancu, Gh. (2000). Dreptul transporturilor-Partea generală (Transport law - The general part), Bucharest: Lumina Lex Publishing House.

Ciobanu, T. (2000). *Dreptul transporturilor. Transportul terestru și aerian* (Transport law. Transport by land and air), Bucharest: Actami Publishing House, 2000.

Cristoforeanu, E. (1925). *Despre contractual de transport. Cartea I Transportul terestru de lucruri. Analiza lui în cadrul dispoziţiunilor din Codul de Comerț* (On the carriage contract, Book I, Land transport of things. An analysis in the light of the provisions of the commercial code), Bucharest: "Curierul judiciar" S.A. Printing House.

Dogaru, I., Cercel, S. (2007). *Drept civil. Partea generală* (Civil law. The general part), Bucharest: C.H. Beck Publishing House.

Pop, L., Popa, I. F., Vidu, S. I. (2012). *Tratat elementar de drept civil. Obligațiile* (An elementary treatise on civil law. Obligations), Bucharest: Universul Juridic Publishing House.

Scurtu, Șt. (2003). *Dreptul transporturilor* (Transport law), Craiova: Universitaria Publishing House.

Stanciu, C. (2015). *Dreptul transporturilor: contracte de transport de bunuri* (Transport law. Contracts for the carriage of goods), Bucharest: Universul Juridic Publishing House.
Stătescu C., Bîrsan, C. (2008). *Drept civil. Teoria generală* a obligațiilor (Civil law. The general theory of obligations), 9th edition, revised and completed, Bucharest: Hamangiu Publishing House.

Article Info

Received: June 05 2020
Accepted: June 13 2020