

THE TRANSPORT CONTRACT IN THE NEW CIVIL CODE FORM, PROOF AND MEANS OF TRANSPORT

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Abstract

Article 1956 of the New Civil Code provides: “The transport contract is proved by shipping documents such as consignment notes, receipt of luggage, roadmap, bill of lading, travel ticket or ID or other similar documents, from case to case”. The new Civil Code does not provide details regarding the form the transport contract, which means that the documents referred to in the legal standard concern the proof and not the validity of the contract. According to Article 1957 of the Civil Code, the transport may be carried out by one or more carriers, in the latter case it can often be successively combined. Successive transport is performed by two or more successive carriers using the same means of transport. Combined transport is that for which the same carrier or successive carriers use the same means of transport, reason for which it is also known as multimodal transport. Carriers that succeed one another hand over their goods and luggage until reaching the destination, without the intervention of the passenger or consignor [Article 1957, paragraph (3) of the new Civil Code].

Keywords: the transport contract, form, proof and means of transport.

JEL Classification: K12, K22

1. Introduction

The New Civil Code dedicates Article 1955-2008 to the transport contract, regulating the transport contract of goods and the transport contract of passengers and luggage.

The legislator of the Civil Code is also concerned about the definition of the transport contract. According to Article 1955 of the New Civil Code, through the transport contract, one party, called carrier undertakes, primarily, to transport a person or a good from one place to another in exchange for a price which the passenger, consignor or consignee undertakes to pay at the time and place agreed.

2. Contracting parties

As a rule, the contracting parties are the consignor and the carrier. The transport of goods can be also contracted by the consignee of the goods transported, in which case the contracting parties are the carrier and the consignee of the goods transported. In the case of transport of goods, even if the consignor is who contracts the transport, certain legal consequences also affect the consignee of the goods transported. It is understood that the development of the transport contract of goods involves the participation of three subjects, namely the consignor, the carrier and consignee of the goods transported.

3. Form and proof of the transport contract

Article 1956 of the New Civil Code provides: “The transport contract is proved by shipping documents such as consignment notes, receipt of luggage, roadmap, bill of lading, travel ticket or ID or other similar documents, from case to case”. The new Civil Code does not provide details regarding the form the transport contract, which means that the documents referred to in the legal standard concern the proof and not the validity of the contract.

Means of transport

The Civil Code regulates two main means of transport, the successive transport and the combined transport (multimodal).

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4. Representation in successive or combined transport

(1) In successive or combined transport, the latter carrier represents the others in terms collecting the amounts due to them under the transport contract and regarding the rights stipulated under Article 1995.

(2) A carrier that does not fulfill its obligations stipulated under paragraph (1) shall be liable to the previous carriers for the amounts due to them.

5. Multimodal (combined) transport contracts

5.1. Defining the multimodal transport contract and applicable conventions

The multimodal transport contract has been defined as “a unitary contract for the transport of goods by at least two different means of transport”.²

The multimodal transport operator (MTO) is a person or entity “which concludes a multimodal transport contract” and “undertakes to carry out such transport”.³

The carrier is a person who performs or undertakes to perform a transport or part of it, “whether he is identical to the multimodal transport operator”.⁴

The consignor is the person who concludes the multimodal transport contract with the multimodal transport operator (MTO).⁵

The consignee is the person entitled to take delivery of the goods from the multimodal transport operator.⁶Based on the UNCTAD/ICC Regulations, “the multimodal transport document is the document that proves the multimodal transport contract” and that can be replaced by electronic messages, where they are allowed by applicable law. This transport document shall be in a negotiable or non-negotiable form indicating the consignee's name. Also, these regulations define delivery as “handing over the goods (merchandise) to the consignee” or placing the goods at its disposal, in accordance with the multimodal transport contract or delivering the goods to an authority or a third party entitled to receive them, according the rules applicable in the place of delivery.

An important international convention in this field is the European Agreement on Main Combined Transport Lines and Related Installations (A.G.T.C.). This agreement was signed on February 1st, 1991 in Geneva and ratified by Romania by Law no. 8 of March 8th, 1993. The purposes of the agreement are:

- to facilitate the international transport of goods;
- the interoperable transport of goods should grow due to increased international trade;
- the important role of combined transport to ease demands on the European road network, particularly in trans-alpine traffic, and to limit damage on the environment;
- the international combined transport in Europe, more efficient and attractive to customers, is crucial to be made within a legal framework to establish a coordinated plan for the development of

²According to UNCTAD/ICC Regulations for multimodal transport

³Article 2, paragraph 2 of the UNCTAD/ICC Regulations for multimodal transport

⁴Article 2, paragraph 3 of the UNCTAD/ICC Regulations for multimodal transport

⁵Article 2, paragraph 4 of the UNCTAD/ICC Regulations for multimodal transport

⁶Article 2, paragraph 5 of the UNCTAD/ICC Regulations for multimodal transport

combined transport services and infrastructure necessary for the operation of these services, based on the internationally agreed performance parameters and standards.

A.G.T.C. sets out the following definitions: the expression of combined transport means the transport of goods in a single unit of transport using more than one means of transport; the expression network of large combined international transmission lines designates all railway lines considered to be important for international combined transport if: they are commonly used in international combined transport and they serve as major access lines for international combined transport; it is predicted that, in the near future, they shall become important combined transport lines.

a) the expression related facilities designates the combined transport terminals crossing border stations where wagon groups shall be exchanged, stations in which the tracks are changed, and ports and ferry links, which play an important role in international combined transport;

b) defining the network. The contracting parties also adopted the provisions of the Agreement as a coordinated international plan for creating and operating a large network of international combined transport lines, which they understand to achieve within the national programs. The network of international combined transport and related facilities consists of railway lines (indicated in the Agreement) and of combined transport terminals, crossing border stations, stations in which the tracks are changed and ports and ferry links that have an important role in international combined transport.

The Warsaw Convention for the unification of certain rules on international air transport also includes some provisions on combined transport. It stipulates that in the case of combined transports made partly by air and partly by any other means of transport, the provisions of the Convention apply only to air transport and only if the conditions of Article 1 of the Convention are met. The parties are not prevented by anything, in case of combined transport, from enrolling, in the aviation law, clauses regarding other means of transport, provided that the provisions of the Convention be observed in terms of air transport.⁷

Termination of the transport contract

Unlike other contracts, the Civil Code does not regulate cases of termination of the transport contract or for the transport of goods or for the transport of passengers and luggage. In this situation, the transport contract, both for the transport of goods and of passengers and luggage is subject to general cases of contractual termination.

6. Conclusions

Transports have an important role in daily activities: tourism, traveling, occasional or periodic travels, transportation to and from work. The existence of large enterprises or urban agglomerations is subject to these common or individual means of transportation which ensure the seamless flow of people in many different ways, directions and intensities. Territorial organization and urbanization take into account, primarily, the provision of transport routes, as evidenced by the characteristics of the means used today.

Regardless of the means of transport used, quality requirements are the same: the speed of transport, maximum safety and comfort.

Due to the importance and role of these social activities, transports have benefited from legal regulations since ancient times. The guarantee of free movement of people and goods has occupied a central place in all codes, legal systems and later, in international regulations. Life has imposed regulation based on direct negotiations and consensus of all issues related to the development of international transport.

⁷Article 31, paragraph 1-2 of the Warsaw Convention

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