



**The Analysis of the Carrier's Obligations
during the Movement of Goods in Terms of
Dual Perspective of the Budapest
Convention and the Settlement of the New
Civil Code**

Ion IORGA¹, Mirela Paula COSTACHE²

Abstract: In the present study we have analyzed one of the most important, but at the same time conflicting, the carrier's obligations arise under the contract of carriage, that is the compliance of the itinerary while traveling goods to their destination, safely without delay. Using content analysis, through a descriptive documentary research and jurisprudence analysis, this study aims at identifying both the content of the obligation of complying the itinerary established in the contract or the usages that derive from, and particular aspects of this obligation which modifies the original terms of the carriage contract. Also, the paper discusses the texts of the New Civil Code and the Budapest Convention on the carriage contract on inland waterways. To what extent the carrier is entitled to invoke the exemption causes of liability? What are these causes? The paper is in the interest of legal practitioners that confront with the compliance issue of the carrier's obligations and attracting the liability of the carrier for all damages of the goods, during and after the route deviation from the itinerary in given situation.

Keywords: contract of carriage; carrier; contractual liability; good faith

1. Introduction

Most often changing venue of goods transport goes according to the terms of carrier's document agreed at the starting point.

The main task that the carrier assumes is, of course, as in any contract of carriage, moving goods to the destination safe, without delay and to deliver them to the

¹ Senior Lecturer, PhD in progress, Academy of Police "Alexandru Ioan Cuza", Romania, Privighetorilor no. 1 A, sector 1, Bucharest, Romania; Tel.: +40213175523, Fax +40213175517, Corresponding author: ioniorgaion@yahoo.com.

² Senior Lecturer, PhD in progress, "Danubius" University of Galati, 3 Galati Boulevard, 800654 Galati, Romania. Tel.: +40.372.361.102, fax: +40.372.361.290, Corresponding author: mirelacostache@univ-danubius.ro.

recipient in the same state as it has been assigned. It must therefore take all precautionary measures, especially in critical situations that can occur during transport. The carrier may not load or transship the goods, all or in part to another means of transport without the consent of the sender, except in the presence of obstacles and the carrier cannot obtain instructions from the sender in due time or if the usage allows it. It is also forbidden to carry the goods on deck or in open spaces without the sender's permission (article 3, paragraph 4, Budapest Convention¹).

There are exceptions though, when the carrier is obliged to deal with special situations that alter the original terms of the contract of carriage. Thus, it is possible that the sender, under a special right recognized by the regulations in force, unilaterally changes the destination of the consignment. Also, there are few situations where the carrier due to fortuitous events, is forced to take special measures to protect the interests of the parties of the contract of carriage. The normal regime of common right suffers appropriate adjustments.

2. Carrier's Obligation to Respect the Itinerary. The Consequences of the Non-Execution

The itinerary can be determined as we know by the contract of carriage, being explicitly mentioned in consignment-note or by the public carrier charges accepted by the sender, especially in the case of companies that ensure transportations on regular basis. In any of the above mentioned situations, the clause stating the course is mandatory for the carrier, as well as any contractual stipulation. It is excluded the change of the road through the unilateral will of the carrier. It is also possible that in the contract of carriage to specify the stopovers which are allowed to the carrier or even the fact that that the goods movement is achieved without stopovers.

¹ Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) adopted on 3 October 2000 by representatives of the Danube Commission and the CCNR under UNECE was ratified by Romania by Law no. 494 of November 18, 2003 published in the Official Monitor no. 854 of December 2, 2003. The Convention signed on 22 June 2001 entered into force on 1 April 2005, with its ratification by the 5th state (Croatia) on December 7, 2004, in accordance with article 34. At that time the Convention was ratified by Hungary, Romania, Switzerland and Luxembourg; it was subsequently ratified by Germany, the Netherlands and France, last by Law no 2007-300 in 5.03.2007. CMNI follows the principles that exists in other Conventions of transport domain such as the Hague-Visby Rules 1968 or Hamburg 1978 or CMR 1956, the last being a true inspiration. The Convention regulates also the international fluvial carrier contract on the Danube which runs between two states of which at least one is party to the Convention.

If it violates the mentioned duty, the carrier shall be liable to the shipper or possibly to the recipient, especially for the delays.

The speed of operations, the fluctuations that the price of goods register, the need to meet seasonal needs, the long distances to be traveled, require as means of transport to go full speed, reasonably possible, directly to the destination point, and deviations from this way should not intervene, except in cases of urgent necessity. For example, in the case where the deviation of the way is to avoid the dangers that threaten the life of the vehicle or of the load, or the need to try to save other ships in distress, in case of waterways transportation. It is also possible that a ship would need urgent repairs in order to continue its voyage and it could not be achieved unless it diverges from the route.

As previously mentioned the default route can be pre-established by the contract of carriage, the carrier must comply with the spatial and time coordinates which he has taken. If the parties do not expressly specify the route and intermediate stopovers, it implies a clause in the contract of carriage covering the normal route, allowing for reasonable deviations of the carrier to be justified for the completion in good condition for shipping. In this sense, it provides for article 1272 of the New Civil Code¹.

The carrier's failure of the obligation of not deviating from the road unduly may cause delays so serious as to impede the achievement of commercial purpose of the trip, thereby depriving the sender - receiver – of all or part of the benefit that it would be obtained through consistent execution of the contract of carriage.² If the delay is of such nature as to prevent entirely the achievement of the commercial purpose of transport (e.g. when there is a special interest in delivery, the delivery is essential), the carrier violates an essential contractual obligation giving the other party the right to terminate the contract, the contractor is entitled to not fulfill the incumbent obligations, since it remained without the purpose (legal case) in which it was assumed (e.g. to pay for the price transportation as the cargo arrived very late at the destination).

¹ Article 1272 of the New Civil Code Content of the contract: (1) The valid concluded contract obliges not only what it is expressly stipulated but also to all the consequences that the practices established between the parties, custom, law or equity give to the contract, according to its nature. (2) The regular terms in a contract are understood, though they are not explicitly stated.

² When the commercial object of the expedition is thwarted ever since the departure as the carrier has hidden the intention of deviating from the route, it has the effect of relative nullity of contract to fraud – a contemporary cause with the completion of the legal act; so it is not a matter of contract civil liability.

The sender cannot terminate the contract if the delay did not have consequences so serious as to undermine completely the commercial purpose of transport. In the latter case he is entitled to claim compensation from the carrier for the damage that he has suffered due to the delays caused by shipping.¹ The carrier shall be relieved of liability for the payment of those damages if the delay was caused by a particular cause for exemption (risk) provided by law or contract of carriage.

3. Legal Issues Related to the Deviation from the Itinerary through the International Regulations and Internal Law. The Bad Faith vs. Good Faith of the Carrier

Firstly we analyze the situation where it was agreed by the contract of carriage the itinerary and stopovers without the possibility of deviation.

A carrier unilaterally may decide to deviate from the route, it exposes to the responsibility of repairing any damage occasioned by his wrongful act. What is the solution assuming the occurrence of some exemption causes of liability subsequent to the deviation, causes that otherwise would have spared the carrier to rectify the damage? Does the carrier support these risk effects that may occur after departure? In other words, it assumes any negative consequences regardless of cause, as they may be accidental? In solving this problem we must start from statutory provisions in the matter, and the terms of the contract.

The contract clause expressly prohibits the carrier to deviate from the route must be interpreted as a condition of fulfillment of the result obligation to deliver goods to destination in the entrusted state without delay. The sender is interested in this aspect, to which is protected by law, but is also interested in the exact compliance of the route. We should not overlook the right of that person, as at any time by a countermand, it would require to the carrier the immediate delivery of goods to a point on the itinerary.

If the goods reach to the final destination, but rather on delay, the carrier shall bear the consequences and it will have to compensate the recipient for the damage caused in this case, usually in the limit of the carriage value. But if the recipient proves that the deviation from the route was the reason for the delay being an act committed with intention to cause damage or recklessly (unwise), knowing that a

¹ Constanta Court, civil sentence no. 27/86 annotated by Marin Voicu in *Revista de Drept Comercial/Commercial Law Review* no. 4/2004.

prejudice would probably occur from the delay, than the carrier does not longer enjoy legal limitation, according to the requirements of international and internal law of transportation. (article 1533 New Civil Code¹ and art. 21 CMNI)

We believe that, in principle, any deviation from the route under the conditions where it is expressly forbidden by contract clauses, it presumes the existence of serious misconduct, a “reckless” act with consciousness on the part of the carrier on the fact that a delay and hence some prejudices, it would have been likely to occur for the recipient. Therefore, the recipient does not have to prove the fault severity of the carrier for it to decline in the right of limiting liability. Contract clause creates a presumption of not only liability, but also on the degree of fault of the carrier, decisive for the compensation level.

Conversely, if there were not provided in the agreement precisely and rigorously the route and stopovers, in which case it means an ordinary clause, in the sense of the pursuance of the usual route, some nuances are necessary based on the principle of good faith in the contract performance expressly provided in article 1170² and article 1272 of the New Civil Code. So the law enforces that the route compliance, but of that regular route that can, for example, be established by a usage which the parties have not expressly rejected it.

Then, under the conditions where it would be proven that following the usual route it would be totally unfair to the carrier, meaning that it would be subject to huge costs that it could not provide at the conclusion of the contract, changing the route is justified by itself. This should not affect the recipient's right to compensation. The carrier will invoke unavoidable circumstances and the consequences of which could not be prevented, e.g. certain obstacles to its movement (article 16 paragraph 1, CMNI). The recipient will seek to show that the carrier has deviated from the route, fact which resulted in the delay (aspect easy to prove). In this way it is demonstrated ***the alleged fault fact of the carrier to deflect and not its bad faith.***

¹ Art 1533 New Civil Code - Foreseeability of the prejudice: Debtor is liable only for the prejudices which he foresaw or could have foreseen following the non-execution at the time of the conclusion of the contract, unless the non-execution is intentional or due to its serious negligence. Even in the latter case, the damages-interests include only what is direct and necessary consequence of the non-execution of the obligation.

² Article 1170 of the New Civil Code: Good faith: The Parties shall act in good faith for the negotiation and the conclusion of the contract and throughout its execution. They cannot remove or limit this obligation.

On the carrier there is the presumption of good faith in carrying out the transport, even with the deviation in question. But it is not sufficient, because the carrier will be liable to pay compensation, not only when acting with intent to defraud the creditor – “it is not bad faith on his part” - but whenever it will not be proven the existence of a non-imputable “foreign cause”. It is force majeure or unforeseeable circumstances. ***So there is stressed onto it a presumption of negligence, not serious negligence or intent.*** (art. 1350¹, art. 1351² and art. 1357³ New Civil Code)

While the carrier will not prove unavoidable circumstances and whose consequences could not be prevented, or one of the special risks required by the applicable law of the contract of carriage that determined the delay, it is presumed to be at fault and it will have to compensate the recipient of the receiver, however relying on the benefit of legal limitation of liability. Therefore, the recipient interested in the full coverage of his prejudice - caused by the delay - will have to prove the bad faith of the carrier (intent or serious negligence), destroying the presumption of good faith to the carrier. In any case to the carrier it cannot be held the liability for the delays caused by events that represent causes exonerated of liability, qualified as such by the legal depositions, despite the fact that the parties have stipulated a “criminal clause” by which it was anticipated the amount of prejudices due to the delay.

A complex problem is the assumption that, subsequently to the guilty misconduct of the carrier to route, certain force majeure events occur that cause damage or loss of goods. To what extent the carrier can avail these causes of exception of liability that under normal conditions it could successfully invoke the light of the legal depositions?

¹ Article 1350 - contractual liability: (1) Any person must fulfill the obligations which they contracted. (2) Where, without justification, fails to fulfill this duty, it is responsible for the prejudice caused to the other party and it is required to rectify the prejudice, according to the law. (3) If not otherwise provided by law, neither of party may eliminate the appliance of the rules of contractual liability to opt for other rules that would be more favorable.

² Article 1351 - Force majeure and fortuitous case: (1) If the law otherwise provides or the parties otherwise agree, the liability is removed when the prejudice is caused by force majeure or unforeseeable circumstances. (2) Force majeure is any external event, unpredictable, absolutely invincible and inevitable. (3) Case fortuitous is an event that cannot be predicted nor prevented by one who had been called to answer if the event would not have occurred. (4) If, under the law, the debtor is relieved of contractual liability for unforeseeable circumstances, he is also relieved in case of force majeure.

³ Art 1357 - Conditions of liability: (1) The one who causes prejudice to another by an unlawful act committed with guilt, is obliged to pay compensation. (2) The author of the damage is reliable for the easiest misconduct.

It is understood that the carrier will be liable for any damage caused directly by the deviation from the itinerary. The carrier can defend itself by invoking a cause that removes the unlawful nature of his act - provisions of the authority (article 1364¹ of the New Civil Code) State of emergency (art.1361 New Civil Code²) or those that remove guilt – in case of force majeure or unforeseeable circumstances - events that inexorably led him to change route (article 1351 New Civil Code). Also, the carrier is not responsible for the deviation caused by “transactions or attempts of aid or rescue operations on inland courses, article 18 (1), CMNI - (this case is treated as a state of necessity).

Besides the above-mentioned situation, when the carrier deviates from the route, it does it unjustifiably. It violates a contractual clause, either express or implied to follow a particular route (the normal route). By deviating, the carrier violates an obligation of “not to do” and, according to article 1523 letter b of the New Civil Code it is rightfully put on delay. *Nota bene*: The enforcement notice does not operate on the fundamental obligation of the “outcome” –change of venue and deliver the goods to the destination in the state in which they have been entrusted.

The legal consequences of the rightful delay in carrying out various obligations are different, as we deal with the obligation of delivering with a determined individual asset (commodity) or with other types of obligations (Turianu, 2007, p 175). In the first case, according to article 1634 Paragraphs 1 and 2 of the New Civil Code³, as an effect of the notice, the risk of destruction of goods (fortuitous event or force majeure) is shifting to the debtor, unless it proves that the asset would have been destroyed and the creditor that demanded the restitution of the creditor himself is put on the delay regarding the obligation of receiving the asset (article 1274 paragraph 2⁴ conjunction with paragraph 1¹ article 1557 New Civil Code).

¹ Article 1.364 New Civil Code: Achieving an activity required or permitted by law or order of the superior shall not relieve from liability the person who may become aware of the unlawful nature of his act committed in such circumstances.

² Art 1361: The one who, in a state of necessity, destroyed or damaged the property of another to defend himself or his property from harm or imminent danger is obliged to rectify the damage, according to the rules applicable to unjust enrichment.

³ Article 1634 (1) The debtor is discharged when the obligation cannot be enforced because of force majeure, of unforeseeable circumstances or of their equivalent events, produced before the debtor being put on a delay. (2) The debtor is also released, even if it in delay, when the creditor could not, however, benefit from the execution of the obligation due the circumstances provided at line (1), unless the debtor has taken upon himself the risk of their performance.

⁴ Art 1274 NCC – The risk in transferring contract of ownership: (2) However, in the creditor put on delay takes the risk of accidental destruction of the property. He cannot be free even if it would be

The delayed debtor is not without fault - *qui in mora est culpa non vacant* - (article 1634 and 1525² New Civil Code). Therefore if the sender (owner of disposition right of goods) did not require delivery of goods by the carrier or the latter is not put on delay, the risk of destruction stays within his task. (*res perit domino* – article 1557 of the New Civil Code)

The carrier, being rightfully delayed on the obligation of not deviating from the route, does not take the risk of destruction of goods (occurred subsequently to the deviation) for whose deliverance was never put on delay. On the other hand, if it is found that upon delivery of the goods they were damaged or destroyed, the carrier is presumed to be at fault. When during the defense will try to invoke the “foreign cause” they are not non-imputable that would be at the origin of the counter-claims it will be surprised by the counter-evidence, his act was wrongful to deviate from the itinerary which paralyzed the approach. The effort to prove the inevitability of the circumstances of force majeure, which otherwise would have been able to exonerate of the liability of any diligent carrier, it will be useless. The current circumstances could be avoided if the carrier did not deviate by fault (unjustified) from the route.

It can be seen that there are *two concurrent causes in producing the prejudice: the fact of deviations attributable to the carrier and the unforeseeable circumstances arose after the deviation*. Situation falls within the system that starts from the thesis of indivisibility cause in establishing the causal conditions – the element of liability. According to this thesis, in the establishment of causal report it must be kept in mind that the phenomenon – a cause that does not act alone, but that its conduct is subject to certain factors, which without producing it directly to the detrimental effect, it does however, favor the production of this effect “facilitating the rise of causal process, hastening and favoring the development process or getting them worse or determining negative results”! *Such conditions (that unjustified deviation) constitute along with causal facts an indivisible unity*

proven that the property would have been destroyed and that deliverance obligation would have been executed on time.

¹ Article 1557: (1) When the impossibility of execution is total and final and it regards an important contractual obligation, the contract is terminated as of right and without any notice, even when the event is fortuitous. The provisions of article 1.274 paragraph (2) shall apply accordingly.

² Article 1525 New Civil Code: The debtor responds since the date to which is in delay, for any loss caused by a fortuitous event with unforeseeable circumstances unless it frees the debtor of the performance of the obligation.

within which these conditions acquire also through the interaction with the cause, the causal character.

The carrier will attempt to demonstrate that the circumstances responsible for the caused damage (proximate cause) were not occasioned or contributed to by the fault fact of deviating from the route and they would still have manifested and produced the same effects, regardless of the intervention (even if it had followed the agreed route). So there could not be avoided and therefore his action is excluded from the causal complex. To the carrier is not denied the recourse to any particular cases of exemption, recognized in transport domain, which were not affected by the deviation of the route.

On the other hand, if the by non-complying of the route, the carrier has committed a “reckless” act, consciously that a prejudice might occur to the goods by the deviation from the route, than it decedes also from the right to rely on exemptions and limitations of liability provided by law. For example, it is the situation when it deviates from the route to a stopover in a zone of armed conflict or it knows that a certain segment of the Danube the navigation is risky, and yet ignores the potential danger and strays into that area.

In any case, a deviation from the strict route specified in the contract of carriage is presumed to be in itself a reason for revoking the right to limit liability for damages caused by violation – a reckless act knowingly that some damages will produce. For example, ship berthing in a port outside the route for emergency repairs (due to un-airworthy condition imputable to the carrier), although this is an unjustified deviation in relation to the contractual requirements, it cannot necessarily be retained as a “reckless act”, that would deprive the carrier of the benefit of the limitation of liability.

If the interested party is nevertheless concerned that the regarded port was known and that it did not provide basic, minimal safety, onboard the ship and cargo, it can hold a specific seriousness of the guilt of the carrier with repercussions in terms of liability.

4. The Conclusion of the Contract

In the Continental and Romanian law, the termination legal regime of the carriage contract on the grounds that there was an unjustified deviation, it transfers the the

problem of carrying losses (damage goods) caused by fortuitous events arising after the deviation, from the contractual liability plan of the carrier in the one of supporting the risks by the debtor (carrier) being in delay.¹

This time, the debtor is in the delay on the fulfillment of the obligation (generated by the sanction of termination) to return the goods to the creditor - the sender, as a result of termination (article 1554 of the New Civil Code).

Also, as a result of termination (of the rightful one, under the conditions of a Level IV Commissoria Lex – article 1553, of New Civil Code) there are abolished all contractual clauses that predetermined the conduct of the parties. In the post-deviation from the route period, the carrier in addition to the fact that it does no longer benefit from the freight, it will be exposed to enormous risks. His interests will no longer be protected by statutory provisions in the matter. On the other hand, the carrier is in delay of delivery of the required goods - effect of termination – in the moment when it deviated from the route. It will bear the risk of destruction of goods under the common law (article 1634, 1641², 1642³ and 1525 of the New Civil Code) unless it proves that the goods would have been destroyed at the creditor as well – the owner of the right of disposition on the asset.

For the faults of the goods found during the release of goods, that could have been caused by specific risks under the legal depositions or in the conditions of carriage, the carrier shall not be entitled to the exemption causes which were justified under the rule of uniform rules or contractual provisions. Of course, there is the situation where these risks occur in the post departure period (termination).

¹ In the English law concept, where the charterer finds out that the ship has deviated unjustifiably from the route way, it has the liberty to choose the termination of the contract, demanding the delivery of goods because the carrier has violated one of the important obligations. For other differences in the legal system against the route deviation in maritime law see (Bibicescu, 1958, pp. 237-238).

² Art 1641 New Civil Code: In the case of total destruction or alienation of the property subject to refund, the refund obligation of the debtor is bound to pay the value of the property, considered either at the moment of the receipt or at that of loss or of alienation, according to the lowest of these values. If the debtor is in bad faith or the refund obligation comes from his negligence, the refund being achieved according to the highest value.

³ Article 1642 of the New Civil Code: If the property subject to restitution was fortuitous lost, the refund obligation of debtor is discharged of this obligation, but he must give the creditor, as applicable, the compensation received for this lost or, when it did not receive it yet, it is entitled to receive this allowance. If the debtor is in bad faith, the refund obligation comes from his negligence, he is not in liberty to pay back unless it is proven that the property had been destroyed and in the case where, at the time of destruction, it was already delivered to the creditor.

If under the conditions of carriage governed by special rules laid down in the national and international laws, the carrier may successfully invoke a circumstance which may be unpredictable, but at least it was inevitable to protect themselves from liability, with the termination of the contract, it is taken from him this favor. The only thing that should be done is to prove, according to common law, an event of force majeure interpreted more demanding, which must be unforeseeable and that it was at the origin of the damage produced post-departure (post-termination), moreover it must demonstrate that, because it was in delay, this cause would have been operational also on the assumption that the goods would be at the creditor.

The carrier shall be liable also for the nautical errors¹ committed by its agents or servants and for damages caused by fire or a hidden defect of the ship, arising in the post-diversion period because the contractual exemption from liability in such circumstances (admitted in maritime and inland law) has ceased to act with the termination of the contract of carriage.

5. Conclusions

The carrier will be liable for all prejudices suffered by the asset in the period after the deviation from route, unless it proves the “foreign cases” that were at the root of these prejudices, being about those “foreign cases” - co-fault contractor, the vice of goods, force majeure and unforeseeable circumstances – whose non-imputable feature is considered to be more severe by the applicable law to the contract of carriage. The carrier must prove, in addition, that the goods would have perished when it was returned to the entitled creditor as a result of the termination.

The carrier also loses the benefit of legal limitation of liability, which is obliged, under the circumstances, to rectify the damage in full. On the other hand, if the carrier delivers the goods unaffected as a result of the termination of the contract, it is not exempted from paying damages. The damages are not intended to compensate as equivalent of the non-execution of the obligation to change of venue under the contractual civil liability commitment. They seek to repair the damages caused by the termination of the contract of carriage effects attributable to the

¹ The nautical error retained in the commander’s task and the crew of the ship does not include the error in the management of the ship. CMNI Convention has shared the narrow sense of the term, limiting the possibility of exempting the carrier in this case. For the meaning of the word “management” (negligence in managing the ship) it was used in the Hague Convention.

carrier. The effects of the contract are affected by an implied condition of resolution – culpable non-execution of obligations by a party in the reciprocal contracts.

It is possible for the sender to perform the obligation of “to do” of the carrier on its expense, concluding another contract of carriage in order to complete the journey with another carrier (article 1528 of the New Civil Code¹)

Finally, the carrier, by the virtue of the right of countermand may solicit in the case where it is found unjustified deviation from the itinerary, delivering the goods by the carrier in the port where it made an unscheduled stop. In that case, the contract of carriage produces still effects governed by the uniform rules in the matter.

Therefore, the carrier will no longer tolerate the effects of the contract termination. On the contrary, the exercise by the sender of the right to unilaterally amend the contract of carriage assumes the sustainment, on its part, of all expenses and damages incurred in the execution of the instructions, i.e. the freight for the entire journey, whether it requires unloading of the goods before their arrival at the place of delivery. It is possible that the sender, in turn, to benefit from the interested damages justified by the deviation from the itinerary.

This unfavorable situation for the sender is possible, given that, in the absence of a commissoria lex, the court will not accept the request for termination, considering that the carrier has not violated, the deviation from the route, an essential obligation under the contract of carriage. It is questionable the possibility of inserting a commissoria lex in the international contract of carriage, at least that would give the sender the right to consider the contract as rightfully terminated without formally put on delay in the case of deviation from the route. This contract clause may be interpreted as exacerbating the responsibility of the carrier (as shown above the risks to which they are exposed), and according to the international laws “all contractual stipulations covering ... the increase of gravity of liability, in the sense of the current Convention, on the carrier ... are zero” (article 25 CMNI).

It is not, of course, the case of the deviation made intentionally or “recklessly” with the awareness of producing the damage to the goods by the carrier. In that case the carrier will be deprived of any privilege in the matter of liability and it will be

¹ Article 1528 The execution of the obligation of to do: (1) In the case of a non-obligation of to do, the creditor may, at the expense of the debtor, execute itself or to make determine the obligation to be performed. (2) Unless the debtor is rightly in delay, the creditor may exercise this right only if it notifies the debtor either with putting into delay or subsequently after.

submitted to all risks. As such, the rightful termination clause does not detract, in these circumstances, from the rules governing the exemptions and limitations, and also increasing the gravity of the liability.

In response, there will be null a clause under which the carrier will be exonerated of the liability for any fault, including “dol”, manifested in the event of deviations from the agreed route.

A deliberate deviation from route absolves the carrier of liability, waiver constitutes a particular risk - the concept of maritime regulations - only if done to aid or save on shipping rates.

It would be interesting to analyze to what extent the deviation, in order to rescue and aid of inland waterways, would be justified, sacrificing the transported goods or only in the sender's interest to release the goods, in order to save other owners' goods, especially since the rescue activity is paid from funds established for this purpose. Under these circumstances, we consider it necessary to achieve a balance between the interests of all those directly or indirectly involved in the joint rescue action, otherwise being diverted from its humanitarian purpose.

6. References

Căpățână, Octavian & Stancu, Gheorghe (2003). *Dreptul transporturilor. Partea generală/ Transport law. General part*. Bucharest: Lumina Lex.

Turianu, C. (2007). *Curs de drept civil. Drepturile reale. Teoria generală a obligațiilor/ Course of civil law. Real rights. General theory of obligations*. Bucharest: Editura Universitară.

Bibicescu, Gheorghe (1958). *Transportul maritime/Maritime transport*. Bucharest: Editura Stiintifica.

****Noul Cod civil roman/The New Romanian Civil Code* (2009)

****Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)*.