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ABSTRACT

OF A
THESIS

FOR THE AWARD OF A DOCTORAL DEGREE

ON THE TOPIC

„THE CONTRACT FOR CARRIAGE OF GOODS BY ROAD“

Scientific field 3. Social, economic and legal sciences
Professional field 3.6. Law
Scientific speciality Civil and Commercial Law

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I. GENERAL CHARACTERISTICS OF THE THESIS

Relevance of the topic and practical significance of the research

The thesis is devoted to the substantive issues of the Contract of Carriage of Goods by Road, both under the national Bulgarian law and in relation to the Convention on the contract for the international carriage of goods by road (CMR). The scientific novelty of the study lies in the fact that, to date, there has been no complete systematic study in our legal literature, both with regard to the regulation in our domestic law and with regard to the CMR. The importance of the questions of interpretation of the Convention are directly applicable to the interpretation of the domestic regulation, in view of the attempt to comply with its provisions in the regulation of our domestic law, which is why the work proposes a specific analysis of the similarities and differences between the regulation of the "contract for the carriage of goods by road" under the CMR with the current domestic law.

Aims, object and objectives of the study

The aim of the thesis is to present a complete and systematic theoretical analysis of the substantive issues of the contract for the carriage of goods by road under our domestic law and the CMR, its characterization and clarification of its legal nature, an examination of its main elements, including by way of distinctions, an analysis of the legal relationships that arise and a clarification of the substance, content and exercise, respectively performance of rights and obligations, including a discussion of the important issues relating to liability.

The scientific task includes the following subtasks:

First, to examine in detail the previous regulation and its implications for the current legal framework. The study is aimed at analysing the previous legislative decisions, their theoretical characterization and highlighting the specific points of the contract for carriage of goods by road - general characteristics of the contract, subject matter, conclusion, parties, rights and obligations and liability.

Second, the provisions of the Convention on the Contract for the International Carriage of Goods by Road should be examined in detail. The study aims to analyse the provisions of the Convention, including the historical reasons for using the specific wording of the provisions, their interpretation by States (parties of the Convention) from different legal systems according to their

domestic legal framework, as well as a comparative law analysis of the case law from States from different legal systems on the application of the Convention, which aims to broaden the knowledge in the interpretation of the legal framework, with an emphasis on points where the Convention does not provide a clear answer, for which a comparative law interpretation is presented.

Thirdly, to examine in detail the regulation of the contract of carriage of goods by road under domestic law, for which, on the basis of the historical study and the examination of the CMR regulation, the thesis on the specific wording of much of the current legal framework is justified. Weaknesses (omissions and inaccuracies) and the need to correct them are critically highlighted. The scientific aim of the thesis is to draw scientific and scientific-practical conclusions based on the arguments in defence of the critical analysis, to summarize them and to draw “de lege ferenda” proposals.

Research methodology

The thesis explores a topic that combines to a large extent private international law and national law, in particular the regulation of the contract of carriage by road as part of the sub-sector "transport law". This is directly reflected in the methods of scientific research used. In writing the thesis, a wide range of general and special methods of conducting theoretical research in the field of legal science was used. Leading among the general scientific methods are linguistic interpretation, critical analysis, synthesis, deduction and induction, and among the specific scientific methods scientific-logical interpretation has been used, in which historical, comparative law, systematic and teleological interpretation have found application.

Scope and structure of the thesis

The work covers 469 pages, including a bibliographical reference, and includes 75 titles cited in it, of which 26 are in English, French, German, Spanish and Russian language. The structure of the thesis consists of an introduction, three chapters divided into paragraphs, and these internally into sub-paragraphs and subdivisions, and a conclusion.

II. BRIEF OUTLINE OF THE MAIN CONTENT OF THE THESIS

Introduction

In the introduction, the immediate tasks of the thesis are stated in a synthesized form, the aim and objectives of the thesis are introduced, the structure and the main points are outlined and systematically analysed in the relevant parts.

CHAPTER ONE

Historical overview of the regulation in the Tsardom of Bulgaria and the People's Republic of Bulgaria

Chapter One is divided into three paragraphs and contains a historical overview of the historical national framework, presenting chronologically the domestic legislative authorizations and synthesizing the theoretical concepts in our legal literature relevant to the respective legislative framework, with particular attention to individual issues such as the main characteristics of the contract, the legal position of the recipient, the liability of the parties and the claims procedure. Legislative authorizations and doctrinal concepts are traced in order to clarify their subsequent evolution, including a critical analysis.

The first paragraph (p.9 to p.13) analyses the regulation of "the contract of hire of carriers, by land and by water, for the conveyance of things or persons" in Art.386 to Art.390 of the Law of Obligations and Contracts (LOC) of 1892 as the original of the contracts of carriage, the main points of the characterization of the contract as consensual, synalagmatic, intuitu personae, the subject of the contract is clarified, the parties are characterized - carrier and consignor, with the possibility of the appearance of a third figure - consignee, in which case there is a stipulation for the benefit of third persons. The main obligations of the consignor, of the carrier and his liability as a penalty for non-performance are analysed, presupposing fault, respectively the fault of his subordinates, as there is no such liability in the cases of fortuitous event and force majeure, in the case of fault of the consignor or the consignee and in the case of defects of the goods themselves. Active substantive legitimation is analysed in the case of non-performance of the carrier's obligations - conferred on the consignor as a party to the contract, notwithstanding that it is not the actual owner, and on the consignor, who draws its rights from the transport contract itself, and in the case of competition in its rights with the consignor, joint standing is assumed.

In the second paragraph (from p.14 to p.28) the regulation of "contract of carriage by dry carriage" in Article 384 et seq. to Article 412 **Commercial Law** (CL) 1897 is analysed, the main points of the characterization of the contract as consensual, representing a contract of result with the possibility of issuing specific documents - a consignment note, containing the conditions of carriage and serving as a means of proof, and exceptionally manifesting a lateral action - of the disposition of the cargo, as well as a cargo record, representing a written document in which the obligation of the carrier to deliver the goods to be transported to the person named in the act or to his order is materialized. The parties - the carrier, the consignor and the consignee - are characterized, and various interpretations of the theory are presented with regard to the legal position of the consignee, the view of L. Dikov, who finds that a correction should be made to the view that the contract for the carriage of goods by road means is a contract for the benefit of third persons and presents a thesis according to which the consignee enters into the relationship created by the transport contract in four successive phases, there being a merger between the consignor and the consignee in so far as they are persons with a common interest in receiving in good order what has been agreed. Both the obligations of the transmitter and the obligations of the carrier are analysed, and the relatively detailed regulation of the carrier's liability is presented, regulated as strict liability, limited in time, as well as in amount and scope. Liability is analysed, which covers any damage to the goods, irrespective of whether the damaging event is attributable to the carrier or to his people, and special grounds for exemption from liability are provided for - force majeure (footnotes pp. 20 to 23 present the theoretical developments on the subject), the natural quality of the goods or defects in the packaging, the burden of proof which lies with the carrier. Liability is to the consignor, even without the latter being the owner, incl. he may claim not only for damages personally sustained but also for those which have affected the person on whose account the goods were delivered for carriage. The analysis of active substantive legitimation is that of the persons genuinely concerned, but in two cases: where the relevant claims have been regularly asserted on the part of the shipper, or where what the carrier has done can be characterized as a tort. The statutory limitation on the amount of damages payable is analysed, which is waived where the carrier or its persons have acted with 'malice' or 'criminal negligence'.

In the third paragraph (from p.28 to p.65) the regulation of the road transport contract, which was in force after 09.09.1944 and the transition to the

social-economic system, is analysed, namely the general regulation of the transport contract in the provisions of Article 309 - Article 322 of the Law on Obligations and Contracts (in force since 01.01.1951), as well as the special rules of the Statute of Road Transport for General Use in the People's Republic of Bulgaria (in force since 01.01.1955) (SRT). The differences in the legal regime compared to the previous regulation are presented (freight transport was carried out according to a planned procedure, part of the state national economic planning, the main part of the vehicles were state socialist property, the transports were carried out by socialist transport enterprises, and a large part of the freight was sent and received by socialist production organizations on the basis of transport plans as part of the unified national economic plans). The thesis analyses the regulation of the road freight contract as a sub-type of the transport contract, indicating the main characteristics of the contract (p.30 to p.33) as an independent type of contract, bilateral, real, subject to the requirement of form in view of the planned nature of socialist transport law, freight transport is carried out on the basis of contracts, and the specific road transport contract is formalized by an entry in a waybill (p.33; having significance for the control of the carriage and issued unilaterally by the carrier) and by the issue of a so-called consignment note (p.33 ; drawn up as a single document in which appear the signatures of both the consignor and the carrier, i.e. having a bilateral character and evidentiary significance), the completion and particulars of which are regulated by law and which have independent significance. There is provision in the general provisions of the LOC for the issue of a cargo record (p.34) as a registered security which may also be issued on promissory note, but the provision applies only to contracts of carriage by sea. It has been pointed out that the regulation of the rights, obligations and liability of the parties is influenced by the principles laid down in the regulation, which are based on the socialist nature of transport activity, the participants in which exercise the rights and obligations in order to achieve a common goal - the realization of the people's economic plan, therefore, the regulation is based on the principle of mutual assistance and cooperation between all participants in the transport contractual relationship, due to the combination of their interests with the public interest, and mutual cooperation is manifested by The obligations of the carrier are analysed (pp. 35 to 37), noting that, although they appear to coincide in content with the previous regulation, there are significant differences in relation to the economic purpose of socialist transport, which also applies to the obligations of the carrier. The liability of the transport

organisation is analysed (p. 48 to p. 53), both in relation to the general regulation in the LOC and to the special regulation in the SRT - regulated as a special pecuniary liability due to the non-performance of an obligation arising from the contract and during its operation, with manifestations - total loss, partial loss, damage and delay. In the event of a form of non-performance, a pecuniary liability is provided for, framed by the scope and amount, previously established by mandatory norms, including the law regulated special grounds for exemption from liability - in case of force majeure, due to the nature of the cargo or the content of the consignments, the defects in the packaging, which could not have been noticed upon acceptance of the consignment, the falsely declared content of cargo and consignments, which were not allowed for carriage or were transported under special conditions, or the fault of the customer (when loading and unloading). The special rules in relation to the special non-jurisdictional complaint procedure are also analysed, as well as the evidence for which the law requires the drawing up of a certificate of ascertainment in accordance with an established model, which is a bilateral document, the legal significance of which depends on whether it is drawn up at the time of delivery of the goods (it has the effect of proof of the shortages or damage) or afterwards (it has the effect of ordinary evidence, which is subject to the discretion of the complaint service). The question of the legal status of the recipient is noted (p.54 to 64), respectively the theoretical studies of the socialist doctrine on this issue are presented, which for the most part (with L. Vassilev and L. Topalova as the main representatives) assume that the consignee becomes a party to the contract, although not at once and not with the conclusion of the contract itself, but by gradually displacing the consignor, i.e. the consignee does not participate as a party in the conclusion of the contract, but in the process of its execution gradually enters (in three stages) into the transport legal relationship, until finally it usually displaces and replaces the consignor and becomes an independent party.

CHAPTER TWO

Convention on the Contract for the International Carriage of Goods by Road (CMR)

Chapter Two is divided into twelve paragraphs and its subject is the Convention on the Contract for the International Carriage of Goods by Road (CMR). The thesis aims on the one hand to give detail and depth to the legal analysis of the Convention, on the other hand - the interpretation and analysis of

the Convention presupposes the interpretation and analysis of the national legal regime of the contract for the carriage of goods by road, insofar as the special regulations under our domestic law are consistent with and follow a large part of the Convention's provisions.

The first paragraph (from p. 69 to p. 99) analyses the scope of application of the Convention in terms of “subject matter” and “place” and outlines special cases of application and gives a general outline.

When analysed “by matter”, it is clarified that there is no legal definition in the CMR of the term "contract of carriage of goods by road", for which a definition is proposed (p.70), the main characteristics of the contract are indicated as consensual (p.70), remunerative (p.72), bilateral (p.74), with a specific object (p.71) to be performed by means of a road vehicle within the meaning of Article 1, paragraph 2 of the CMR (p.72), distinguished as a separate type of contract (p.72), and distinctions are also made from the forwarding contract (p.81-85) and the rental contract (p.86).

The persons involved in the carriage relationship are analysed: carrier (p.73); *principal* (understood not as the person on whose behalf the agent acts, but as the person who participates in concluding the contract of carriage with the carrier and whose main obligation is to pay the carriage fee, without necessarily being the owner of the cargo p.73-74); consignor (p.74); consignee (p.74). The question can the CMR contract be described as a contract for the benefit of a third persons (p.76 to p.80) is highlighted? It is pointed out that the CMR does not give an explicit answer to the question, which is not accidental, but a consequence of the aim pursued by the CMR - the creation of a unified regulation applicable in countries from different legal regimes, therefore the comparative law is traced the regulation of the contract of carriage by road from the point of view of the legal position of the consignee in France, Germany, England, Italy, Russia and Spain, and it is concluded that in the countries where the contract of carriage by road is treated as a contract for the benefit of a third persons - they also treat the contract under the scope of the CMR as such, conversely, in the countries where the contract is treated as tripartite - they also treat the contract under the scope of the CMR as such. It has been pointed out (p.80) that the problems raised by the question of treating the contract for the international carriage of goods by road as a contract for the benefit of third persons or not are mainly related to the active legitimation of the parties and also to the liability for the carrier's claims.

In analysing the scope of the Convention by place, its relatively broad applicability is pointed out (p. 87), because it is sufficient that at least one of the places of receipt or delivery provided for in the contract is in two different States, at least one of which is a party to the Convention, and it is emphasised that for the Convention to apply there must be an agreement to transport from one place to another which is in a different State, the mere fact of crossing a frontier not being sufficient, the intention of the parties being determinative, for which there are given and corresponding

Special cases of application are indicated, i.e. in the case of combined transport (p. 89 ff.), and an analysis of the special condition of application in the case of a mode of transport other than road transport is proposed, with three cumulative requirements for application.

An answer is proposed to the question whether the Convention applies if the transhipment or the use of another mode of transport altogether is effected at the initiative of the carrier without being provided for in the contract, indicating the extent to which no Convention has been adopted on the contract of international combined transport. In dealing with the problem referred to, reference is made to its comparative law controversy, for which the various decisions in: England, Belgium, the Netherlands and Germany, are given, and an author's opinion is given on the question posed (p. 95), according to which the determining criterion for the application of the Convention to the contract concluded, which by definition must satisfy the requirements of Article 1 CMR, is to be sought in the intention of the parties, which may be expressed expressly or impliedly, because the scope of the Convention is not concerned with the performance of carriage but with the conclusion of a contract for such carriage, necessarily involving knowledge that if it meets the conditions it will be within the scope of the Convention. The intention to contract includes an intention that the Convention should apply, and if it appears from the contract that the intention was to carry out only carriage by road, the Convention applies in any event to the whole carriage, whether or not the performance is by another mode of carriage, including transhipment, because it is not made with the consent of the principal, and the carrier cannot therefore escape his liability under the Convention, especially where he entrusts another carrier with the performance by the other mode of carriage.

In the **second paragraph** (from p.99 to p.116) the rules concerning specific documentation are analysed. The provisions governing the preparation of the

consignment note, its content, liability in the event of inaccurate information and the significance of the consignment note as a document of *prima facie* evidence of the conclusion of the contract, the stipulations thereunder and the circumstances reflected therein are analysed in turn in the light of Article 9 CMR, and it being expressly emphasized that the consignment note is not a security (p.111), it's not a title to property, does not materialise any rights over the cargo and, accordingly, the actual possession of the consignment note does not legitimise its holder as the owner of the cargo. The regulation of an "electronic consignment note " created as an alternative in the adopted Additional Protocol (eCMR) to the Convention on the Contract for the International Carriage of Goods by Road is analysed.

The third paragraph (from p.116 to p.124) analyses the commencement of the performance of the contract and the rules of evidence. It is emphasized that the commencement of the performance of the contract is the moment of the occurrence of the acceptance of the cargo as a legal act, i.e. the passing of the cargo into the actual possession of the carrier, which coincides with the passing of the right of management (control) over the same, but which is for the purposes of the contract of carriage (p.116). The rules of evidence are analysed (from p.118 to p. 124), the purpose of which is to specify which circumstances are to be verified by the carrier before the performance of the contract begins, giving him the opportunity to object if he finds discrepancies or if he is unable to carry out the verifications, otherwise, in the absence of objections, a presumption is established that the circumstances correspond to what is reflected in the consignment note, sect. i.e. the carrier is bound by the presumption that the cargo and packaging were in good visible condition, respectively that the number of parcels, their markings and numbers correspond to the particulars in the consignment note. The rules on objections are analysed - when they should be made, whether they should be reasoned and whether they should be admitted and what is the evidential value of reasoned objections entered in the consignment note.

The fourth paragraph (from p.124 to p.130) proposes an analysis of the liability of the consignor when the cargo is handed over - liability is only to the consignor, he is liable only to the carrier and only for damage caused by the packaging because it is a particularly high risk factor, and so does not apply to incorrect loading or stowage. His liability is unlimited (p.125) and exemption from such liability is only possible where the defects in the packaging were

apparent or known to the carrier at the time of acceptance of the cargo and he made no objection. The obligation of the consignor to deliver the necessary documents, respectively the liability in case of non-fulfilment, is discussed.

The fifth paragraph (from p.130 to p.137) analyses the carrier's obligations to comply with unilateral orders to modify the contract (the so-called "right to dispose", which does not include the right of ownership of the cargo, emphasising that the consignment note is not a security and the "right to dispose" is regarded as a right in relation to the subject matter of the contract p.130), respectively the consequences of non-performance. The content of the right, to whom it belongs at different times, how it may be exercised and what rights and liabilities arise from its exercise, respectively the liability of the carrier in cases where it fails to comply with the orders, are discussed.

The sixth paragraph (from p.137 to p.151) titled "delivery" analyses the provisions that govern the due performance of the carrier's main obligation - delivery of the cargo as a legal act to the destination and its delivery to the consignee. Emphasis is placed on Article 13(1)(2) CMR (p. 139 et seq.), according to which text, if loss is established or if the goods have not arrived by the expiry of the time limit for performance, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage. The question of the legal position of the consignee is also directly relevant to the question of standing (substantive legitimation). The different interpretations of the active legitimation of the consignor, with a view to expressly recognising the right of the consignee in cases under Article 13 CMR, are analysed comparatively: France, Germany, England, Austria and Italy. The national case law is also analysed and a critical view is expressed with regard to the accepted solution that the active legitimation of the consignee arises from subrogation to the rights of the shipper by virtue of Article 13 par.1, clause 2 CMR, and a more recent case law is presented, where the active legitimation is determined depending on who actually suffered the damage. A summary is made (p. 143), in which, after the analysis of the different interpretations in the doctrine and practice, it is noted that it is predominantly accepted that the gap on the issue of active substantive standing should be filled by applying the *lex fori*, as in most of the cases active procedural standing is also granted to a person who has not been explicitly granted a right of action and therefore owes proof of his substantive standing. Consequently, if a right of action has been settled in favour of a person (principal, consignee or consignor), he does not need to prove

that he has suffered damage in his legal sphere. If another person, to whom the right of action has not been expressly conferred but who has suffered damage directly or indirectly under the contract, is preferably granted standing, but has the burden of proving his substantive standing (consignor where he is not the principal or where the consignee has received the goods, consignee before receiving the goods, including assignee, subrogate, etc.).

An analysis of the rules is proposed, under which a consignee claiming rights is obliged to pay the amount of the obligations arising from the consignment note , and in the event of "objections on this point" the carrier is obliged to deliver the cargo, but only upon presentation of a guarantee by the consignee, i.e. the established "implied" lien, which is limited to the carrier's claims under the consignment note . Emphasis is placed on the question whether the carrier can claim from the consignee the costs not recorded in the consignment note , i.e., does the carrier have a claim against the consignee, i.e., does the latter become liable in respect thereof (p. 145)? It is submitted that the question posed finds contradictory resolution, both by comparative legal analysis of the French and Slovenian solutions, and by consideration of Bulgarian national case law, where it is held that *"...the carrier's remuneration was due for payment by the consignee of the cargo, pursuant to the express provision of Article 372(2) of the Commercial Law",* with criticism (p.148) on stated grounds (the author's view being that the High Court of Justice (HCJ) should have focused on a different issue, namely: *Where the CMR finds application, in view of the absence of a provision on the liability of the consignee for obligations not recorded in the consignment note , in cases where the principal is not the consignee, does the same constitute an incompleteness to which the rules of our domestic law can be applied, under which Art.372, (2) of the Commercial Law, the law provides that, in the event of unpaid costs, the carrier may direct his claim against the consignor and against the consignee?* To which the question posed is answered in the negative for the reasons stated: The CMR governs the liability of the consignee where it is a party to the contract and where it is expressly stated in the consignment note that, in order to release the cargo upon delivery, the consignee must pay the obligations under the consignment note or, in the event of any objection by the consignee, provide security, and therefore a reference to the domestic regulations is not appropriate because it would amount to rewriting the Convention; It is unnecessary to insert in the consignment note a clause releasing the consignee from the obligation to pay the carrier's remuneration, because it is important for the consignee to

determine the amount due under the consignment note in order to decide whether to claim release of the cargo. If the idea of the Convention was to make the consignee liable in all cases for the obligations of the contract of carriage (whether or not they were entered in the consignment note), except where it is expressly stated in the consignment note that the consignee is discharged from the obligations of the contract, then at the very least there should be such an entry clause in the Convention (or in the model produced by the IRU), rather than a stipulation informing the consignee of the amount he must pay to discharge the cargo; Inasmuch as the carrier would not be deprived of the opportunity to engage a responsible party, the principal, the proper approach is to ascertain which party stands on that side, i.e. Otherwise, if it cannot be ascertained, the carrier should be presumed to have a claim against the consignor, in so far as it is assumed that, in the absence of other evidence, the consignor is the person who contracted with the carrier, but the latter would also have a claim against the consignee if the latter had expressed a willingness to assume the obligations. Therefore, in order for the consignee to be liable, it is necessary that the consignee has expressly manifested its intention to be liable for those obligations, which is the burden of proof on the carrier, a similar solution adopted in a subsequent decision of the Supreme Court of Cassation).

The seventh paragraph (from 151 to 160) analyses the provisions of the Convention governing what should happen in the event of obstacles to delivery and arrival and how costs should be recovered where such obstacles exist.

The eighth paragraph (from p. 161 to p. 234) occupies the most voluminous part of the thesis and is devoted to the liability of the carrier, which is in turn internally divided into sub-paragraphs and subdivisions.

The **first sub-paragraph** (§8.1. from p.161 to p.168) deals with the forms of non-performance, the limits of liability in time and the nature of the carrier`s liability, on which it has been noted that this is one of the most contentious issues insofar as the Convention was designed and drafted to apply in all courts of competent jurisdiction in the Contracting and Adhering States to the CMR, which have differing theories on the issue of the nature of the carrier's liability. Different interpretations in France, England, Germany, Austria and Spain are presented. An opinion is expressed (p.168) that whether one chooses to define liability as contractual, statutory, strict, subjective, respectively with their possible variations, practically the same result is reached because: the liability of the carrier under the CMR can only exist where there is a form of non-

performance of a concluded contract falling within the scope of the Convention has occurred; the carrier's liability is regulated peremptorily and does not need to be expressly agreed, incl. deviation from the norms by contractual agreement is not permitted; in the event that a form of non-performance has occurred, the carrier is liable, and its exemption from liability in both cases (presumed fault or strict liability) is only when it is proved that any of the prerequisites of Article 17 are present CMR. It has been pointed out that the discussion on the nature of liability (strict or subjective) is based on the wording of Article 17(2). CMR "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" - whether it constitutes vis major (which gives an objective character to the liability) or whether a subjective element is included in "he was unable to prevent" (i.e. the limit of liability has a subjective element, which is characteristic of fault liability), but in either case the carrier is liable unless he proves exonerating circumstances, and the interpretation of the provisions does not depend on how the nature of liability is to be determined, so it is concluded that the disputation is of no practical value (p. 169).

The **second sub-paragraph** (§8.2 from p. 169 to p. 220), which in turn is divided into four sub-paragraphs, deals with the general grounds for the carrier's exemption from liability (§8.2.1 from p. 169 to c. 191), non-exempt grounds (§8.2.2. from c. 192 to c. 197), special grounds for exemption from liability (§8.2.3. from c. 198 to c. 217), and liability for contributory negligence (§8.2.4. from c. 217 to c. 219).

In the subdivision general grounds for exonerating the carrier from liability, the cases of:

1. Misconduct of the person entitled constituting a manifestation of the general principle "nemo ex suo delicto meliorem suam conditionem facere potest". It has been suggested that “claimant” should be interpreted broadly, as both sender (consignor) and recipient (consignee), and correctively, not as the person who has exercised the right of action, but as a possible claimant. It is submitted that if conduct consists in the commission of acts for which a special ground is provided for the exclusion of the carrier's liability, the court should classify them as such and allocate the burden of proof accordingly. The wrongful cause may have different aspects (for example: incorrect or insufficient information about the cargo, etc.) and may occur at different times during the performance of the contract (before, during or after the carriage but before the completion of the delivery, in view of the time period for the carrier's

liability), and it is necessary that it should have initiated the process which, as a direct consequence, leads to the occurrence of a form of non-performance.

2. Instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier - A corrective interpretation of “claimant” is proposed - not as the person who exercised the right of action, but as a possible claimant, incl. if instructions were given by the consignee, and the beneficiary is the consignee, the carrier may invoke the circumstance exonerating its liability, due to the "instructions" of the consignor, i.e. the person who is not the de facto claimant. Thus, it is proposed that 'instructions' should be interpreted broadly to include not only those under Article 12 CMR (the so-called right of injunction) but also instructions or directions as to how the contract of carriage is to be performed which are binding on the carrier. The condition 'not given as a result of the carrier's misconduct' characterises the carrier's conduct which gave rise to the instructions. It is stated that if the carrier raises the objection it has the burden of proving it, and if it alleges that the form of default was caused by orders of the person entitled, in the event that the latter alleges that they were given as a result of the carrier's unlawful conduct (i.e. it introduces specific circumstances on the basis of which the orders were requested), the carrier has the burden of proving that its conduct was not unlawful, incl. different hypotheses of application are proposed.

3. Inherent vice of the goods - it is considered as a defect that is typical (inherent) for the type of goods (certain susceptibility). It is inherent in given goods that they are exposed to some hazards peculiar to them, the emphasis being on the fact that although exposed to risks does not mean that it is an inherent quality which makes its manifestation typical in carriage. The goods should in principle withstand the normal conditions of carriage, in so far as the carrier performs the same with due care. If a defect has manifested itself during carriage, it is subject to examination as to whether it was the fault of the carrier, in which case the latter cannot be absolved of liability. If it is not, but the goods nevertheless suffer a defect, the carrier must prove, in order to be exonerated from liability, that an inherent defect has occurred in the particular goods, that is to say, that the particular goods have given rise to a defect inherent in the particular goods but exceptional in comparison with other goods of the same kind which are normally carried. A distinction is made with the special ground for exemption from liability under Article 17(4)(b). "d" in that, for paragraph 2 to apply, there must be a certain defect in the goods as compared with other

goods of the same nature which are normally transported. The defect is an abnormality in comparison with other goods of the same kind, the carriage of which would not have resulted in damage because of the absence of that defect. The defect comes about precisely because of that defect, and in that sense is an inherent property, but not typical of all goods of the kind in question, but of a particular part, that is to say, it is necessary that the particular goods should possess some exceptional defect which cannot normally be found in goods of the same kind when they are subject to transport.

4. Circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Insofar as the wording of the provision gives rise to the discussion of the nature of liability, starting from whether it amounts to vis major (force majeure) or whether a subjective element is included in "was unable to prevent " (with or without the inclusion of the carrier's diligent care), different opinions have been presented in transport practice and literature.

Firstly, the opinion of R. Loewe is noted, who, with regard to the liability of states that the regime is not a fault liability with a presumption of fault, but an objective liability, and with regard to " circumstances which the carrier could not avoid and the consequences of which he was unable to prevent " advocates that the same constitutes a concept close to force majeure, which in turn varies not only between different legal systems, but also in many cases between states of the same legal circle. Interpretations of the provision in various countries are examined, such as France, Germany, England, Austria and Spain. It is concluded that it is predominantly accepted (including by the representatives of States from different legal circles) that the ground for exemption from liability under Article 17, paragraph 2, subparagraph 4 CMR has features similar to vis major (force majeure), but in any event it is not associated with an ordinary fortuitous event, and therefore no automatic recourse to concepts or analogy with domestic law should be made when dealing with cases where there is a relevant objection by the carrier to be exempted from liability under Article 17(2)(4) CMR. The interpretations of the provision in the literature and practice of the Republic of Bulgaria, which are not consolidated, are also examined. It is noted (p.184) that the principle of strict liability has been adopted in our domestic law, with the analogous wording of Article 17(2) adopted in Article 68(1) of the Road Transport Act (**RTA**) among the grounds for the carrier's exemption, 4 CMR, but with the addition of "(force majeure)", which is not precise, because in addition to being contrary to the text of the CMR, it is also contrary to the

general provision of contracts of carriage under Article 373, paragraph 1 of the Commercial Law and the legal definition under Article 306, paragraph 2 of the Commercial Law. Two options have been proposed (p.187) - either to assume that Article 17(2)(4) CMR in conjunction with the whole of Article 17 CMR governs force majeure or to assume that a fortuitous event is governed to prevent the occurrence and consequences of which there is a requirement of due diligence.

With regard to the first option it is analysed that the wording corresponds to the features of force majeure, although elements are missing (unpredictability and externality), so force majeure manifests its independent role in strict liability, incl. Strict liability was born to explain the cases where the consequences of the occurrence of an event (conventionally speaking) fortuitous for the parties should be borne by a party that is not at fault for its occurrence, dictated by considerations of fairness. However, again for reasons of fairness, there are also situations in which imposing consequences on the innocent party is unjustified, among which is force majeure. If, in the case of 'fault' liability, the model of due care acts as a criterion for the legal relevance of the factual causal link between the conduct of the person whose liability is claimed and the wrongful result, in the presence of these elements the law presumes that the subject acted negligently, and to rebut this presumption it is sufficient to prove that the impossibility of preventing the result was due to circumstances which were not the consequence of negligence, i.e. fortuitous events. Under strict liability, we have an assignment of responsibility to the "innocent," so by definition we don't care, i.e., we deprive the innocent of the opportunity to rebut the presumption that the unavoidability of the result was due to circumstances that were not the consequence of an fortuitous event. But we give him the opportunity to absolve himself of liability by force majeure. And if we define force majeure as a qualified type of fortuitous event in which the wrongful result occurs unavoidably in the sense of an inability to counteract the force causing the impossibility by applying all practicable means, the difference with fortuitous event lies in the measure of due conduct. Whereas in the case of a fortuitous event it is sufficient to prove that he did not act negligently (meaning that he exercised the ordinary care due to a good steward, respectively the due care due to a good tradesman), in the case of force majeure it must be shown that he did not also act differently from a good professional (in the relevant field), i.e. whoever he was (a professional) in the particular situation could not have taken other measures either to avoid the occurrence of the event or to

prevent its consequences. Thus, an objective moment (following the objective theory by specifying that by "the external origin of the accident" we mean an event technically alien to the carrier) is also incorporated into the concept, as is a subjective moment (failure to take the measures that a professional would have taken) in determining the event. And what measures are necessary depends on the evolution of the industry, which should be judged at the time. Hence, it is concluded that if the provision is viewed through this lens, it can be held that the exonerating circumstance under Article 17(2)(4) CMR is force majeure, accordingly applying the criteria in assessing whether an event constitutes force majeure or not.

With regard to the second option it is analysed that if the provision refers to a "fortuitous event" there is a problem related to the Convention's drafting. It has been pointed out that in our domestic law the contract for carriage of goods by road is an “absolute” commercial transaction, therefore the carrier is a trader and there is a statutory requirement for him to exercise “professional due care” in respect of his conduct - the care of a good carrier, but such due care is not expressly imputed in the CMR, and the objective of uniformity of rules sought by the CMR does not permit the use of national law to fill in gaps or to extract arguments from it. It has been pointed out that it is possible to draw a conditional rule of due care from the aggregate rules on the carrier's duties and liability and to conclude that, being charged with specific duties, the carrier owes a duty of care greater than that of a good master, but that this may be open to the criticism that it adds to the factual content of the carrier's liability by imposing on it more than is due under the rules. The analysis of the opinions in practice and theory on CMR offered in the submission gives courage in this respect and it is pointed out that if one accepts the reasoning from this point of view, then the carrier owes in the performance of the contract an enhanced duty of care, greater than the ordinary care of a good steward ('utmost care', 'utmost care', the care of a good professional carrier, etc.). Hence, in the event of an fortuitous event (if Article 17(2)(4) CMR is to be interpreted as such), it must be assessed whether the carrier could have avoided the circumstances giving rise to the adverse consequences and whether could he have overcome the adverse consequences. The assessment is to be made from the perspective of whether the carrier acted other than as a good professional carrier, i.e. whoever he was (professional) in the particular situation could not have taken other measures either to avoid the occurrence of the event or to prevent its consequences. It is

concluded that here again the differences between the two opinions are blurred because the same limit of scrutiny is reached.

In summary, including in confirmation of the position expressed in the first sub-paragraph on the issue of the nature of liability, it is stated that if it is accepted that the objection under Article 17(2)(4) CMR is to be assessed in terms of the criteria of vis major, it must be concluded that liability is strict and contractual. Assuming that it is to be assessed in terms of the professional carrier's enhanced care criterion, we can conclude that liability is presumptively culpable. In both cases, the interpretation to be made by the enforcing authority reaches identical results, and it is therefore argued that the debate on the nature of the carrier's liability under the CMR is devoid of practical value. In a footnote (p.191) the author's opinion is expressed that the carrier's liability should be seen as strict and contractual, accordingly " circumstances which the carrier could not avoid and the consequences of which he was unable to prevent " should be considered force majeure because it overlaps its features (unforeseeability and unavoidability, both of the event/obstacle itself and of its consequences, incl. implicitly implies that the event itself is 'external' to the carrier).

In the subdivision "non-exempting grounds" are analysed the hypotheses of:

1. Defective condition of the vehicle (from p.192). It has been suggested that the provision should be interpreted broadly (in view of the wide possibility of technical defects) and a distinction has been made between vehicle defects and defects in special equipment, for which there is a separate provision in Article 18, paragraph 4 CMR.

2. Misconduct of persons hired by the carrier (from p. 195) - the rule reiterates the principle of Article 3 CMR, the liability regulated being for damages for non-performance when it is due to the conduct of a person employed by the road carrier to assist in performance. It is stated that the carrier is liable for the result, but its obligation may be performed by another person and then the carrier, if it has engaged such a person, will not be relieved of liability but will be liable if the result is not realised, i.e. it will be liable for that person's default as if it were its own default.

In the subdivision special grounds for exemption from liability (from p.198), the hypotheses of special risks are analysed:

1. Article 17, paragraph 4, b. "a" CMR - use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note - it is analysed what is meant by an open vehicle, systematically the provision is interpreted with the rule of Art.18, par.2 CMR for allocation of the burden of proof;

2. Art.17, par.4, b. "b" CMR - " the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed " - it is analysed what comes within the scope, so the provision is systematically interpreted with the provision of Art.18, par.2 CMR;

3. Art.17, par.4, b. "c" CMR - " handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee" - has been analysed systematically with Art.18, par.2 CMR. On the question of what proof the right-holder should make to rebut the presumption, it is suggested that he should prove that the operations were properly carried out, including in such a way as to enable the cargo to withstand the usual manoeuvres of carriage, respectively that the form of non-performance is due to improper carriage on the part of the driver or to other circumstances for which the carrier is responsible.

4. Article 17, paragraph 4, b. "d" CMR - the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin - the analysis is systematic with Art.18, par.2 CMR, respectively Art.18, par.4 in par.2 CMR;

5. Art.17, par.4, b. "e" CMR – “insufficiency or inadequacy of marks or numbers on the packages” - it is stated that it is similar to Art.17 par.2 par.1 CMR, but with the difference in the burden of proof;

6. Art.17, par.4, para. "f" the carriage of livestock - it is stated that the ground is considered as a private case of carriage of goods endangered by risk due to their nature, and it is systematically interpreted with Art.18, par.5 par.2 CMR.

In the latter subdivision, the apportionment of liability is analysed (p.217). The liability of the carrier is limited to the extent to which the grounds for which he is liable have contributed to the forms of non-performance, i.e. cases where

the carrier is partially liable, in which case he must first prove the exonerating circumstances, respectively if it is established that the form of non-performance has nevertheless occurred despite the existence of such circumstances but also due to other circumstances for which the carrier is liable, he must be liable for the latter, the court determining the proportion.

The **third sub-paragraph** (§8.3 from p.219 to p.220) proposes an analysis of the provisions concerning the allocation of the burden of proof for the existence of exculpatory grounds. It is pointed out that in order for the carrier to be able to invoke the defence of Article 17, Paragraph 2 and Paragraph 4 CMR, he must satisfy the requirements of Article 18 CMR concerning the burden of proof, i.e. if he claims the existence of the circumstances referred to in Paragraph 2, he must prove them, as there are no special rules in the Convention concerning the means of proof. If it alleges the circumstances of paragraph 4, it must prove with a high degree of probability that the form of default could have occurred because of the special risks, in which case the burden of proof is reversed and the person entitled has the burden of proving that the form of default is not the result of the grounds on which the carrier claims relief.

In the **fourth sub-paragraph** (§8.4. from p. 219 to p. 229), an analysis is proposed of the provisions concerning the consequences of delay in delivery (in cases of stipulated time or lack thereof) and of the fiction in which delay is equated with non-delivery, as well as of the cases in which the cargo is discovered after the expiry of the period of delay equated with lack. A distinction is made between the provisions in so far as the same is relevant to the amount of liability, in so far as in the case of delay in delivery the person entitled has to prove the occurrence of damage, and the limit of liability is up to the price of the carriage, and in the case of delay equivalent to non-availability the compensation is assessed on the basis of the price of the goods at the time and place of their acceptance for carriage, and there is a maximum limit on the amount of compensation, except in the cases of Articles 24 and 26. An analysis of national case-law on a case concerning the application of the provisions on delay amounting to default is offered, and a critical view is expressed on some of the points made.

The **fifth sub-paragraph** (§8.5. from p. 229 to p. 234) analyses the texts governing cases of cash on delivery, respectively the consequences of non-fulfilment of the carrier's obligations, and the carriage of dangerous goods, with due regard to the ADR rules.

The **ninth paragraph** (from p. 235 to p. 277), also being a large part of the thesis, is devoted to the extent of the carrier's liability, which is in turn also internally subdivided into sub-paragraphs and subdivisions. It is stated that in the event of liability of the carrier, the compensation to follow is of a monetary nature only, and the paragraph under consideration analyses the rules governing the extent of the compensation, the way of its calculation, the general provisions for limiting the amount and the special cases expressly provided for.

The **first sub-paragraph** (§9.1. from p. 235) analyses the provisions determining the amount of damages for default and delay, namely how damages are calculated and at what point the value is determined. With regard to the regulated special limit of the carrier's liability, it is stated that the limits are only in respect of the carrier and only in the case of liability which is within the scope of the CMR. The Additional Protocol of 05.07.1978, signed in Geneva, in force since 28.12.1980, the essential part of which is on the amendment of Article 23, paragraph 3 CMR, with the replacement of the gold franc by a unit of account, is analysed, and criticism is expressed (p.238) that Bulgaria has not acceded to the Protocol, including at the present time, but on the other hand its provisions have been adopted in our domestic law, which has been considered as a serious omission, accordingly accession to the Protocol has been recommended. On the question of the reimbursement of the freight charges and other expenses incurred in the carriage of the goods, the different approaches to the interpretation of "other expenses" in different countries (namely: France, Germany and England) are presented, including the view expressed in the theory in this country, and an opinion is proposed (from p. 245) which defends the view that the compensation should be considered to cover the direct and immediate loss suffered and cannot include indirect damages. The value of the compensation is calculated at the time when the cargo passes under the control of the carrier, therefore all expenses in connection with the goods at that time are to be calculated in determining the value under paragraph 2, i.e. they do not constitute "other expenses" within the meaning of Article 23(4) CMR, and accordingly the limits of paragraph 3 CMR apply to them. The occurrence of a form of default usually concerns an event in the course of carriage of the goods. The damage incurred will be calculated at the time of acceptance for carriage, i.e. there is a period of time during which costs may have been incurred by the beneficiary in connection with the contract of carriage and which would have increased the value of the goods carried from the perspective of the beneficiary. It is therefore these costs which fall within the scope of Article 23(4) CMR, i.e.

all other costs incurred from the time of acceptance of the goods under normal conditions, such as loading, weighing, securing of the goods, insurance premiums after acceptance of the goods, costs paid for customs, veterinary and other inspections, costs of an escort, tolls, vignettes, etc., because these are costs which increase the price of the contract of carriage at the expense of the person entitled from the moment of acceptance of the goods for carriage. If the occurrence is detected upon arrival of the cargo, then all additional costs from the acceptance of the cargo until the discovery of the form of default upon delivery are subject to compensation under Article 23(4) CMR. If the event leads to an obstacle under Article 14, paragraph 1 of the CMR, which results in the impossibility to perform what has been agreed upon in the contract, but the circumstances allow performance, the carrier is obliged to request instructions if he receives them, respectively has taken the necessary ones in the interest of the right holder, if on this occasion costs are accumulated in order to continue the performance of the contract, if the same are not the consequence of the fault of the carrier, the latter is entitled to claim such from the right holder. If they are the consequence of his fault, they shall remain at his expense. If they have been paid by the person entitled, the latter may claim them as "other costs" under Article 23(4) CMR because performance of the contract is still possible. If, as a consequence of the incident, performance of the contract becomes impossible and the carrier is liable for the form of non-performance, then the costs subsequent to the 'discovery' of the incident are directly related to the damage, but not directly related to the carriage contracted for and therefore not recoverable under Article 23(4) CMR. These are consequential costs which are not foreseeable for the carrier and the carrier should not be held liable for them without limitation.

The provisions governing compensation in case of delay are analysed - the damages that may arise in case of delay are not related to damages to the goods themselves, and the claim for compensation under Article 23(5) CMR is limited to the amount of the freight price, not to compensation for direct damages - i.e. damages to be compensated for the loss suffered by the recipient due to the delay - these are financial losses resulting from the late delivery of the goods, therefore indirect damages (including loss of profits) are also compensable, the damages must be foreseeable and causally linked, the gaps being filled by the relevant applicable domestic law.

The **second sub-paragraph** (§9.2. from p. 248) analyses the provisions that determine the amount of compensation in case of damage - the carrier pays compensation in an amount calculated according to the value of the goods, determined in accordance with Article 23, paragraph 1, 2 and 4 of the CMR, i.e. in case of damage the compensation is also monetary, the amount is proved by the beneficiary, the relevant value is the value under Art.2, and the freight price, customs duties and other costs are also recoverable, proportionally according to the extent of the depreciation, and the limit under Art.23, Art.3 of the CMR is applicable. The compensation is to be understood as the difference in the value of the goods between the objective value within the meaning of Article 23(2) CMR (on acceptance) and the value after damage.

The **third sub-paragraph** (§9.3. from p.250) analyses the provisions relating to the determination of the amount of compensation for declared value under Article 24 CMR, which only replaces the statutory upper limit for the limit of the carrier's liability in case of absence or damage not in case of delay, and also analyses the prerequisites and the time of the agreement.

The **fourth sub-paragraph** (§9.4. from p.252) analyses the provisions concerning the determination of the amount of compensation in case of a declaration of a special interest in delivery under Article 26 CMR, which is a method allowing the claimant to claim compensation for additional damages, independently of the damages under Article 23, 24 and 25 CMR, but within the amount of the declared special interest, i.e. it is a means by which compensation may be claimed for other damages which are not compensable under Articles 23 and 25 CMR, irrespective of the statutory limits, but up to the amount of the special interest. The difference with Article 24 CMR is that it is expressly possible to exceed the limit of liability also under Article 23(5) CMR, but for this purpose a special interest in exceeding the contractual time limit must be entered, i.e. it is a condition that a special interest (to a certain extent) is expressly indicated in respect of a specific delivery period, if no such interest is indicated - the time limits of Article 19 CMR apply. An interpretation is given to 'additional damage' as foreseeable damage to the person entitled, because it is by reason of foreseeing the occurrence of such damage that he has declared his special interest, and he is not obliged to declare the reasons for his special interest, which may be of a different nature. Those damages are foreseeable for the person entitled, but from the carrier's point of view they are not, but it is by

contracting for a special interest that he agrees to bear the consequences of them too, up to the amount of the special interest declared.

The **fifth sub-paragraph** (§9.5. from p.255) deals with the provision providing for the fixed rate of 5% interest for delay, from which date it applies, and the cases of application.

The **sixth sub-paragraph** (§9.6. from p.259) proposes an analysis of the provisions providing that the carrier may be able to invoke the provisions of the CMR which exclude its liability, determine or limit the amount of compensation payable where, under the applicable domestic law, the form of non-performance arising out of the contract of carriage under the CMR gives rise to extra-contractual claims.

The **seventh sub-paragraph** (§9.7. from p. 261), entitled Compensation in case of "bad faith", analyses the texts of Article 29 CMR, according to which the carrier may not invoke the provisions of Chapter Four CMR which exclude or limit his liability or which shift the burden of proof if the damage was caused by " *his wilful misconduct or by such default* ". Emphasis is placed on the latter concepts, clarifying the historical reasons for the use of the particular formulation, presenting the opinion of R. Loewe, offering a comparative law overview of interpretations in France, Germany, England and Spain, with an author's summary (p. 272), according to which the standardization and unification of transport law in the various modes of carriage, including road carriage, even in countries interpreting gross negligence as equivalent to intent (for the purposes of Article 29 CMR), have necessitated a gradual "lowering" of the cases in which the carrier is liable without limitation, respectively the adoption of rules under which, in order for the carrier's liability to be engaged, proof of the existence of a cognitive element – awareness (either full knowledge of the factual aspect of his conduct and of the possibility of causing the wrongful result, or such obviousness of the factual aspect and of the possibility of causing the wrongful result that there can be no lack of awareness that the conduct is wrongful). On the question how to interpret the provision in our country (from p.272), the author's opinion is set out, in which it is recalled, with the help of a historical interpretation of a previous national regulation, that there had been a similar "increased" liability, which, after the transition to a regulation based on different political-economic considerations, was repealed, and subsequently, despite the subsequent change in socio-economic conditions, was not passed in the current regulation, which was considered a serious omission (p.273). The

opinion of the case-law on the question of 'negligence', the text of Article 22(5) of the Montreal Convention, and due diligence in our commercial law is examined, and a conclusion is reached (p. 275), that in interpreting the expression "wilful or what amounts to wilful act according to the law of the court seized", one should not read in "... or gross negligence", but associate it generally as "bad faith", taking into account the considerations set out, including the comparative law trends of "downgrading" the liability of the carrier in these cases - both in other CMR countries and in international transport conventions, including the trends of "upgrading" the requirements for the application of Art. 17(2)(4) CMR, also in line with the extremely rapid pace of development of the transport industry, which in turn increases the "care" of the good merchant carrier.

The **tenth paragraph** (from p. 278) analyses the provisions of Chapter V of the Convention governing the rules on the ascertainment of the state of the goods (first sub-paragraph §10.1.) and the rules on the limitation period (second sub-paragraph §10.2.), excluding from the subject-matter the questions of international jurisdiction, recognition and enforcement of judgments.

In the **first sub-paragraph** it is emphasized that the Convention does not (optionally) regulate "claim proceedings", but rules are laid down in Article 30 CMR which aim at facilitating the proof of possible future claims, as well as informing the carrier about them, thus helping to secure the necessary evidence. An analysis of the various hypotheses is proposed, the rules being differentiated according to whether the shortages and damages or the delay in delivery are involved, respectively whether the shortages or damages are visible or concealed.

The **second sub-paragraph** deals with the rules of Article 32 CMR governing time limits for the exercise of claims under CMR, which it is emphasised, are governed by limitation rather than recourse, with the sole exception of cases of delay in delivery. The commencement of the running of limitation periods, the prerequisites for suspending the running of time limits, including a critical analysis of national case-law on the application of the prescribed limitation period in the event of a claim brought by the subrogated insurer under a contract of insurance of cargo against the risks of carriage against the carrier or its insurer are consistently examined.

The **eleventh paragraph** (from p.291) analyses the provisions governing cases of carriage by successive carriers, indicating the prerequisites for qualifying a carrier as successive, an analysis of the rights and obligations between successive carriers is proposed, the allocation of liability between them, including the rules of recourse and the procedural aspects of the exercise of the right of action between successive carriers.

The **twelfth paragraph** (from p. 305) proposes an analysis of the provision governing the nullity of clauses contrary to the Convention, which is of fundamental importance insofar as it deprives the parties of the possibility either to reduce or to increase their rights or liability under the CMR contract, thereby intersecting both the possibilities of disadvantaging the economically weaker party and the possibilities of unfair competition, by analysing the specific exceptions under which the parties may negotiate different conditions

The specific exceptions under which the parties may negotiate different terms are analysed and various examples of the application of Article 41 CMR are given.

CHAPTER THREE

The contract for the carriage of goods by road under the domestic law.

The third chapter is divided into eleven paragraphs, and internally into sub-paragraphs and subdivisions, and is devoted to the contract for the carriage of goods by road under current domestic law, with a special focus on the Road Transport Act (**RTA**). The contract of carriage of goods by road is examined as part of the sub-sector of transport law, as a generic concept, and its generic features are distinguished. The general characteristics of the contract, its parties and their rights and obligations are examined, with particular attention being paid to the legal position of both the consignee and the liability of the carrier.

The **first paragraph (**from p. 309) sets out the legal framework.

The **second paragraph** (from p. 314) deals with the contract for the carriage of goods by road as part of the sub-sector "transport" law, with three sub-paragraphs dealing in turn with the general characteristics of the contract for the carriage of goods as a generic concept (§2.1.), the parties (§2.2.), their rights and obligations (§2.3.), and the liability of the carrier (§2.4.).

The **third paragraph** (from p.333) deals with the contract of carriage of roads by road as a type of contract for the carriage of goods, with two sub-paragraphs dealing with the hierarchy of sources (§3.1.) and a comparative analysis of the provisions of the RTA in the regulation of the contract for the carriage of goods by road (§3.2.), pointing out both the similarities in the regulation of the RTA with the CMR (noted in 25 paragraphs) and the differences.

In the **fourth paragraph** (from p. 339) is analysed the legal concept of the contract for road freight transport under Article 49 of the RTA and are indicated the general characteristics of the contract - bilateral (p. 340), remunerative (p. 340), consensual (p. 340), informal (p. 341), a contract that is not intuitu personae (p.341), characterized as an independent type of contract (p.345), an "absolute" commercial transaction (p.346), the subject of the contract (p.341) and the object of the contract (p.344), the technical means used to achieve the result (p.342), and the parties (from p.348) are discussed.

In the **fifth paragraph** (from p. 350) the rules concerning the conclusion of the contract are analysed and the focus is put on the consignment note (from p. 352), comparing the rules under the RTA with those under the CMR. The provisions governing the preparation of the consignment note, the content, liability for inaccurate information and the significance of the consignment note as a document of evidence are successively examined, with explicit emphasis on the essential difference of the road consignment note under our domestic law in the current regulations, both under the former and under the CMR, with regard to the fact that, according to §1.30. Final Provisions (FP) of the RTA equates the consignment note to a "cargo record" within the meaning of Art. 371 of the Commercial Law (p.362), and is critical of the legislative solution adopted (p. 364), which is summarised as follows: From the historical analysis of the current regulations regarding the transport documents applicable to road transport, it is summarised that the consignment note in all cases had an evidentiary meaning and its general regulation did not provide for its issue as a security. There was a provision in the Commercial Code (superseded) allowing the issue of a cargo record (bill of lading) by way of exception. There was a provision in section 314 LOC allowing the issue of a cargo record, but only in contracts of carriage by sea. So also under CMR the consignment note was regulated only as a document of evidentiary value. It follows that the legislative decision is a novelty in the regulation, without drawing any arguments from the Recitals to the RTA, on the

contrary - it is only stated that "the texts in the Bill are in line with the provisions of the CMR", but the consignment note under the CMR is not securities (paper bond) - it is regulated as a document of evidentiary value, not a title to property, it does not materialise any rights over the cargo, its actual possession does not legitimise its holder as the owner of the cargo, and therefore its content does not provide for a requisite for its issue as a registered or promissory note, as mentioned - this is explained by the fact that road transport is fast and the use of a consignment note of a negotiable nature is unnecessary. The legal consequences of the settlement of the consignment note as a cargo record are analysed, i.e. as a consignment note (the beneficiary of the contract of carriage is the legitimate beneficiary of the consignment note), pointing out the practical problems in the necessity for the consignor to send the consignment note to the consignee along with the carriage in order for the latter to be able to exercise rights under it, as well as the cases where there is no consignment note issued at all, insofar as the RTA itself allows the validity of the contract for carriage of goods by road, regardless of the issuance of the consignment note , which leads to the conclusion that in cases where there is no consignment note we have a different regime regarding the contract for carriage of goods by road. Another problem has also been identified as a significant one, which is a factor that has upset the legislative solution, namely the regulation of the right of 'reclamation'. It has been analysed that the submission of a "claim" is not a bar to a claim, without expressly regulating in whose favour the latter belongs, and from the systematic interpretation of Article 75 in conjunction with Article 73 in conjunction with Article 74 RTA. It follows that the right of action belongs to the 'injured customer', who has a right of recourse which, in the case of carriage of goods, is conferred on the consignor, i.e. it follows that, notwithstanding the issue of the consignment note (which may have transferred the rights of carriage of the goods in favour of another person, the consignee), active legitimation is conferred on the consignor. Finally, a corrective interpretation is proposed that 'by mutual agreement of the parties, a cargo record within the meaning of Article 371 of the Commercial Law may also be issued', for which a de lege ferenda proposal is made in the conclusion.

In the **sixth paragraph** (from p. 367), the legal position of the recipient is discussed in an independent place, which occupies an important place with a view to determining the active substantive standing in the event of a form of default. After clarification of the economic purposes of the conclusion of the contract (p. 369), the principle of the relative effect of the contract is placed at

the starting point for the correct determination of the legal position of the recipient in cases where it is not involved in the conclusion of the contract (p.370), and the Bulgarian legal literature is analysed, in which the notion that the consignee is not a third party beneficiary, but at a certain point in the development of the carriage relationship becomes a party to the contract in place of the consignor, is substantiated over a long period, reservations being expressed against this notion. The possible hypotheses for the treatment of the consignee are set out consistently in the submission:

- as a legitimated bearer of a security (first sub-paragraph §6.1. from p. 373) - in case the rule of §1, 30 of the FP of the RTA, giving the quality of an security (paper bond) to the consignment note, which reflects on the legal characteristic of the contract, attributing it to the contract for the benefit of third persons, is not revised;

- as a party (second sub-paragraph §6.2. from p. 376) - the generalised position is analysed, according to which the recipient becomes a party to the contract, although not at once and not with the conclusion of the contract itself, but gradually. Reservations are expressed on the position taken on arguments advanced.

- as a beneficiary (third sub-paragraph §6.3. from p. 383) - if one accepts the corrective interpretation of §1, 30 FP of the RTA and further denies that the recipient becomes a party to the contract, then it is considered whether it participates as a beneficiary using the legal construction of a contract for the benefit of third persons. In summary (p.387), it is held that a contract for carriage of goods by road is an independent type. Where the principal is not the beneficiary, the contract has the characteristics of a contract for the benefit of third persons and the rules of the aforementioned construction should apply accordingly. Nor does the legal position of the consignee change where the goods are encumbered by obligations of which the carrier notifies the consignee on arrival of the goods at destination, because in that case the consignee is not automatically obliged to pay them by virtue of the contract in which he has not participated. If he requests a 'delivery, releasing the cargo from the obligations ' and pays the same, the payment is on the basis of a contract of subrogation between the carrier and the consignee in respect of the obligations encumbering the cargo, and not by reason of his intervening as a party and 'substituting' the consignor as such. If the consignee refuses 'release' the carrier may refuse delivery by exercising its statutory lien.

- as principal (fourth sub-paragraph §6.4. from p. 388).

In the **seventh paragraph** (from p.389), entitled "legal relations under the contract of carriage of goods by road", are dealt with successively in sub-paragraphs and sub-sections: the obligations and liability of the consignor (§7.1. from p.390), conditionally divided into: non-monetary obligations (§7.1.1. from p.390), including the delivery of the cargo in a condition fit to withstand carriage and in suitable packaging (§7.1.1.1. from p.391), where an analysis is made of the internal special rules, for which there are no analogues to the CMR, including their correlation with Regulation No. 7 of 27.04.2018 on the securing of goods carried, and the delivery of the necessary documents, respectively the liability for non-performance (§7.1.1.2. from p.406), and monetary obligations (§7.1.2. from p. 407); securing the carrier's claims (§7.1.3. from p. 410), including a legal right of commercial pledge (§7.1.3.1. from p. 410), including an analysis of the application of Article 315 of the Commercial Law and a critical opinion on the practice under Article 315(5) of the Commercial Law (p. 411 and p. 412 in footnotes), and the right to remuneration upon acceptance of the cargo (§7.1.3.2. from p.413); the carrier's obligations (§7.2. from p.415), including transportation (§7.2.1. from p.415), custody of the cargo (§7.2.2. from p.417), execution of orders (§7.2.3. from c.419), delivery (§7.2.4. from p.424), and cases of subsequent impossibility are analysed (§7.2.5. from p.429).

In the **eighth paragraph** (from p. 431) the liability of the carrier is discussed - regulated as a special property liability due to the non-performance of an obligation arising from the transport contract and during its validity, subject to special regulation in Section IV of the RTA. The forms of non-performance (first sub-paragraph §8.1. from p. 432), the limits of liability in time (p. 434), the nature of liability as contractual and strict (p. 434), the grounds for exemption from liability (second sub-paragraph §8.2. from p.435, the non-exempting grounds under Article 68, paragraph 2 of the RTA, corresponding to Article 17, paragraph 3 of the CMR (from p.446), and the extent of the carrier's liability (third sub-paragraph §8.3. from p.447). A detailed critical analysis of the imperfect provision of Art. 68 para. 1 of the RTA, which only partially (without adopting "special" grounds for exemption, and also omits part of the general grounds - when the form of non-performance is due to "instructions of the claimant, which is not the result of misconduct of the carrier", and there is no provision for "liability for contributory negligence") and the grounds for exemption from liability under the CMR are adopted

imprecisely (specifically in the provision for " circumstances which the carrier could not avoid and the consequences of which he was unable to prevent ('force majeure')"). Criticisms have been made with regard to the approach to the definition of the ground of "force majeure", insofar as by adopting the descriptive provision of Article 17, paragraph 2, subparagraph 4 CMR - the text contradicts Article 373, paragraph 1 of the Commercial Law and the definitional provision of Article 306, paragraph 2 of the Commercial Law, and in view of the special regulation of the liability of the road carrier it follows that the general provision of Article 373, 306(1) and (2) respectively of the Commercial Law do not apply, but the criteria for the event described in Article 68(1)(3) of the RTA should be applied, which is not correct, and the approach should be considered an omission of the legislator, insofar as it should have taken into account the different comparative law interpretation of the CMR provision. It has been suggested (p.438) how "force majeure" should be interpreted, and typical cases and permissions have been suggested as to when a successful defence under art.68(1)(3) of the RTA should be deemed to have been proved (p.439). A critical analysis is also made with regard to the provisions governing the scope of the carrier's liability, specifically with regard to the absence of rules governing the cases of "declared value" and "special interest" analogous to Article 24 CMR and Article 26 CMR (p.448), as well as the significant omission of rules analogous to Article 29 CMR (p.449).

In the **ninth paragraph** (from p. 449) the provisions governing the rules of limitation under the RTA are critically analysed, noting the following criticisms: first, the regulation, contrary to the title, does not regulate claim proceedings, and the legal meaning of the claim made within the time limits is expressed and exhausted in the suspension of the course of the limitation period; secondly, Art, 373 (5) of the Commercial Law provides for a limitation period for liability in cases of goods received for all transport contracts, which period coincides with that of a claim under Article 74, 1 of the RTA, but the limitation period provided for is contrary to Article 75 of the RTA, respectively Article 76 of the RTA, and therefore Article 373(5) of the CL is not applicable to a contract for the carriage of goods by road; Third, Article 75 of the RTA provides that the making of a claim is not a bar to an action, without expressly providing in whose favour the latter belongs; Fourth, a serious omission is noted in the absence of any regulation of the rules for ascertaining the condition of the cargo on arrival at destination.

In the **tenth paragraph** (from p. 451), the general provisions concerning "subsequent carriers" are dealt with insofar as, as has been critically noted, there is no specific regulation of cases in which, after the contract has been excluded, at least one other road carrier is involved in its performance.

In the **eleventh paragraph** (from p.453), the features and characteristics of the general generic concept of the "contract for the carriage of goods by road" are summarised, as derived by comparing the CMR and domestic law regulations.

Conclusion

The work ends with a conclusion, in which the critical position on the imperfect (incomplete or inaccurate) adoption in the national legislation of the provisions of the Convention on the Contract for the International Carriage of Goods by Road is expressed, and a number of concrete proposals de lege ferenda for the refinement of individual provisions in the RTA are made.

III. MAIN CONTRIBUTIONS OF THE THESIS

General contributions:

- The work is the first comprehensive systematic study in our legal literature of the contract for the carriage of goods by road, both under domestic law and under the Convention on the Contract for the International Carriage of Goods by Road.

As specific contributions should be highlighted:

- The comparative legal studies of the regulation of the contract of carriage by road from the point of view of the legal position of the consignee, including under the CMR;

- A detailed analysis of the provisions under which the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage under the CMR, i.e. the focus is again on the legal position of the consignee, an analysis and critique of national case law is proposed, and summaries are accordingly made of the question of active legitimation, and of the question whether the carrier may claim from the consignee the claims not entered in the consignment note , i.e. whether the carrier has a claim against the consignee, i.e. whether the latter becomes liable under the CMR. A critical analysis of our national practice in the application of the Convention is proposed

with regard to the legitimation of the consignee on the argument of subrogation to the rights of the shipper and on the question whether the consignee is liable for the claims not recorded in the consignment note under Article 13(2) CMR;

- Examination of whether the Convention applies if the use of another mode of transport is initiated by the carrier without being provided for in the contract;

- Characterisation of the carrier's liability, including in the light of the interpretations of the provision of Article 17(2)(4) CMR " circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" and the submission that the carrier's liability should be regarded as strict and contractual, accordingly " circumstances which the carrier could not avoid and the consequences of which he was unable to prevent " should be regarded as force majeure;

- A critical analysis of our national practice in the application of the Convention as to whether, in a claim under Article 20 CMR, there is a reserved portion of the cargo and its corresponding value;

- Analysing the rules for the reimbursement of freight charges and "other expenses" incurred in the carriage of the goods under Article 23(4) CMR and taking a position on what should be included in "other expenses", including whether excise duty is included in the determination of the value of the goods or whether it constitutes "other expenses" rather than being allocated to "customs duties";

- Critical analysis of our national practice in the application of the Convention on the issue of non-attribution of direct damages from domestic law instead of Article 23(1) CMR, and determination of value under the amended Article 23(3) CMR, without Bulgaria having acceded to the Additional Protocol of 05.07.1978, signed in Geneva, in force since 28.12.1980;

- Suggested interpretation of the provision of Article 29 CMR and position on how to apply it in our country with a proposal that the expression " wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case " should not include "...gross negligence" but should be generally associated as "in bad faith";

- Critical analysis of our national case law on the applicability of Article 32(1) CMR, incl. in relation to the subrogated insurer of the cargo property insurance in favour of the beneficiary;

- Detailed consideration of the legal position of the consignee under the RTA with a consistent consideration of the possible hypotheses (as a legitimated bearer of a security, as a party to the contract, as a beneficiary and as a principal) and presentation of a position where, in cases where the principal is not the consignee, the contract has the characteristics of a contract for the benefit of third persons, accordingly a construction is found applicable, incl. the legal position does not change in cases where the cargo is encumbered with obligations of which the carrier notifies the consignee upon arrival of the cargo at destination, and if the consignee requests "release" and pays the obligations, the payment is on the basis of a contract of subrogation between the carrier and the consignee in respect of the obligations encumbering the cargo, and not because of intervention as a party and "substitution" of the consignor as such;

- An analytical critical analysis of the domestic law with regard to: the legal definition; the lack of a regulation giving protection to consumers; the regulation of the road consignment note as a security as distinct from the previous regulation and as distinct from the CMR; the lack of a regulation analogous to Art 13, paragraph 2 CMR; the imperfection of the text of Article 63 of the RTA governing the right of disposition; the lack of special regulation of cases of pre-arrival and delivery obstacles; the imperfect provision of Article 68 of the RTA due to the wording adding "force majeure" being imprecise; the failure to include as a ground damages or shortages occurring due to "orders of the person entitled which is not the result of the wrongful conduct of the carrier"; the absence of liability in case of contributory negligence; the failure to join the Protocol of 05.07.1978, signed in Geneva, in force since 28.12.1980, despite which the adoption of the rules of the Protocol in domestic law; the failure to adopt rules analogous to Article 23, paragraph 5, CMR, limiting the liability of the carrier in cases where there is damage in case of delay in delivery, namely not more than the price of the carriage; the provisions governing the scope of liability of the carrier, specifically with regard to the absence of rules governing the cases of "declared value" and "special interest" analogous to Article 24 CMR and Art.26 CMR; the absence of rules analogous to Art.29 CMR; the absence of provisions governing the rules of limitation under the RTA; the absence of rules

governing the ascertainment of the condition of the cargo on arrival at destination; the absence of special rules for the case of 'successive' carriers;

- Reasoned proposals de lege ferenda for refinement of individual provisions in the RTA.

IV. LIST OF PUBLICATIONS ON THE TOPIC OF THE THESIS:

1. **Demirev, D**. Is a contract for the benefit of third persons a contract for the carriage of goods by road where the person against whom the result is realised is different from the consignor? M. Commercial Law, 2022, No. 1.

2. **Demirev, D**. *Bad faith* of the carrier within the meaning of Article 29 of the Convention on the Contract for the International Carriage of Goods by Road. M. Contemporary Law, 2022, No. 1.

3. **Demirev, D**. Circumstances which the carrier could not avoid and the consequences of which he was unable to prevent within the meaning of Article 17, paragraph 2, subparagraph 4 CMR? M. Commercial Law, 2022, No. 2.

V. LIST OF PUBLICATIONS THAT ARE NOT ON THE SUBJECT OF THE THESIS:

4. **Demirev, D**. "Extraordinary circumstances" in the case law of the ECJ in the case of "flight cancellation" within the meaning of Regulation No 261/2004. www.lex.bg, 09.01.2023.