

REVIEW

By Prof. SJD Angel Kalaidjiev, Lecturer at Sofia University "St. Kliment Ohridski", on the dissertation thesis " The Contract for Carriage of Goods by Road ", submitted by Dimitar Kurtev Demirev for obtaining the educational and scientific degree " Doctor of Philosophy" in the professional field 3.6 "Law"

(Civil and Family Law - Commercial Law)

I. Concerning the procedure for the defence of the degree of Doctor of Education and Science

I have been appointed as a member of the scientific jury in the procedure for the defence of the dissertation " The Contract for Carriage of Goods by Road" of Dimitar Kurtev Demirev, PhD student in independent study in the professional field of 3. 6 "Law" (Civil and Family Law-Commercial Law) at the Department of Civil Law of the Faculty of Law at St. Kliment Ohridski University (SU), by Order No. RD-38-313/03.06.2023 2023 of the Rector of St. Kliment Ohridski University (SU). By decision of the scientific jury, adopted at its first meeting, I have been appointed as a reviewer for the procedure.

The dissertant was enrolled as a full-time doctoral student in the professional field 3.6 "Law" (Civil and Family Law-Commercial Law) at the Department of Civil Law by Order No. RD-20-982/30.09.2022 of the Rector of SU. He has successfully passed all examinations.

The doctoral candidate has submitted a dissertation as well as four articles in specialized scientific journals, as follows: "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?" - Contemporary Law Magazine, No. 12022,; " 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" - Contemporary Law Magazine, No. 1/2022; " 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?" - Commercial Law Magazine, No. 2/2022.

The submitted dissertation and the publications on its topic meet the formal requirements for the procedure for the award of the degree of PhD of Laws, as well as the requirements of the Regulations on the Procedures and Conditions for the Acquisition of Scientific Degrees and the Occupation of Academic Positions at St. Kliment Ohridski University in Sofia.

II. About the PhD student who prepared the dissertation

Dimitar Kurtev Demirev graduated from the Law Faculty of Sofia University in 2013.

He is a visiting assistant professor of "Civil Law. General Part" at SU during the academic years 2018/2019; 2019/2020; 2020/2021; 2021/2022; 2022/2023. In the period June 2012 - August 2014 the PhD student worked in various positions at First Investment Bank JSC. In 2014 he passed the examination for junior lawyer. He won a competition for junior judge, and in the period October 2015 - June 2016 he was trained at the National Institute of Justice of the Republic of Bulgaria. In the period July 2016 - July 2018 he was a junior judge at the Blagoevgrad District Court, and since July 2018 he has been a judge at the Sofia Regional Court.

His scientific interests are in the field of civil and commercial law, civil procedural law, as well as in various areas of European law. His serious scientific interests are expressed in the following published studies and articles on the topic of his dissertation, mentioned above. The PhD candidate has published one article which is not on the topic of the dissertation - "Extraordinary Circumstances" in the case law of the ECJ in the case of "flight cancellation" within the meaning of Regulation No 261/2004. Lex.bg, 09.01.2023. The

doctoral candidate has also presented a scientific study on the topic of "Rights of air passengers under Regulation (EC) No 261/2004" at a conference on "The rule of law and the effective application of European Union law by the Bulgarian courts".

He has participated in numerous local and international trainings, educational programs and seminars.

He speaks English and Russian.

III. On the submitted dissertation

1. The topical character of the dissertation chosen by the author is undeniable. It is presupposed by the necessity to analyse in depth the insufficiently studied problems of the road freight contract.

2. The dissertation is 469 pages long, including a table of contents and a bibliographical reference. The thesis is structured in three chapters (internally divided into sub-paragraphs and subdivisions), an introduction and a conclusion. A list of the literature used is also appended, containing a total of 75 works, of which 49 are in Bulgarian and 26 in foreign languages - English, French, German and Russian.

Chapter One contains a historical overview of the regulation of the contract for the carriage of goods by road. It describes chronologically the legal acts in the field of road transport law - the Law on Obligations and Contracts (amended) of 1892, the Commercial Law (amended) of 1897, the Law on Obligations and Contracts of 1951 and the Statute of Road Transport of 1955. The author presents the relevant legislative authorisations in order to subsequently clarify their evolution, while also critically presenting and analysing the relevant understandings in theory.

Chapter Two is devoted to the Convention on the Contract for the International Carriage of Goods by Road (CMR). The work contains an analysis of the individual texts of the CMR, which presupposes the interpretation and analysis of the national legal regime of the contract for the carriage of goods by road (because the Road Transport Act (RTA) complies with and follows the provisions of the CMR). The work contains a thorough and in-depth analysis of the individual legal problems of the road haulage contract according to the regulation and scope of the CMR. In addition to the scope of the CMR, the legal nature and characteristics of the contract, the problems of the consignment note, the obligations of the consignor and the carrier, the delivery and acceptance of the goods and the rights of the consignee, the legal position of the consignee, the liability of the carrier and its scope, the grounds for exemption from the carrier's liability, the procedure for its engagement, the statute of limitations and the nullity of clauses contrary to the CMR are the subject of clarification and scientific analysis. In this respect, the work is undoubtedly of scientific as well as applied scientific value.

Chapter 3 is devoted to the contract for the carriage of goods by road under current domestic law. Particular attention is paid to the RTA as a special normative act, however, in compliance with the general rules of the Commercial Law. In addition to the legal characteristics of the contract, the parties to it and their rights and obligations, the work critically analyses the form of the contract and in particular the road transport bill of lading. Of interest is the study of the legal position of the consignee (recipient) as beneficiary of a contract in favour of a third party, as well as the liability of the carrier qualified as strict (strict) contractual liability and the grounds for its exclusion.

The work concludes with a conclusion in which the author proposes concrete proposals *de lege ferenda* for amending the RTA.

The systematics of the work is consistent with the specificity of the legal phenomenon under study. The individual chapters are well balanced and logically connected. They contain a coherent and in-depth exposition of all the main issues raised by the regulation of the road haulage contract.

3. The dissertation contains a number of merits.

3.1. It reveals the author's in-depth knowledge of the issue as a legal framework, theory and practice. The high linguistic culture and the clear and precise style of expression of the doctoral candidate cannot be overlooked. The work deserves high praise as it reveals the author's rich legal culture and ability to subject to a thorough critical and reasoned analysis opinions traditionally advocated and supported in legal theory and jurisprudence.

3.2. The author has critically analysed the entire Bulgarian literature devoted to the problems of the contract for the carriage of goods by road, as well as a large number of serious foreign (English, French, German and Russian) studies. Contemporary theoretical views in this area are thoroughly discussed. The scholarly apparatus is extensive, and the citation is accurate and conscientious. A good knowledge of legal theory is evident, which has allowed the author to show an independent attitude to the relations under study and to argue his own theses - a basic prerequisite for a scientific work. The correct attitude of the dissertant in presenting his own and others' arguments also makes a strong impression. When arguing his own thesis, the PhD student also provides counterarguments, which reinforces the weight of his arguments and shows respect for others' opinions.

3.4. The work also contains the following scientific contributions.

It is the first comprehensive and in-depth monographic study of the legal regulation of the contract for the carriage of goods by road under both domestic law (RTA and CL) and the Convention on the Contract for the International Carriage of Goods by Road (CMR).

For the first time in our literature a detailed historical and comparative legal study of this institution has been made. The analysis of the provisions of the CMR is not an exercise in itself, but is carried out in relation to the national legal framework and the possibilities for its improvement.

The author's contribution is his formulation of the legal definition of the contract of carriage of goods by road under the CMR, as well as the analysis of the legal definition and concept of the contract of carriage of goods by road under Article 49 of the RTA (pp. 339-350), which are constructed by comparing them with other legal figures - the forwarding contract and the rental contract (pp. 81-87). Unquestionable scientific contributions are also contained in the author's conclusions on the general characteristics of the contract under the CMR and the RTA (pp.70-72 and pp.340-346).

The examination of the legal position of the parties to the transport legal relationship is also of a contributory nature (pp. 323-326). Of interest is the analysis of the figure of the principal under the CMR (a person who concludes the contract of carriage with the carrier and whose main obligation is to pay the carriage consideration, without necessarily being the holder of rights over the cargo - pp. 73-74). New to our contemporary literature are the author's reasoned conclusions about the legal position of the consignee and hence about the contract of carriage of goods as a contract for the benefit of a third party. Noteworthy is the analysis of the provisions of the CMR concerning the active legitimation of the consignee, who shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage. Also new to our literature are the doctoral student's arguments and conclusions concerning the carrier's ability to claim from the consignee the claims not recorded in the bill of lading, which means that the consignee is the holder of the obligations under the contract of carriage (Article 13(2) CMR). The critical analysis of the Bulgarian case-law on the application of the CMR with regard to the possibility for the consignee to intervene in the shipper's rights also makes a contribution.

Serious scientific contributions are also contained in the conclusions of the doctoral student on the legal status of the recipient under the RTA (pp. 367-389) and the characterization of the contract of carriage, in cases where the principal is not the recipient, as a contract in favor of a third party. For the first time in our literature, it is argued that if there are obligations of which the carrier notifies the consignee upon arrival of the cargo at the

destination, the consignee may pay them on the basis of a contract of subrogation between the carrier and the consignee.

For the first time in our literature, the question of the applicability of the CMR in the event that the use of another mode of transport/transshipment is effected at the initiative of the carrier without being provided for in the contract has been examined.

The contribution of the work is the analysis of the legal nature of the consignment note, including the e- consignment note, and the liability for its drafting, both under the rules of the CMR (pp. 99-116) and the RTA (pp. 352-366), and the critical analysis of the statutory authorization of the RTA (pp. 355-366), according to which the consignment note is a security.

The merit of the work is the examination of the commencement of performance and its proof, the obligations and liability of the consignor in the delivery of the cargo under the CMR and the RTA (pp. 117-123, pp. 124-130, pp. 390-413).

New to our literature are the doctoral student's reasoned conclusions on the nature and scope of the carrier's obligations to comply with the shipper's/consignee's orders to modify the contract (the so-called "right to dispose")(pp. 130-137, pp. 418-423) and to deliver the cargo to the destination and hand it over to the consignee (pp. 137-151, pp. 423-428), as well as on the carrier's subsequent failure to perform its obligations, the obstacles to the cargo's arrival and the recovery of costs (pp. 151-161, pp. 428-430).

The analysis of the forms of non-performance (pp. 161-173) and the carrier's liability under the CMR, including under Article 17, paragraph 2, subpara. 4 CMR (pp. 167-234) and under the CL and the RTA (pp. 331-332, pp. 430-446), is of undisputed contribution. The general and special grounds for the carrier's exemption from liability, the cases in which the carrier is not exempted from liability and the cases of contributory negligence are thoroughly examined. The issues of the manner of determining the compensation in various forms of non-performance and forms of fault, including in case of bad faith, the compensation in case of extra-contractual liability and the limitation of its amount and the special cases expressly provided for are examined (pp. 235-277, pp. 446-448). The author's conclusion that the expression "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent " has the meaning of force majeure is justified, therefore the carrier's liability is strict (without fault). The criticism of the provision of Article 68 of the RTA and its imprecise formulation of the concept of 'force majeure' is also worth supporting.

The author also contributes his conclusions on the CMR rules on claims against the carrier and the time limits for bringing them, establishing the proof of claims against the carrier, and the nature of the time limits for exercising them (pp. 278-290).

There are some useful points in the study of the legal relationship in the case of more than one carrier (pp. 291-303, pp. 450-451).

For the first time in our literature, a general generic concept of the legal phenomenon of a contract for the carriage of goods by road is substantiated (pp. 451-454).

The critical analysis of the Bulgarian case-law on the question whether a claim under Article 20 CMR is subject to examination as to whether there is a retained part of the cargo and its corresponding value, as well as on the non-award of compensation for direct damages and the determination of the value under the amended Article 23(3) CMR are worthy of support. The author's criticism of the case-law on the applicability of Article 32(1) CMR, including in relation to the subrogated insurer under the property insurance of the cargo in favour of the beneficiary, should also be shared.

The analysis of the rules on the reimbursement of customs duties and 'other expenses' incurred in the carriage of the goods under Article 23(4) CMR and the reasoned opinion on the content of the term 'other expenses' are also of a contributory nature.

The author's proposed interpretation of the provision of Article 29 CMR concerning the exclusion of the carrier from the right to claim the exclusion or reduction of his liability and in relation to the reversal of the burden of proof is justified.

Scientific contributions are also contained in the critical analysis of the Bulgarian domestic law concerning: the legal definition of the contract of carriage of goods by road; the lack of a consumer protection regulation; the lack of a regulation analogous to Article 13(2) of the CMR; the rules on the "right to dispose" under Article 63 RTA; the absence of special regulation of the cases of obstacles prior to the delivery of the cargo and obstacles upon delivery; the absence of regulation of liability in case of contributory negligence; the adoption by our country of the rules of the Protocol of 05.07.1978, signed in Geneva, in force since 28.12.1980, despite the non-accession of the Republic of Bulgaria to this Protocol; the absence of national regulations limiting the scope of the carrier's liability in cases where there is damage in case of delay in delivery, as well as for the cases of "declared value" and "special interest". The doctoral student's critique of the rules of the limitation in the RTA, the conclusion that there is a need to regulate a mechanism for ascertaining the state of the cargo on arrival at destination and for cases of 'successive' carriers is also worthy of support.

The *de lege ferenda* proposals made in the thesis also constitute undoubted scientific contributions in themselves, as does their summarisation in specific provisions for amendments and additions to the RTA.

The author's contribution is also the practical orientation of the dissertation, as it critically and thoroughly analyses the case law on the application of the CMR and the RTA.

3.5 Some recommendations can be made to the author to improve the work.

It could be recommended that in the future publication of the work, the part devoted to the general type of the legal phenomenon of the contract for the carriage of goods by road should be extended and deepened, since the subject of the work is not the contracts for the carriage of goods under the CMR and domestic law, but the single phenomenon of the contract for the carriage of goods by road.

3.6. The serious scientific background of the dissertation is evident from the one study and three scientific articles published by the dissertation on the topic of the dissertation, which are serious and thorough scientific researches in themselves.

In the study "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?" - Journal of Commercial Law, No. 1/2022, the controversial question in theory and practice whether the contract for carriage of goods is a contract for the benefit of a third party is analysed. The study presents a historical overview and the current regulation of the contract of carriage of goods by road, analyzes the views in the literature on this issue in good faith, examines the legal position of the consignee as a party and justifies the understanding that the contract of carriage of goods in a contract for the benefit of a third party.

In the article "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 " - Journal of Contemporary Law No. 1/2022, the concept of "bad faith" of the carrier within the meaning of the CMR is analyzed, and on the basis of comparative and systematic interpretation the conclusion is thoroughly justified and argued that the phrase his 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 be understood as "bad faith".

In the article " 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" - Journal of Commercial Law, No 2/2022, based on a thorough logical and systematic interpretation of the provisions of the CMR, as well as on a comparative legal

analysis, a reasoned conclusion is drawn as to the objective nature of the carrier's liability within the meaning of Article 17(2)(4) CMR.

3.7. The abstract submitted for the purposes of the procedure includes: a general description of the thesis; a brief statement of the main content of the thesis; a presentation of the main scientific contributions of the thesis; a list of publications on the subject of the thesis; a list of publications not on the subject of the thesis.

IV. Conclusion

According to the requirements of the Academic Staff Development Act in the Republic of Bulgaria (ASDA) and its implementing acts, including the science metrics tables for the minimum required points by groups of indicators for different scientific degrees and academic positions and the number of points by indicators in Area 3. Social, economic and legal sciences (Annex to Article 1a, paragraph 1 of the Regulations for the implementation of the Law on Social, Economic and Legal Sciences), the candidates for the degree of Doctor of Education and Science in the field 3.6 Law should have submitted a dissertation (50 points) and a printed production bearing at least 30 science-metric points.

The published studies and three scientific articles on the topic of the dissertation submitted by the PhD student Dimitar Kurtev Demirev provide the PhD student with 35 science-metric points. Therefore, the doctoral candidate fulfils the scientometric requirements for the degree of "PhD", even without taking into account his other published articles outside the topic of the dissertation research.

There is no evidence of plagiarism in the dissertation. All conclusions are the author's own work.

The above recommendations concerning the thesis are of a secondary nature and in no way detract from its significance. Therefore, I give a positive assessment of the submitted dissertation and I confidently propose to the scientific jury for the defense of the dissertation under the Order No. RD-38-313/03.01.2023 of the Rector of Sofia University "St. Kliment Ohridski" to award Dimitar Kurtev Demirev the degree of Doctor of Education and Science in the field of higher education 3. "Social, Economic and Legal Sciences", professional field 3.6. "Law" (Civil and Family Law - Commercial Law).

Sofia, 10 July 2022.

Angel Kalaidjiev: