Teka Komisji Prawniczej PAN Oddział w Lublinie
vol. XVIII, 2025, no. 2, pp. 587–601
https://doi.org/10.32084/tkp.10232

CARRIERS RESPONSIBLE FOR DAMAGE IN THE CARRIAGE OF GOODS PERFORMED BY SEVERAL CARRIERS

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Abstract This article aims to determine against which of several carriers involved in the performance of unimodal transport (by means of one mode of transport) the person originally entitled (sender or recipient of the consignment) may pursue claims for damages arising in connection with such transport. It comments on the provisions of international conventions governing in a uniform manner the contract of carriage in rail, air and road transport (RU/CIM, Montreal Convention, CMR) and in Polish domestic law (Civil Code, Transport Law). The discussion addresses two types of transport performed by several carriers – successive carriage and subcontracted carriage. The author points out the diverse regulations provided in the conventions, with their evolution intended to eliminate the differences between successive and subcontracted carriage by introducing joint and several liability of the contracting carrier and his subcontracting carrier for damage caused by the latter and allowing the possibility of direct redress by entitled persons against the subcontracting carrier. This solution, as well as changes in the market of transport services (liberalisation, demonopolisation), deems, in the author's opinion, the institution of successive carriage redundant. Therefore, the paper postulates that it be abandoned in the future Polish regulation of the contract of carriage, with the introduction – as do the RU/CIM and the Montreal Convention – of the possibility for the entitled person to pursue claims against the subcontracting carrier for damages caused by him.

Keywords: contract of carriage; joint and several liability; subcontracting; successive carriage.

INTRODUCTORY REMARKS

Execution of a single contract of carriage of a consignment often involves participation of several carriers. This is always the case with multimodal transport, involving carriers of different modes of transport.[1] However, in unimodal transport the performance of the contract between the sender and the first carrier by many carriers is not uncommon either. In international road

[1] Multimodal transport issues are discussed in: Dąbrowski 2023.

ISSN 1899-7694
e-ISSN 2719-7379

transport, it is actually the rule. These are both situations in which several carriers actually carry out transport on individual legs of the route, as well as situations in which carriers conclude further contracts for the same carriage, but the entire service is actually performed by one contractor, the last carrier in the chain of contracts.

This article aims to identify carriers against whom a person originally entitled (sender or recipient)[2] may make a claim for compensation for damages arising in connection with the carriage performed by two or more carriers by means of one mode of transport. Therefore, similar issues in multimodal transport remain outside the scope of the study. So does the subject matter of claims between the carriers themselves.

The problem will be discussed against international conventions containing uniform standards governing transport contracts in rail,[3] air[4] and road transport,[5] as well as in Polish domestic law.

The research assumption is to show that, although the regulations contained in individual conventions differ, there is a general trend to blur the differences between the modes of transport involving several carriers (successive and subcontracting), developed in international transport law and transport practise. This article also aims to find an optimal solution to the discussed problem in the future internal regulation of contracts of carriage. There is no doubt that the current rules provided for in the Civil Code[6] are too vague, while the regulation contained in the Act of 15 November 1984 – Transport Law[7] – is anachronistic and inconsistent with today's economic realities.[8]

In preparing the study, the method of investigation of the law in force and legal comparison were used, referring to the provisions of domestic law and international conventions containing uniform rules of private law.

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[2] For legitimacy of seeking redress against a carrier see Ambrożuk 2017, 85-95.

[3] Convention concerning International Carriage by Rial (COTIF) of 9 May 1980, Journal of Laws of 1985, No. 34, item 158 as amended by the Vilnius Protocol of 3 June 1999 (Journal of Laws of 2007, No. 100, item 674), whereby the carriage of goods is stipulated in Appendix B – Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) [hereinafter: RU/CIM].

[4] Montreal Convention – Convention for the Unification of certain Rules for International Carriage by Air of 28 May 1999, Journal of Laws of 2007, No. 37, item 235.

[5] Convention on the Contract for the International Carriage of Goods by Road (CMR) of 19 May 1956, Journal of Laws of 1962, No. 49, item 238 as amended.

[6] Act of 24 April 1964, the Civil Code, Journal of Laws of 2025, as item 1071 [hereinafter: CC].

[7] Act of 15 November 1984, the Transport Law, Journal of Laws of 2024, item 1262 [hereinafter: Transport Law]. This law currently regulates the carriage of goods and passengers in all modes of transport, except maritime, air and horse transport (Article 1(1)) and postal transport.

[8] For more see Ambrożuk, Dąbrowski, Garnowski, and Wesołowski 2020, 215-22.

Views expressed in Polish and foreign literature are also taken into account. The historical-legal method was also used to a limited extent. The presentation of normative solutions and related doubts and an attempt to solve them will be preceded by general comments on the different ways of performing carriage by many carriers.

1. SUBCONTRACTED AND SUCCESSIVE CARRIAGE

Transport law identifies so-called successive carriage and subcontracted carriages. The former is performed by successive carriers under the same (one) contract of carriage concluded with the sender and under the same consignment note. The contract of carriage is constituted as an agreement of this kind by the acceptance by subsequent carriers of the consignment and the consignment note. The identity of the consignment and the consignment note are a condition for the succession of the contract.[9] It is generally assumed that successive carriers enter into a contract of carriage concluded between the consignor and the first carrier and are jointly and severally liable (with possible modifications in relation to the general model of joint and several liability, also qualified as *in solidum* liability) towards the person entitled to perform the entire carriage [Wesołowski 2013, 749-52].

Subcontracted carriage involves the conclusion by the carrier who has accepted the obligation to move the consignment of another contract of carriage with another carrier and entrusting him with the transport of the consignment on the whole or part of the route of carriage. The contract with a subcontracting carrier in the light of transport regulations is an independent contract of carriage, separate from the contract of carriage originally concluded. Sometimes the not very precise terms "contracting carrier" and "operating carrier" are used to refer to the first carrier and the subcontracting carrier, respectively.[10] The contracting carrier must be assumed to have the status of consignor[11] vis-à-vis the operating carrier. In practise, especially in international road transport, longer contract chains exist. In such carriage,

[9] More on this topic Wesołowski 2013, 730-44.

[10] The terms contracting carrier and operating carrier are used in aviation conventions – the Warsaw Convention – i.e. Convention for the Unification of certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929, Journal of Laws of 1933, No. 8, item 49 as amended by The Hague Protocol of 28 September 1955, Journal of Laws of 1963, No. 33, item 189, supplemented by the Convention, Supplementary to the Warsaw Convention, for the Unification of certain Rules relating to International Carriage by Air performed by a person other than the Contracting Carrier of 18 September 1961, also referred to as the Gudalajar Convention, Journal of Laws of 1965, No. 25, item 167 and the Montreal Convention. RU/CIM uses the terms contracting carrier and substitute carrier. CMR does not use these terms.

[11] For relations between carriers performing one carriage see Wesołowski 2017, 515-25.

the problem often lies in the question of determining the correct nature of the contract concluded by the sender with the first entity, because the activities actually performed by the first carrier, if he entrusts carriage along the entire route, do not differ in principle from typical forwarding activities[12]. However, this issue remains outside the scope of this study.

Both types of transport involving several carriers are known in conventions (Article 26 and 27 RU/CIM, Articles 36 and 39-48 of the Montreal Convention, Article 34-40 CMR) and in Polish domestic law (Article 789 CC, Article 5 and 6 of the Transport Law) alike. They are quite commonly opposed to each other.[13] However, this is a certain simplification. A successive carriage may occur (and most often does) by entrusting the carriage to a subcontracting carrier, if the conditions resulting from the provision on successive carriage are met.[14] Mixed configurations are also possible, e.g. those in which there is successive carriage, and one of the carriers of such carriage uses a subcontracting carrier who does not meet the requirements of a successive carrier, e.g. due to his failure to accept the consignment note. The fact that any of the successive carriers use a subcontracting carrier (under a separate contract) does not affect his legal situation, i.e. neither the scope of his liability nor the possibility of pursuing claims for damages against him.[15]

Judicial decisions, especially in international road transport, are also significant here as they assume a broad understanding of successive carriage, i.e. also in a situation where the transport was *de facto* performed by a single

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[12] More on this topic see Wesołowski 2015, 181-93.

[13] Cf. e.g. judgement of the Supreme Court of 18 February 2016, ref. no. II CSK 111/15, *Internetowa Baza Orzeczeń SN* [accessed: 18.08.2025]. See also judgment of the Court of Appeal in Warsaw of 24 May 2019, ref. no. VII AGa 1232/18, Lex no 2739643 and judgment of the Court of Appeal in Szczecin of 30 December 2022, ref. no. I AGa 32/22, Lex no 3722431.

[14] It is characteristic that the courts, when awarding compensation to the first succeeding carrier (which is most often sued in cases related to successive carriage), often refer not only to the provisions of the convention relating to successive carriage (e.g. Articles 34 and 36 CMR), but also to the provisions governing responsibility for subcontractors (e.g. Article 3 of CMR), thus underlining the dual liability of this carrier. For example, the District Court of Barcelona, in its judgement of 29 November 2004, www.poderjudical.es, no. 761/2003.

[15] See judgement of the French Court of Cassation of 3 May 1994, European Transport Law (ETL) 1995, 685, in which the court held that the carrier to whom one of the successive carriers has commissioned the last phase of the carriage under a separate contract is not the last carrier within the meaning of regulations on successive carriage. Cf. Court of Appeal judgement of 10 February 1988, Lloyd's Law Report (Lloyd's Rep.) 1988, vol. 1, 487-95, in which the court held that the fact that a carrier entrusts successive carriage to a carrier who is not a successive carrier under CMR does not change his status as a successive carrier or his responsibility for the entire carriage, including carriage performed by his subcontractor pursuant to Article 3 CMR.

carrier, when the previous carriers in the contractual chain did not have physical contact with the consignment.[16]

Nevertheless, as a result of the changes made to the conventional rules concerning carriage performed with the participation of subcontracting carriers, these forms of transport have come closer together. They involve the introduction of joint and several liability of the carrier and the subcontracting carrier for damages caused by the latter, and consequently the possibility of direct claims against the subcontracting carrier by the person originally entitled. Recourse claims between these carriers are also regulated, as is the case with successive carriage.

2. INTERNATIONAL RAILWAY LAW

Rail transport was the first branch of transport in which an international convention laying down uniform standards governing the contract of carriage in international transport was adopted. On 13 and 14 October 1890, nine States signed[17] the International Convention concerning the Carriage of Goods by Rail (CIM 1890) in Bern. This Convention entered into force on 1 January 1893.[18] It introduced a rule according to which the railway which accepted the consignment is responsible for carrying out the carriage until the handing over of the consignment. Each railway receiving the consignment together with the consignment note also become responsible for the performance of the carriage by participating in the contract of carriage (Article 27(1) and (2) CIM 1890). Consequently, the sender was granted the right to bring claims against the first railway, the last railway or the railway on whose line the damage occurred (Article 27(3) CIM 1890).

The Convention thus adopted a model of successive carriage, but it did not regulate transport on a subcontracting basis. This was a consequence of the fact that railways in individual countries were, as a rule, state-owned

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[16] The Supreme Court of the Netherlands in its judgement of 11 February 2015, ETL 2016, 109-18, argued in favour of a wide application of the rules on successive carriage.

[17] These were: Switzerland, Germany, France, Austria-Hungary, Italy, Belgium, Luxembourg, Netherlands, Russia. Pursuant to Article 19 of the Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles on 28 June 1919, Poland undertook to accede to the international conventions referred to in that Treaty, including the 1890 Bern Convention and the additional agreements to that Convention. The Accession Protocol was signed on 23 January 1922 and the Convention entered into force for Poland on 24 February 1922. Cf. Government Statement of 4 April 1922 regarding the Bern International Convention for the Carriage of Goods by Iron Rail, Journal of Laws, No. 76, item 685. For a broad discussion on the process of Poland's accession to the Convention, see Żółciński 1971, 49-52.

[18] The history of the first railway convention is described by Żółciński 1971, 24.

and monopolistic. It was therefore not possible to entrust the carriage to subcontracting carriers nor was the carrier who had signed the original contract able to perform it by himself in the territory of another country. In order to carry out an international carriage involving several countries, the sender had to either to conclude separate contracts with individual railways, which was troublesome, or to use the institution of successive carriage introduced by the CIM 1890 Convention, which involved the railways of individual countries for carriage performed under a single contract.

CIM's later versions (1923, 1933, 1952, 1961, 1970) did not introduce changes in this respect. Nor did the original version of the Convention concerning International Carriage by Rail (COTIF) signed on 9 May 1980 provide for subcontracting. Or perhaps to be more precise, its Appendices A and B containing uniform rules governing international carriage by rail failed to do so.[19]

A change only took place on 3 June 1999, when the Protocol amending the COTIF Convention was adopted in Vilnius, which provided the new content of the conventions and included appendices (the so-called Vilnius Protocol). The changes were the result of the demonopolisation and liberalisation of the rail transport market in the European Union, in particular the separation of infrastructure management activities from transport activities.[20] The very regulations of the contract of carriage (RU/CIM and RU/CIV) introduced provisions for the performance of carriage by subcontracting carriers.

Currently, following the changes made by the Vilnius Protocol, RU/CIM separately regulate transport performed by successive carriers (Article 26) and substitute_carriers (Article 27).

In respect of successive services, the RU/CIM provide for similar joint and several liability of successive carriers, except that an action may be brought against the first or final carrier or against the carrier who performed the part of the carriage during which the event giving rise to the claim occurred (Article 45(1)). An action against other carriers involved in the carriage by way of a counterclaim may be brought. An objection may also be raised against them "in connection with the principal action" arising from the same contract of carriage (Article 45(5)). This means that if a successive carrier other than that referred to in Article 45(1) of the RU/CIM brings an action under the contract of carriage (e.g. compensation for

[19] The main content of this Convention includes public law rules, it addresses, i.a. the establishment of the Bern-based Intergovernmental Organisation for International Carriage by Rail (OTIF), its structure and activities, arbitration and other organisational issues. Whereas, the very regulation of contracts of carriage is included in Appendix A (Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV)) and in Appendix B (Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM)) [hereinafter: RU/CIM].

[20] Cf. Freise 2009, 1237-238.

damage resulting from defective loading operations – Article 13(2) of the RU/CIM), the person entitled may bring a counterclaim against that carrier based on the provisions on liability for damages, as well as raise an objection in the proceedings to set off the carrier's claim against the claim arising from the fact that the damage was caused during the successive carriage. They may also raise an objection that the carrier's claim may be extinguished as a result of a set-off already made against the claim for payment of compensation.

It follows from the above that the impossibility of bringing an action against a successive carrier other than the one referred to in Article 45(1) RU/CIM does not mean that such carrier is not liable for damage to the consignment or resulting from a delay in carriage. He remains in debt with other successive carriers. However, the Convention creates a barrier to claim compensation from such a carrier. The situation of such a carrier resembles to a certain extent the situation of the debtor of a natural obligation. This means that if a carrier other than the one referred to in Article 45(1) of the RU/CIM carries out a voluntary performance for the right holder, its performance is not undue and that carrier himself acquires a recourse claim, to be satisfied according to the rules resulting from Articles 50 and 51 RU/CIM.[21] Similar measures were adopted in the CMR Convention.

Article 45(1) RU/CIM is the original instrument under the railway law, according to which when the carrier required to hand over the consignment is entered in the consignment note with his consent, an action may also be brought against him, even if he has not received the consignment or the consignment note.

A measure unknown to other conventions (or Polish law) involves also a time limit for bringing actions against individual carriers involved in successive carriage. If the claimant has a choice between several carriers, his right of choice ceases as soon as an action is brought against one of those carriers. In this situation, it is difficult to talk about joint and several liability in the sense in which this concept occurs in domestic Polish law.

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[21] The same line was adopted by the Austrian Obersten Supreme Court in its judgement of 20 June 2000, Transport Law 2001, 79. The Court of Appeal assessed the case differently in its judgement of 4 November 2005, Lloyd's Rep. 2006, vol. 1, 429-32, where it held that a carrier other than the first, last or the one on whose part of the route the damage occurred, by paying compensation does not acquire a recourse claim against the carrier that caused the damage and "with some reluctance" dismissed the action. The Court found that compensation was not paid under the provisions of the Convention and that a solution to the problem should be sought outside the Convention system. In the case in which the judgement was passed, payment of the compensation was made by the second carrier in the chain while the fourth carrier was responsible for the damage. Therefore, although the successive carriage took place as a result of subsequent carriers entrusting the performance of the carriage (subcontracting agreement) to other carriers, there was no other direct legal relationship between the plaintiff and the defendant except that which resulted from the construction of the successive carriage.

On the other hand, aviation law served as the model for regulating the situation of subcontracting carriers in RU/CIM (see below). RU/CIM provides in Article 27(4) for joint and several liability of the subcontracting carrier and the operating carrier(s), thereby giving the rightholder the right to directly pursue claims against the subcontracting carrier. This liability is independent of whether the first carrier (contracting carrier) was authorised to entrust the carriage to a subcontracting carrier. However, in contrast to successive carriage, where each of the carriers accepting a consignment together with a consignment note is liable for damage caused throughout the entire route, the joint and several liability of the subcontracting carrier is limited to the carriage performed by him (Article 27(2)). To this extent, the rightholder (the sender or recipient of the consignment) may, at his discretion, make claims against both the contracting carrier and the operating carrier, or against both. However, when bringing an action against a subcontracting carrier, he must prove that the damage occurred at the time when he was in charge of the consignment. Any limitation of liability which RU/CIM provides for in respect of the contracting carrier himself apply to the subcontracting carrier's liability. Any specific agreement under which a contracting carrier accepts obligations not arising from the RU/CIM or waives rights under these provisions will apply to the subcontracting carrier only if he has given his written consent (Article 27(3)). The total amount of compensation payable by the carrier, the subcontracting carrier and their agents or servants whose services they use in the performance of the carriage cannot exceed the maximum amounts of compensation provided for in RU/CIM (Article 27(4)).

The principle that if the claimant has a choice between several carriers, his right of choice ceases as soon as an action is brought against one of those carriers also applies to sub-contracted carriage.

3. AVIATION LAW

The Montreal Convention plays a key role in the regulation of international air transport agreements now. This Convention has in practise replaced the so-called Warsaw system, i.e. the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, as amended.[22] The performance of air carriage under this

[22] The Warsaw Convention – i.e. Convention for the Unification of certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 (Dz. U. (Journal of Laws) 1933, no. 8, item 49), as amended by The Hague Protocol of 28 September 1955 (Dz. U. (Journal of Laws) 1963, No. 33, item 189), supplemented by the Convention, Supplementary to the Warsaw Convention, for the Unification of certain Rules relating to International Carriage by Air performed by a person other than the Contracting Carrier of 18 September 1961, also referred to as the Gudalajar Convention (Dz. U. (Journal of Laws) 1965, No. 25, item 167).

Convention has revealed the practise of entrusting the performance of a contract of carriage concluded with customers to other air carriers. There has also been chartering of aircraft, as well as sharing the cargo area of the aircraft between carriers [Konert 2010, 30]. Therefore, the question arose as to who should be considered an air carrier, or the so-called contracting carrier (the one with whom the customer concluded a contract of carriage), or the carrier that actually performed such carriage. These issues were regulated in the Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier concluded in Guadalajara on 18 September 1961, which entered into force on 1 May 1964

The Guadalajara Convention extended the provisions of the Warsaw Convention (in the original version or as amended by The Hague Protocol) to actual air carriers. It introduced joint and several liability of the contracting carrier and the actual carrier against the injured party. The Guadalajara Convention, which is a model for later analogous regulations (including the RU/CIM discussed earlier in the version given by the 1999 Vilnius Protocol), introduced a measure according to which an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

This measure was transferred to the Montreal Convention. As in the current version of RU/CIM, this Convention distinguishes between successive carriage (Article 36) and services under the authorisation of the contracting carrier (subcontracting – Articles 39 to 48). More complicated than rail law, the Montreal Convention regulates the designation of a successive carrier against whom an action may be brought. In the event of damage to the consignment, the sender may bring an action against the first carrier, the consignee entitled to receive may bring an action against the last carrier, and each of them may also bring an action against the carrier who performed the carriage during which the destruction or loss of, or damage to, baggage, or delay took place. These carriers are jointly and severally liable. As regards the other carriers, the Montreal Convention does not even give rise to counterclaims or to raise objections – these carriers are not subject to joint and several liability. However, the Convention does not contain provisions providing for the termination of claims against carriers bearing joint and several liability against whom the person entitled has not brought an action.

The Warsaw Convention was also amended by further protocols, which Poland did not adopt. The multiplicity of amending protocols, which were not adopted by all states – the parties to the original convention – led to the disintegration of the Warsaw system. See Żylicz 2002, 76-78.

4. INTERNATIONAL ROAD TRANSPORT

The CIM Convention (in its 1952 version) has become a model for the regulation of the international carriage of goods by road (CMR Convention). The Convention was signed in Geneva on 19 May 1956 by representatives of nine states: Austria, the Federal Republic of Germany, France, Luxembourg, the Netherlands, Poland, Sweden, Switzerland and Yugoslavia. It entered into force on 2 July 1961 after the deposit of notes of ratification by the first five states: Austria, France, the Netherlands, Yugoslavia and Italy.[23]

The CMR Convention does not, in principle, provide for a separate regulation of carriage performed with the participation of subcontracting carriers, provided that they do not take the form of successive carriage within the meaning of Articles 34 ff. CMR. The exception is the specific type of transport, as regulated by Article 2 CMR (so-called "piggyback" transport). In this case, however, the subcontracting carrier of the road carrier is the carrier of another mode of transport, carrying the car together with the consignment. The issue of such transport goes beyond the scope of this article [Wesołowski and Dąbrowski 2017, 273-83].

However, there is no doubt that Article 3 CMR applies to carriage by subcontracting carriers, whereby the carrier is responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his ow. Unlike RU/CIM and the Montreal Convention, there is no basis for direct claims against a subcontracting carrier.[24] Under these provisions, the sender must enforce his claims in accordance with the chain of contractual relations, i.e. the sender against the first carrier and the latter against his subcontracting carrier.[25] The situation of the recipient, however, is different. Usually, in the contract concluded between the sender of the shipment and the first carrier and in the contract concluded between this carrier and his subcontracting carrier, the same person is indicated as the

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[23] As of 20 August 2025, 58 States are Parties to the CMR Convention.

[24] See judgement of the Antwerp Court of Appeal of 6 December 1999, The Case Law of the Port of Antwerp (JPA) 2000, 61-73; judgement of the Supreme Court of 9 July 2007, www.poderjudicial.es, No. 4811/2007.

[25] This is noted by e.g. Hill 1976, 198. See also judgements of the Antwerp Court of Appeal of 15 March 1989, European Transport Law 1990, 574 and the German Federal Court of Justice (BGH) of 24 October 1991, European Transport Law 1992, 83, as well as the Italian Court of Cassation of 16 may 2006, (RDIPP (Journal of Private International and Procedural Law) 2007, 1116-1117). However, the procedure of some countries also allows actions to be brought directly against subcontractors. They may also be sometimes liable on the basis of *ex-prescription* liability known to some legal systems. Cf. judgment of the Italian Court of Cassation of 26 November 1980, RDIPP (Journal of Private International and Procedural Law) 1981, 937.

recipient of the shipment (this is especially the case in typical situations in which the subcontracting carrier actually performs the entire carriage). The recipient, if he is entitled to pursue claims, therefore has the right to do so against both the first carrier and his subcontracting carrier.[26] However, they are liable for the damage on a different basis. It is a matter of non-performance or improper performance of various contracts (concluded with the original sender and between carriers). Obtaining compensation from any of the carriers by the entitled person also releases the other carrier from liability in this respect. It should be assumed that the liability of both carriers is not joint and several (no explicit normative basis), but liability *in solidum*. Of course, this does not close the issue of settlements between carriers.

The CMR Convention, on the other hand, contains an extensive regulation of successive carriage (Articles 34 to 39 CMR). Successive carriers, by accepting the same goods and the consignment note,[27] become a party to the first contract concluded between the sender of the goods and the first carrier. However, Article 36 CMR restricts the number of successive carriers against whom claims may be made for damage to the consignment and claims resulting from delay to the following: the first carrier, the last carrier or the carrier who performed that part of the carriage during which the event causing the loss, damage or delay of delivery occurred. An action may be brought against several of these carriers at the same time.

As in RU/CIM, however, the limitation of the number of carriers against whom the rightholder may bring an action does not apply to counterclaims or objections raised in the examination of an action arising from the same contract of carriage.

The Convention does not use any term which specifies the formula whereby successive carriers are liable for loss, damage or delay in carriage. In particular, it does not state that this is a question of joint and several liability. The literature, therefore, does feature a view that it is about responsibility *in solidum*.[28] However, this view is presented with excessive caution. The lack

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[26] See, however, judgement of the Italian Court of Cassation of 26 January 1995, Transport Law (DT) 1996, 282, as well as judgement of the Court of Milan of 9 April 2001, II Maritime Law (DM) 2003, 176-183, in which the court found, however, that that the recipient is entitled to pursue claims only against the subcontractor.

[27] On the so-called constitutive nature of the consignment note in respect of successive carriage see Messent and Glass 1995, 267-78 and Donald 1981, 44-46, as well as Loewe 1976, 396. The established line of judicial decisions also takes such a stand (cf. e.g. judgement of the Court of Appeal in Athens, European Transport Law 1987, 65). However, the Commercial Court of Antwerp took a different position in its judgement of 16 April 1975, European Transport Law 1975, 548-553, in which it considered the carrier operating on the last national section of an international carriage as a successive carrier despite the lack of a consignment note.

[28] The same in Rodière 1971, 584 and the Antwerp Court of Appeal in its judgement of 14 December 1983, European Transport Law 1983, 809.

of a clear indication that this is joint and several liability in a situation where the provision refers to the characteristics of this type of liability should not be an obstacle to such classification of the liability of successive carriers under the titles mentioned therein. The question becomes even more clear if the provision of Article 36 CMR is read as modifying the principle referred to in Article 34 CMR. All carriers with the liability referred to in Article 36 CMR shall be liable on the same factual and legal basis, which makes it impossible to qualify this liability as liability *in solidum*.[29]

5. POLISH LAW

Polish law also contains provisions on subcontracted carriage (Article 789(1) CC and Article 5 of the Transport Law) and successive carriage (Article 789(2) CC and Article of the 6 Transport Law).

The provisions on subcontracted carriage do not provide for joint and several liability of the subcontracting carrier together with the first carrier for damages caused by the subcontracting carrier. There is also no provision that would allow direct redress against the subcontracting carrier. Therefore, the sender of the consignment may bring an action only against the first carrier. This order of pursuing claims is not affected by the fact of entering the surname name (business name) of the subcontracting carrier in the consignment note or them signing the consignment note. However, the sender may pursue claims against subcontracting carriers where the action of such a carrier would bear the marks of tort (e.g. theft of goods by the carrier's employees).[30] However, the comments expressed above under the CMR convention regarding the possibility of direct redress between the recipient and the subcontracting carrier, due to the identity of the recipient in both carriage contracts (between the original sender and the first carrier and the subcontracting carrier), remain valid.

The design of successive carriage regulated in Article 789(2) CC and Article 6 of the Transport Law is slightly different. The systemic interpretation of the Code provisions indicates quite clearly that successive carriage is not a type of carriage different from subcontracting, but a sub-type of the former. It takes effect as a result of acceptance by the subcontracting carrier

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[29] The same in Clarke 2009, 168; Haak 1986, 113. The same also in German literature. See e.g. Basedow 1997, Article 34, 15; Koller 2007, Articles 34, 6; Thume 2007, Articles 34 and 7. See also the reasons for judgements of the Polish Supreme Court of 26 March 1985, ref. no. I CR 304/84, OSNIC 1986, No. 1, item 14; of 13 October 2010, ref. no. VI ACa 306/10, Lex no. 686781; of 6 February 2008, ref. no. II CSK 469/07, OSNIC 2009, No. 4, item 58. See also judgement of the District Court of Barcelona of 29 November 2004, www.poderjudical.es, No. 761/2003.

[30] See judgment of the Court of Appeal in Poznań of 16 September 2010, ref. no. I ACa 615/10, Lex no. 756686.

of the consignment on the basis of the same consignment note. The Transport Law regulates successive carriage as a separate type of carriage, which occurs by several carriers performing the same or different modes of carriage under one contract of carriage and one carriage document. Apart from this difference, the regulation in both these legal acts is identical. It provides for joint and several liability of all successive carriers. It does not introduce any restrictions (personal, time) on the possibility of pursuing claims against jointly and severally liable carriers. The provisions of the Civil Code and the Transport Law also govern recourse claims between carriers that are jointly and severally liable.

FINAL NOTES

As can be seen from the above comments, individual normative acts concerning the contract of carriage of goods regulate in different ways the issue of designating carriers against whom it is possible to bring an action by the person originally entitled (the sender or recipient of the consignment) in a situation where several carriers are involved in the carriage. The differences apply to both successive and subcontracted operations. This is not conducive to the clarity of the image or to the drawing of more general conclusions. This is also compounded by differences in procedural rules of individual countries, which modify in practice (contrary to the assumptions underlying the unified regulation) the conventional rules (e.g. in terms of the possibility of direct claims against subcontracting carriers under the CMR convention).

However, the introduction in international transport law of joint and several liability of the subcontracting carrier with the first carrier for damage caused during carriage performed by the former in practice eliminates the differences between the two types of carriage, in particular in view of the personal limitations provided for in respect of successive carriers against whom an action may be brought. The blurring of differences is also encouraged by the case law practice of some courts under CMR who broadly interpret provisions on successive carriage and apply these provisions in situations where carriers considered to be successive have not physically taken over the consignment and the consignment note from each other. Undoubtedly, this is a consequence of a lack of the possibility of direct redress under the CMR convention by persons originally entitled against subcontracting carriers.

The above questions the sense of distinguishing successive carriage, especially since – as can be seen from the above comments – they developed during the time of the monopoly position of railways of individual countries. They are also closely related to the idea of a consignment note, which,

due to dematerialisation of documents in business transactions, loses its importance. In addition, the design of successive carriage raises reasonable doubt from the point of view of the principle of safety of trading. It may arise against the will and even knowledge of some carriers.[31] Nevertheless, they are liable for damage caused by other carriers.

Therefore, resignation from successive carriage, as a somewhat anachronistic legal form of performing carriage by many carriers, which does not conform to the current economic conditions seems to be the appropriate solution in the future regulation of the contract of carriage in Polish law. At the same time, it should be postulated that joint and several liability of the subcontracting carrier together with the contracting carrier be introduced for damage caused by the former. The possibility of directly pursuing claims against the subcontracting carrier would simplify and speed up the process of settling claims. A model could be provided for by the Montreal Convention, which does not (as is the case under RU/CIM) terminate claims when actions are brought against those carriers who are jointly and severally liable and not covered by the claim.

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[31] See Wesołowski 2013, 734-35.

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