

FORWARDING CONTRACT, CONTRACT ON THE CARRIAGE OF GOODS, CONTRACT ON OPERATING A MEANS OF TRANSPORTATION¹

ZASILATELSKÉ SMLOUVY, SMLOUVY O PŘEPRAVĚ ZBOŽÍ, SMLOUVA O PROVOZOVÁNÍ DOPRAVNÍCH PROSŘEDKŮ

Karel Marek

Abstract: *The development of trade in the modern economy has brought about an increased importance of transport. Multiplication of means of transportation and the quantity of goods transported has led to the fact that contracts governing the area of transport have become, especially since the beginning of the 21st century, the most common and widely used ones. The most frequently used one is contract on the carriage of goods, forwarding contract and often also contract on operating a means of transportation. In practice there are often situations when more than one of the aforementioned contracts is used for carriage in one “business case” (e.g. a forwarding contract and a contract on the carriage of goods), although comprehensive logistic solutions either under a forwarding contract or under an innominate contract have lately been increasingly required by contracting parties.*

Keywords: *law, civil law, forwarding, carriage of goods, operation of means of transportation*

Abstrakt: *Rozvoj obchodu v moderní ekonomice přineslo zvýšení důležitosti dopravy. Násobení dopravních prostředků a množství přepravovaného zboží vedlo k tomu, že smlouvy, upravující oblast dopravy se staly, a to zejména od počátku 21. století, z nejběžnějších a nejpoužívanějších. Nejčastěji se používá smlouva o přepravě zboží, zasilatelské smlouvy a často i smlouva*

¹ prof. JUDr. Karel Marek, CSc. - Akademie Sting, 637 00 Brno - Jundrov, marek@post.sting.cz, prepared as part of internal project IGA_AS_03_02.

o provozování dopravních prostředků. V praxi dochází často k situacím, kdy více než jedna z výše uvedených smluv se používá k přepravě v jednom "business case" (například smlouva spedice a smlouva o přepravě zboží), u komplexních logistických řešení se v poslední době smluvními stranami stále více vyžaduje smlouva o předávání, nebo podinominátní smlouva

Klíčová slova: právo, občanské právo, spedice, přeprava zboží, provozování dopravních prostředků

JEL Classification: K 12

1 FORWARDING

„Under a forwarding contract, the forwarder undertakes in his own name to arrange transportation of goods for the sender at the sender's expense from one designated place to another designated place, and the sender undertakes to pay the forwarder a fee.

If it is agreed that, prior to issuing the consignment or documents facilitating disposal of the consignment, the forwarder collects a certain amount of money from the consignee or perform some other act of collection, the provisions on documentary collection shall apply as appropriate.

Forwarding (carriage of goods) is a subtype of consignment contract. The New Civil Code (NCC) incorporates, to a large extent, the applicable regulation of the Commercial Code (section 601 et seq. of the Commercial Code).

The development of trade and transport went hand in hand with the development of forwarding (spedition) – a field whose subject is the operation of the procurement activities in the field of transportation of goods (consignments). Forwarding as procurement of transportation branched off the actual direct execution of transport. In practice, however, we sometimes do not accurately distinguish between carriage and spedition and these two activities are confused, with possible negative consequences arising from it.

In assessing the nature of a contract, we see that this is a kind of procurement contract, a special kind of consignment contract. The essential feature is that

the forwarder acts in his own name on behalf of the sender. It is a contract for remuneration. Cases in which the contract will be concluded in writing, for example, for documenting the agreed content including the amount of remuneration, will not be exceptional.

In accordance with the arrangements in the forwarding contract, the forwarder has a responsibility towards the sender, mainly: for the timely provision of transport, for the granting of the right disposition to carry out the transportation (e.g. for loading of goods, use of a suitable vehicle, ensuring unloading), for informing the sender of an obvious incorrectness of their instructions, in the case of completion of instructions if requested to do so, in the case of the sender's incorrect decisions the case of risk of default (decision how to deal with the consignment), for the correct handling of the consignment, for neglect of care in negotiating the conditions of transport, in the case of averting damage on consignment received, in the case of neglect of the duty to inform the sender of damage threatening the consignment or already occurred on it, consisting in care upon the sale of a consignment threatened by a substantial loss.

The assumption is that the forwarder is a person familiar with the issues of forwarding. Such person should have the appropriate level of expertise with respect to the scope of their activity. Also, it is expected that the forwarder will act with due professional care.

It seems, however, that the Trade Licensing Act does not correspond with this. In the past, the Trade Licensing Act classified "national forwarding" as a permitted trade. "International forwarding", which is a more demanding activity in terms of professional qualifications, was not included at all in annexes to the Act; therefore, this activity was a free trade, which could be carried subject to a notification to the competent Trade Authority. The amendment to the Trade Licensing Act removed national forwarding from permitted trades, and forwarding is free trade as a whole, for which, within the meaning of the Trade Licensing Act, no special expertise is needed, only the general conditions of operation of the trade according to the Trade Licensing Act must be complied with.

It can certainly, in practice, cause problems in some cases because the operation of forwarding activities is now carried out by business entities with less professional expertise.

For comparison, in Austria, for example, forwarding is a trade whose operation requires, according to the Trade Licensing Act, a permission by the administrative authority and observance of the following conditions: after graduating from a 4-year apprenticeship in a forwarding store, successfully passed an examination with an apprenticeship forwarder certificate, if they operate the business in person; an officer of a forwarder, in the case of a legal person, has met the same condition as if he operated forwarding activities in person; or the operator or the head of the forwarding entity graduated from a vocational secondary school or university specializing in transportation and forwarding.

Professional organizations aim at developing expertise in the field of forwarding. Forwarders in the Czech Republic are associated in the Association of forwarding and logistics in the Czech Republic (founded under the original name Association of freight forwarding and storage in the CR), which has been a member of FIATA (Fédération Internationale des Associations de Transitaires et Assimilés International Federation of Freight Forwarders Associations) since 1992. It is a standard for the members of the Association to use of the General forwarding conditions issued by the Association.

However, the use of the above General conditions is probably not sufficient in the case of special consignments. Quite specific requirements and demands on forwarders and carriers arise in particular in connection with the transportation of goods of a higher value or in the event of requirements for specific technical conditions (e.g. anti-static environment). Abroad, transport of this type is called High-tech transport. In this case it will be necessary to negotiate the contract with regard to the individual characters of such transport.

Currently, more and more businesses are turning to professional forwarding companies, which are the guarantors of the transportation in the shortest possible time while taking over other formalities associated with the transportation of the consignment. The professionalism of their staff and technological advancement (this, inter alia, allows to monitor information about the entire movement of a consignment from the sender to the recipient) ensure high-quality services and, therefore, they become daily the forwarder of a lot of consignments requiring a speedy delivery, careful handling or customs clearance.

In today's modern concept, professional forwarder does not only fulfill the function of a procurer of transport, but it is also able to provide broader assistance. Such a position of the forwarder is gaining prominence especially for international shipments of goods, which are organizationally and professionally challenging and where the carrier can no longer provide the shipper with adequate services due to its specialization.

The task of the carrier is to transport the goods; the task of the forwarder is to arrange, in the transportation chain, for the sender everything that is necessary to ensure that the consignment is transported from the sender to the receiver.

The term “turnkey carriage of goods” has appeared, stressing the aforementioned comprehensive logistic solutions enabling producers or sellers of goods to fully concentrate on their business activities and leave all activities related to the flow of goods to the care of the forwarder.

If the contract is not concluded in writing, the forwarder has the right to demand that the sender delivers to it an order to procure transportation (forwarding order).

The forwarding order should specify the goods and the place of shipment and destination. However, a forwarding order is not necessary for the creation of a contract; forwarding order is not a security.

It is necessary to distinguish whether the forwarder undertakes to arrange the transportation of goods, or undertakes to carry the goods. In the first case they conclude a forwarding contract, in the latter case a contract on the carriage of goods and it is not decisive, whether or not they will carry out transportation using their own or someone else's means of transport.

In connection with correct determination of contract and the content of the contract, it has to be pointed out that the situation is similar in the case of issuing a forwarding order. If there is an inaccurate description of this order (often there are titles such as “carriage order” or “transportation order”), the content of the order is of essence.

A “carriage order” or “transportation order” will be a “forwarding order” only provided that it implies arrangement of transportation as the subject-matter of the contract entered into. If this is not clear, a different name of the order

may serve as a means to claim that the sender's intent was not to issue a "forwarding order", but that the intent was to enter into a contract of transportation.

There may be situations where the forwarder does not carry out transportation (which is not the purpose of a forwarding contract anyway), but when the forwarder uses another person in the procurement of transportation – another forwarder (the so-called intermediary forwarder). In such case the forwarder is liable as if they were procuring the transportation themselves. Use of another forwarder may come into consideration mainly in the case of subsequent kinds of carriage and in the event of transportation to destinations abroad.

A classic form of use of the services of an intermediary forwarder by the forwarder is groupage. This intermediary forwarder, as a contractual partner of the forwarder, undertakes to carry out for the forwarder certain activities, e.g. collection and distribution of goods from a terminal abroad, etc.

Unless it is not contrary to the contract or prohibited by the sender prior to the commencement of transportation, the forwarder may themselves perform the transportation which they are to arrange. Then they also have the function of the carrier. In the implementation of transport, here will therefore be a simpler functional arrangement. This procedure is referred to as selfentry.

Then, the relationships during transportation will not arise out of a forwarder contract but a contract on the carriage of goods.

The forwarder will arrange the mode and conditions for the transportation with due care so as to best suit the interests of the sender that the forwarder knows.

The forwarder is obliged to have the consignment insured only if stipulated in the contract. The forwarder's obligation to insure the goods is therefore not a statutory obligation, but only if it is provided for by the contract.

While maintaining due care, the forwarder cannot analyze all the sender's instructions in detail, however, they should normally assess them with due care. The forwarder alerts the sender only in the case of obvious errors.

In fulfilling their obligation, the forwarder is obliged to apply due care to arrange the way and conditions of transportation corresponding best to the interests of the sender arising from the contract and its commands or which are otherwise known to the forwarder. Their focus and specialization on the respective scope of activity applies. Due care does not apply only on the actual procurement, but also on goods. The forwarder is liable for damage caused to a received consignment while arranging for transport, unless it could not be averted despite exercising due care.

The forwarder should be a professional entity for the arrangement of transport, but may not have a good knowledge of the goods and his character, although the opposite would be their advantage. They do not know all the details of the consignment and the content of the consignment. For the provision of transport, however, they need to obtain this information from the sender, in order to proceed accordingly. Any inaccuracy could lead to damage.

Where the sender does not provide the forwarder with correct information on the content of the consignment and of all the facts necessary for the conclusion of the contract of carriage, they are to compensate damage occurred as a violation of this sender's obligation.

The sender is obliged to provide the forwarder with correct and complete information about the contents of the consignment and its nature, as well as about other facts necessary for the conclusion of the contract on carriage. In the case of breach of the obligations, the sender is responsible for the damage which the forwarder incurs. This applies, in particular, to hazardous goods and goods which are only conditionally accepted for carriage subject to meeting the conditions for the transportation of dangerous goods.

These conditions are also regulated by various international conventions (ADR for road transport, RID for rail transport, IMDG for sea transport).

The forwarder is obliged to inform the sender of any damage threatening the consignment as soon as they learn of it; otherwise they are liable for any damage thus incurred by the sender as a result of their failure to meet this obligation. This is a special provision in relation to the general preventive

and notification obligation in the framework of compensation. This applies to substantial as well as unsubstantial damage.

Special regulation applies to situations when there is an imminent danger of damage to the consignment and there is not time to ask the sender for instructions, or if the sender delays in providing such instructions. In accordance with section 2126 and 2127 of the NCC, in such situations, the forwarder may sell the consignment in an appropriate manner at the sender's expense.

In general, the forwarder does not bear the risk of damage to the consignment. It is only liable for damage caused to a received consignment at time of arranging transportation. However, this shall not apply if they prove they were unable to avert it. This is a special provision to more general regulation of damage caused to a thing received.

However, damage is not to be compensated if the person who received proves that the damage would arise otherwise.

In this context, it should be noted that the forwarder is not liable for breach of contracts agreed with the carrier, therefore, is not liable to the sender for any damage incurred by the latter as a result of a breach of the contract on carriage by the carrier.

If the forwarder has violated any other statutory or contractual obligations, the general provisions on compensation will apply.

Upon receipt of the consignment, the consignee assumes liability for payment of the carrier's receivables towards the consignor from the contract concerning carriage of the received consignment, provided that the consignee knew or should have known of such receivables.

This is strengthening of the rights of the forwarder and a case of origin of statutory guarantee. However, this applies only if they knew about the receivable or should have known about it.

The forwarder is entitled to an agreed fee for arranging transportation or, if such fee has not been agreed, to fee which was customary at the time of concluding the contract for arranging similar transportation. Additionally,

the forwarder is entitled to compensation of the necessary and reasonable expenses which they incurred for the purpose of fulfilling their obligation.

At this point it should be noted when the forwarder fulfills obligation. In the forwarding contract, the forwarder promises to the sender to arrange, in his own name and on behalf of the sender, transportation of a thing from one place to another specified one. The forwarder carries out the arranging of transportation not only by looking up a suitable carrier and means of transport, but also by concluding the respective contract on the carriage of goods.

In practice, it is discussed whether the forwarder fulfills his basic obligation under the forwarding contract at the time of concluding the respective contract on the carriage of goods with the carrier and notifying the sender of this, or at the time of completion of transportation, i.e. by handing over the consignment to the consignee.

In our opinion, the sender should pay the fee and the costs incurred to the forwarder without undue delay after the forwarder arranged transportation by concluding the respective contracts with carriers, or intermediary forwarders, and notified the sender of this.

The forwarder is to monitor further “progress” of transportation and notify the sender with respect to the statutory preventive and notification duty (inter alia in the context of compensation of damage).

In addition to detailed negotiation of other issues, it is particularly appropriate to agree the issue of remuneration in detail in the particular contract. I can only recommend a more detailed agreement on the ways of accounting - invoicing and payment.

The forwarder has a lien on the consignment while it is held by them, or while the forwarder possesses documents which entitle them to dispose of the consignment, in order to secure sender’s debts arising from the contract. The same applies where it is held by somebody else on the forwarder’s behalf.

At the request of earlier forwarders, an intermediary forwarder applies all rights arising for them from their lien, and also has rights and obligations

to satisfy their rights. If they satisfy them, the rights pass on the intermediary forwarder together with the lien securing them.

In order to secure their claims towards the sender, the forwarder therefore has a lien on the consignment while it is held by them or by somebody else on their behalf, or while the forwarder possesses documents which entitle them to dispose of the consignment.

If requested so by earlier forwarders, the intermediary forwarder will apply all rights arising for them under their lien; they have the right and obligation to satisfy their rights. If they do so, the rights pass on the intermediary forwarder together with the lien securing them. This is a statutory assignment.

Forwarding contract is in fact a special regulation with regard to the use of the consignment contract with necessary modifications. In the NCC, forwarding is provided for in sections 2471 to 2481 and in other issues it is referred to the use on consignment, sections 2455 to 2470, which apply with necessary modifications.

2 CARRIAGE OF GOODS

P The basic provision of this type of contract stipulates that under a contract on the carriage of goods, the carrier undertakes to carry the goods (consignment) from a designated place (place of shipment) to another designated place (destination), and the consignor undertakes to pay them remuneration (carriage charge). This provision includes the essential elements of the contract.

The contract is formed by agreement on the essential elements of the contract.

The essential elements of the contract are:

- identification of goods to carry,
- carrier's obligation to transport the thing,
- determination of the place of shipment and destination,
- consignor's obligation to pay remuneration.

A special manner of expiration of the contract is stipulated in this matter. The contract expires if the consignor has not asked the carrier to take over the consignment within six months from conclusion of the contract.

However, in the case of relationships with a foreign element, we will have to observe the regulation by international treaties, mainly the following conventions governing the carriage of goods:

- COTIF - JPP/CIM (for rail transport),
- CMR (for road transport),
- Warsaw Convention (for air transport),
- United Nations Convention on the carriage of goods by sea.

These international treaties are applicable to international transport. The provisions of international treaties are not only dispositive, but also mandatory. Where there provisions are mandatory the contracting parties may not, in their contracts, of course, agree on a different arrangement.

With respect to relationships with a foreign element, attention should be drawn to one neglected provision of the most commonly used international treaty, the Convention on the Contract for the International Carriage of Goods (CMR).

The Convention, in its article 1, stipulates that this Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

This provision applies regardless of the permanent place of residence and the nationality of the parties. It follows from this that the Convention will also apply to contracts on carriage between domestic entities; a prerequisite for its use is that the place of taking over the consignment and the anticipated place of its delivery are located in two different countries.

It follows from this that if the consignor concludes a contract with a Czech carrier, if the place of shipment of the consignment in the Czech Republic and the place of destination of the shipment is outside the Czech Republic, for example in the Slovak Republic, they are concluding the contract on the carriage of goods according to the CMR Convention, not in accordance with the NCC.

This fact, however, is unfortunately sometimes forgotten in practice and on the part of the sender, the carrier or the consignee there are many problems in case of complaints, claims for damages, etc. The Convention regulates the rights and obligations of the consignor, carrier and consignee, their liability and claims for damages in a different way than the NCC does.

The contract on the carriage of goods does not require a written form, however, the carrier is entitled to require the consignor to confirm the transportation in the transport document, and the consignor is entitled to require the carrier to certify in writing receipt of the consignment. The confirmation therefore must be in writing.

If special documents are necessary for the carriage, the consignor is to hand them over to the carrier the latest when handing over the consignment for carriage. The consignor shall be liable for any damage caused to the carrier by failure to hand over such documents or their incorrectness.

The consignor is also obliged to provide the carrier with correct information about the contents and nature of the consignment. The same what applies to a breach of obligations in case of special documents applies also to a breach of this obligation.

Legal regulation of securities may also be closely related to transportation. A confirmation of receipt of the consignment may be replaced by a bill of lading. A bill of lading is a negotiable instrument to which is attached the right to demand delivery of the consignment from the carrier; it may be issued in somebody's name, to the order or to the bearer.

The bill of lading is a security. The carrier is not entitled to examine why the bill is held by the person presenting it. If the bill of lading does not state to whose order it was made out, it is presumed that it was issued to the order of the consignor.

The rights bound to a bill of lading to the order of the beneficiary may be assigned by a special or blank endorsement; rights bound to a bill of lading registered in somebody's name may be assigned to another party according to the provisions on the assignment of receivables.

Since the Czech Republic is bound by international treaties and international rules are used (e.g. FIATA), we are influenced by internationally used terminology and the term "bill of lading" is not always used. It is common to directly use the designation of a particular type of bill of lading.

However, "freight bill" (in CMR) has to be distinguished; it is a document accompanying the consignment, which is a proof of concluding a contract of carriage.

The minimum content of the bill of lading is stipulated by the law. The bill of lading must state at least the following:

- the name of the carrier and their residential address or place or registered office;
- the name of the consignor and their residential address or place or registered office;
- the designation, amount, weight or volume of the goods carried;
- the form of the bill of lading; whether it was made out to somebody's name or to the order, and identification of the person to whose name or order it was made out;
- specification of the place of destination; and
- the place and date of issue of the bill of lading and the carrier's signature.

If the bill of lading is issued in several copies, the number of copies must be marked on each copy.

After the bill of lading has been issued, only the entitled party under the bill of lading may suspend carriage. Only this entitled party has the right to be given the consignment. If several copies of the bill of lading were issued, several copies have to be presented.

In the event of destruction or loss of the bill of lading, the carrier is to issue the consignor with a new bill of lading. Since this is a security, the law stipulated that the fact that it is a substitute bill of lading must be stated. In the event of misuse of the original bill of lading, the consignor is to compensate damage incurred by the forwarder by this.

The contents of the bill of lading are decisive for claims raised by the party entitled. The carrier may object to such party by referring to the provisions of the contract concluded with the consignor only if such provisions are included in the bill of lading, or if these provisions are expressly referred to therein. The carrier may only raise objections against a party entitled under the bill of lading which follow from the contents of the bill of lading or from the relation between the carrier and the entitled party.

The carrier has a lien on the consignment as long as they have to right to dispose of it. If the consignment is encumbered by several liens, the carrier's lien takes precedence over previous liens, and the carrier's lien takes precedence over the lien of the forwarder.

The carrier is obliged to transport the consignment to the destination within the agreed deadline, or else without undue delay. Some deadlines are governed by rules of transportation.

In case of doubt, the deadline starts on the day following the day on which the carrier takes over the consignment. If the carrier knows the consignee, they are obliged to deliver the consignment to them. If the contract stipulates that the consignee is to collect the consignment at the destination, the carrier must notify the consignee of the arrival of the consignment. The CMR Convention mentions also situations where the deadline was not agreed, and stipulates time limits after which the consignment is considered to be lost.

In practice there are cases where the consignment is transported by several carriers, and a separate contract is concluded with each of them. This may be in cases of combination of various kinds of transportation (e.g. rail and subsequently road). In these cases, each carrier is liable individually.

Very often, however, transportation is provided in a way that the contract is concluded only with one carrier, and this one uses others to fulfill the task. This is because the carrier may fulfill their obligation by using the services

of another carrier. However, they bear the same liability as if they had performed carriage themselves.

In case where several carriers have joined to perform transportation, it may be stipulated in the rules of transportation which carrier and under what conditions is liable.

If the rules of transportation limit the carrier's obligation to compensate damage to health, this is not taken into account. Any limitation, in the rules of transport, of the carrier's obligation to compensate harm does not apply to cases of harm caused intentionally or through gross negligence.

The obligation to carriers operating the public transportation to compensate damage or other harm may be limited by rules of transportation only in particularly justified cases, when the need for such limitation for national transport necessarily follows from the principles applicable to international carriage.

The new Civil Code also regulates the issue of delay in collecting the transported goods. If the person entitled to pick up the luggage or the consignment in arrears with collecting the thing for more than six months, the carrier may sell the thing at the expense of such person. If it is a thing of high value and if the carrier knows the address of that person, they are to inform the person in advance of the intended sale and provide them with an additional reasonable time limit to pick up the thing. A shorter period may be, in justified cases, determined by the rules of transportation. This applies in particular to things of dangerous nature or things that spoil quickly.

Bootstrap sale is possible in designated cases. If the consignment is under imminent danger of substantial damage and there is not time to ask the consignor for instructions, or if the consignor delays in providing such instructions, the carrier may sell the consignment in an appropriate manner at the consignor's expense.

The contract on the carriage of goods is a contract for remuneration. In practice, the contracting parties mostly agree on the use of the carrier's price lists.

The carrier is entitled to the agreed remuneration; if no remuneration has been agreed, they are entitled to the customary remuneration at the time of concluding the contract, taking into account the contents of the carrier's obligation. The carrier is entitled to payment of a carriage charge after completing carriage of the consignment to the destination, unless the contract specifies a different time as decisive. If the carrier cannot complete carriage of the consignment due to circumstances for which they are not liable, they are entitled to a proportionate part of the carriage charge, taking into account the carriage already completed.

The carrier is liable for damage caused to the consignment from the moment of its takeover by the carrier until its handover to the consignee. This does not apply if the carrier could not avert the damage even when exercising due care (section 2566 (1)).

However, the carrier is not liable for damage caused to the consignment if they prove that it was caused:

- by the consignor, the consignee or the owner of the consignment;
- by a defect or the natural properties of the consignment, including normal loss, or
- by defective packaging of which the carrier informed the consignor when taking over the consignment for carriage and, if a freight bill or a bill of lading was issued, this defect in packaging was recorded therein; and
- in the event the carrier failed to inform the consignor of the defective packaging, then if the defect was undetectable when the consignment was received (section 2566 (2) and (3)).

In connection with damage caused to the consignment, yet other obligations are stipulated for the carrier. The carrier must promptly provide a report to the consignor specifying any damage caused to the consignment prior to its delivery to the consignee. However, if the consignee has already acquired the right to delivery of the consignment, the carrier shall submit their report to the consignee. The carrier is liable for damage incurred wither by the consignor or the consignee through breach of this obligation. This is a special kind of obligation to notify.

If a consignment is lost or destroyed, the carrier is obliged to pay the price of the consignment at the time when it was received by the carrier.

If the consignment is damaged or devalued, the carrier is obliged to pay the difference between the price of the consignment when it was received by the carrier and the actual price of the damaged or impaired consignment.

As far as the carrier's liability for damages caused to the consignment is concerned, differences must be pointed out in provisions that can be found in the CMR Convention, because compensation of damage caused to a lost or damaged consignment is a frequent subject of disputes. The CMR Convention, in article 17, quite in detail specifies the exclusion of liability of the carrier; in article 23, it states limitations of compensation of damage which the carrier has an obligation to compensate.

Individual modes of transportation have their important specifics. This is reflected in special regulation of certain issues in the rules of transportation issued especially for rail transport, air transport, transportation by road and inland waterway transport, and maritime transport. However, the rules of transportation must regulate the individual issues within limits established by law.

3 OPERATION OF A MEANS OF TRANSPORTATION

D The basic provisions of this type of contract states that under a contract on operating a means of transportation, the operator undertakes to transportation cargo identified by the client ordering the operation of the means of transportation, and for this purpose to undertake one or more trips with the means of transportation as agreed in advance or to undertake trips within an agreed period according to the client's instructions, and the client undertakes to pay remuneration.

The obligations of the operator and the client, as specified in basic provisions, determine the essential elements of the contract.

The essential elements of the contract are:

- specification of the means of transportation,

- specification of transportation, i.e. specification of the journey(s) or times to make the journeys,
- operator's obligation to provide carriage of cargo,
- client's obligation to pay remuneration.

The contract will find its application mainly in international relations (the International Trade Codes contained a contract on the operation of a ship in the past) but also in the territory of the domestic country, mainly in the operation of aircraft; it can also be used in the area of heavy traffic (i.e. in the transportation of turbines, bridge structures, fuel storage tanks, etc.).

In transportation practice, especially in maritime and air transport, this agreement is referred to as a charter (ship, aircraft).

In the operation of a means of transport, the obligation is specified either

- by specifying a the journey that the means of transportation has to execute (trip charter, voyage charter),
- or by specifying the period for which the means of transportation has to execute transportation (time charter).

The trip charter is similar to the contract on the carriage of goods, whereas the time charter has features similar to the contract of lease, namely or the contract of lease of a means of transport. The time charter may, however, become the basis of a trip charter or several trip charters if the client of transportation concludes another trip charter (a sub-charter) with a third party.

The operator must ensure that the means of transportation are suitable for the trips which are the subject of the contract, and usable for the transportation specified in the contract.

The operator must provide a trained crew, fuel and any other items as necessary to undertake the agreed trips.

The client may assign their right to demand the agreed operation of the means of transportation to another party.

If the means of transportation are not suitable, the operator must compensate the client for damage arising therefrom, unless they prove that this unsuitability could not be foreseen despite exercising due care.

If cargo is accepted for carriage, the provisions on the contract of carriage apply as appropriate to the rights and obligations of the parties, provided this is permitted by the nature of the contract on operating a means of transport.

The provisions on the contract on operating a means of transportation are relatively brief and there are only few but it has become obvious in practice that it is not a dead letter of law.

4 CONCLUSION

As obvious, the provisions relating to the forwarding contract, the contract on the carriage of goods and the contract on operating the means of transportation are to a large extent modified provisions of the Commercial Code (and in the case of operation of a means of transport they have their origin in the International Trade Code).

The provisions of the bill of lading are dealt with separately in a separate subsection of the NCC.

The dispositions for the rules of transportation are concentrated in common provisions on personal and freight carriage.

In practice, this is legislation that is well established and generally should not cause problems in implementation and application.

In specific cases, it is always necessary to assess whether it is a relationship with a foreign element, which could be subject to the respective international legislation.

In the individual types of transport, the rules of transportation must be also taken into account.

5 REFERENCES

BEJČEK, J.; MAREK, K.; KOTÁSEK, J.; ONDREJOVÁ, D. Nástin obchodního práva, II. 2nd edition. Brno: Masarykova univerzita, 2012. 111 p. Edition of multimedia teaching texts No. 78. ISBN 978-80-210-4978-9.

DĚDIČ, J. et al.: Obchodní zákoník, komentář, díl. IV., Polygon Praha 2002, p. 3269 et seq.

ELIÁŠ, K.; ZUKLÍNOVÁ, M.: Principy a východiska nového kodexu soukromého práva, Linde Praha, a.s., Praha 2001.

MAREK, K. K uzavírání smluv. Právní fórum, Praha: Wolters Kluwer ČR, 2012. 2012, issue 4, p. 138-143. ISSN 1214-7966.

MAREK, K.: Smlouva zasílatelská. Právní rozhledy, issue 11/1999.

MAREK, K. Smluvní obchodní právo, kontrakty. 4th edition. Brno: Masarykova univerzita, 2008. 477 p. ISBN 978-80-210-4619-1.

MAREK, K.: Smlouvy k zajišťování přepravy a se vztahem k dopravním prostředkům. Právní rádce, issue 8/1997.

MAREK, K.: Zasílatelství, přeprava a přepravní řády, Právo pro podnikání a zaměstnání, issue 10/2010.

POHŮNEK, M: Právní aspekty zasílatelství, Praha, 1997.

OVEČKOVÁ, O. et al.: Obchodný zákonník, Komentár, 2nd ed., IURA EDITION, 2005.

SUCHOŽA, J.; HUSÁR, J.: Právo, Obchod, Ekonomika II, 1st ed., Praha: Leges 2012, 624 p., ISBN 978-80-87576-33-5.

SUCHOŽA, J., HUSÁR, J.; MAREK, K.; RABAN, P. Česko-slovenské kontexty obchodního práva. 1st ed. Praha: Wolters Kluwer ČR, 2011. 544 p. ISBN 978-80-7357-707-0.

ŠTENGLOVÁ, I.; PLÍVA, S.; TOMSA, M. et al.: Obchodní zákoník, komentář, 12th edition, C. H. Beck 2010.

AUTOR:

prof. JUDr. Karel Marek, CSc., Katedra účetnictví a daní, AKADEMIE STING, o.p.s., Stromovka 1, 637 00 Brno, Česká republika, e-mail: marek@post.sting.cz

AUTHOR:

prof. JUDr. Karel Marek, CSc., Department of Accounting and Taxes, STING ACADEMY, Stromovka 1, 637 00 Brno, Czech Republic, e-mail: marek@post.sting.cz