CHANGES OF THE MARITIME CARRIER'S LIABLILITY IN HISTORICAL ASPECTS

KOVÁCS, Viktória*

The Aim of the Research, Hypotheses

In this thesis, we wish to present the process of legal development of the maritime carrier's liability comprising several centuries. This dissertation works up the changes of regulations concerning one kind of maritime carriage of goods, the line shipping, with other words the carriage of goods with a bill of lading. It covers the changes of regulation of international maritime carrier's liability, as well as the main points and directions of them. In the course of their analysis, their economic and social background and the technical-technological changes of transportation and carriage have also been studied.

The economic importance of maritime carriage of goods in international and domestic relations

Nowadays, 80% of international trade are realized by sea[1] Based on that, it can be stated that this sector of carriage makes up the back- bone of exchange of goods and of global trade. In the second half of the 20th century, the quantity of goods carried by sea kept on grow- ing, parallel with the growth of the value of global production of GDP and of trade, the tendency of which was shaken considerably in 2009 only when the crisis of world economy broke out[2].

The proportional number regarding Hungary reflect a similar volume as for export and import, as well, and a gradual increase can be expected in the future.

It will be strengthened probably in the following term because Hungary tries to become a more grave participant in international maritime carriage by virtue of the planned port in Trieste, Italy and of the expected establishment of an own commercial fleet.

*Associate professor at Széchenyi István University and Deák Ferenc Faculty of Law and Political Sciences

[1] The economic importance of carriage of goods: http://www.geopolitika.hu/hu/2018/10/02/geodebates-vitaindito-szarazfoldi- vs-tengeri-kereskedelem/ (date of download: 25 March 2019)

[2] The economic importance of carriage of goods: http://www.geopolitika.hu/hu/2018/10/02/geodebates-vitaindito-szarazfoldi- vs-tengeri-kereskedelem/ (date of download: 25 March 2019)

Based on the foregoing reasons, the participants of trade of of carriage of goods (e.g. logisticians, forwarders) have to know and apply the legal background of this issue. Moreover, the mentioned economic developments may open new perspectives for Hungarian maritime carriers and they can offer new opportunities for domestic development of law, as well.

With regard to that, the de lege ferenda proposals in the concluding part of the thesis concern the improvement and transformation of the regulation system of carriage of goods. They outline the draft of a uniform regulation structure taking both the peculiarities of the transportation sectors and the interests of carriers and shippers into consideration.

Regulation and research of maritime carriage law in Hungary

The entering of the new Civil Code into force strengthened the topicality of the issue. The answer should be looked for namely to the question how much the liability system for damages in the new Civil Code concerns the previous regulation of carrier's liability and how much the new rules correspond to the tendencies of international development of laws, respectively to what extent they can be applied. It is a key moment that the *new Civil Code* changed basically the liability structure. It broke the uniform liability system for damages of the "old" Civil Code: it put the regulation of delictual and contractual liability for damages on different bases. The principle of generally expectable conduct (1:4. § of Civil Code) is the measure of liability for damages caused out of contract, and an objective based general clause consisting of three elements specifies the basis of liability for damages, respectively the exemption in the case of damages caused by breach of contract.

The other essential change concerned a *special* formation involved traditionally in a separate regulation, namely the *carrier's liability*. The "old" Civil Code regulated the carrier's liability – because of the legal and material features of transport of goods – with special rules. According to that, if the consigned goods injured in the period from shipping to delivery, the carrier held an intensified liability. It listed the factors itemized that exempted the carrier from liability. But the rules specifying these particular carrier's liability structure *were left out from the Civil Code. By virtue of that, it brought the carrier's liability under the scope of the universal con- tractual general clause of liability for damages.* Because of the radical change, the Civil Code *misses § 506 of the "old" Civil Code*[3], as well, that stated definitely that the provisions of Civil Code cannot be

[3] Section (1) of § 506 of the "old" Civil Code: "If the consignment is to be forwarded across the borders, the provisions of this Chapter can only be applied if any international treaty or convention, respectively regulation does not provide otherwise." Section (2) "This Chapter is authoritative to contracts of carriage of shipping, respectively air cargo companies only if any law or international treaty, convention or regulation does not provide differently."

applied to maritime (and air) carriages, except if any sectorial source of law or regulation, thus a general conditions of contract issued by a carrier, for example a bill of lading makes it possible.

The „new" Civil Code includes just *one provision* regarding carrier's liability: this one concerns the liability of multimodal carriers.[4] It makes the approach of this issue from international point of view justified that the relevant international conventions, thus the Brussels Rules, the Hague-Visby Rules, the Hamburg Rules and all conventions in force regulating international road, rail and air trans- portation represent segregated the regulation system being in force at the moment. It causes a considerable practical problem that these sources of law do not fit into each other without deficiencies, there are actually fully unregulated issues, as well (e.g. liability of terminal operators). It can also be stated that even the private law between ports, that is of maritime carriage of goods is not uniform.

It is remedied to a certain extent that companies performing maritime and multimodal carriage of goods secure it in the bill of lading how they solve the problems deriving from deficiencies of regulation (from viewpoint of liability law). But differences in the structure and regulation of sectorial sources of law make it yet professionally justified to harmonize the regulations connected to and completing each other. There are even duties as for the domestic legal system because of deficiencies of the Civil Code regarding legal relations of carriage and for the reason of termination of the special structure of carrier's liability.

The modifications of rules of Civil Code concerning liability for damages can be compared to the changes in the regulation of maritime carrier's liability. Essentially the Civil Code replants namely the liability model of the Convention on Contracts for the International Sale of Goods (CISG)[5] into the general rule of contractual liability for damages. Regarding its content yet, this model is not far at all from the (less applied) general rule of liability for damages in the Hamburg Rules. From the viewpoint of Hungary, it is justified to analyse and to appraise this issue even because the most recent Rotterdam Rules[6] approved in 2009 may bring some changes in many respect. If it enters into force, then as a compulsory mean of regulation, whereas in the contrary case, then by virtue of inclusion of its certain provisions in the conditions of bill of ladings also in such issues of maritime carriage law, *the application of which will be inevitable also in Hungary*. On the basis of Article 5 of the Decree Rome I, it is a basic interest of Hungary, as well, to have an applicable domestic regulation also in respect of maritime carriage of goods. Regarding international contracts of carriage, *the laws chosen* by the contracting

[4] Section (2) of § 6:268 of the "new" Civil Code: "If the carrier forwards the consignment by using several transportation methods, the rules of the concerned branch of transport shall be applied to its activity regarding the single transportation methods. If it cannot be stated where the damage occurred, the provisions of this Chapter shall be applied to the carrier's liability."

[5] Convention on Contracts for the International Sale of Goods – CISG.

[6] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea.

parties shall be applied in the first place, but for lack of choice of laws, just this source of law may lead to the Hungarian laws as applicable laws. But in case there are no rules in the Hungarian legal system regulating the concerned issue with regard to the features of carriage of goods, then we renounce once and for all that the Hungarian rules may come into consideration at all as applicable laws.

The lack of interest of the Hungarian jurisprudence makes it difficult to prepare for these processes. In this issue, two PhD dissertations[7] was at our disposal in Hungarian language during the research work. Four monographs[8] were prepared in this issue each of that presents and analyses a particular part of the scientific sphere of carriage of goods directly. Each of them was published at the beginning and in the middle of the 20th century. Two further monographs[9] in Hungarian were at our disposal dealing tangentially with formation, development and sense of establishments of maritime commercial and carriage law when discussed development of certain legal establishments of commercial law. In the course of the research, beyond the foregoing, five textbooks in Hungarian, six scientific articles in Hungarian and one thesis were at our disposal that worked up issues of general carriage law and maritime carriage law directly. Beside them, we worked up several scientific works in Hungarian, however these only just affect the concerned issue.

The first scientific assumption grounding our dissertation was that as a result of the legal unification process on the sphere of maritime carriage law comprising nearly one century, *two families of regulation* of the liability of maritime carriage law were materialized. One of them is the group of the Harter Act, the Brussels Rules, the Protocols and the Rotterdam Rules, the structure of liability for damages of which is basically identical with each other. The other „family" is the Hamburg Rules and their „satellite" regulations, the Multimodal UN Convention and the UN Convention on Liability of Terminals that go back to the (previous) Warsaw Convention and are influenced by the Vienna Convention on Sales of Goods, as well.

There are considerable differences between the practical applicability of the two different models of carrier's liability. The liability model of the Brussels and the Rotterdam Rules is characterized by a *practical approach*. The solutions of their regulation are based on *the centuries-old traditions of maritime private law and the contractual practice of bills of lading*. On the other hand, the system of liability for damages of the Hamburg Rules and their "satellite" regulations are less practical because

---

[7] KRESKAY, Ferenc: The carrier's liability on the basis of the Brussels Rules. 1996.; Szalay Gyula: Opportunities and barriers of systematization of the law of physical distribution. 1994.

[8] BACZONYI-ISÉPI-UHLARYK: Carriage law. Közgazdasági és Jogi Könyvkiadó, Budapest, 1974. Benyovits Lajos: Maritime private law. Grill Károly Könyvkiadó vállalata. Budapest, 1912. Istvánffy László: International and Hungarian rules regarding air transportation. Királyi Magyar Egyetemi Nyomda. Budapest, 1944.
NÁNÁSSY, Béla. The Hungarian rail carriage law. Szikra Irodalmi és Lapkiadóvállalat, Nyomdai Rt., Budapest, 1947.

[9] FÖLDI, András: Commercial establishments of law in Roman law. Akadémiai Kiadó, Budapest, 1997.
SIKLÓS, Iván: Some questions of custody liability in Roman law. Budapest, 2009.

application of the abstract formula may be thesource of several practical problems in the light of different legal families and national laws. The two directions of development appear sharply separated in the "old" and the "new" Civil Code. The system of liability for damages of the "old" Civil Code is based on the same principles as the traditional maritime carrier's liability that is the "first family of regulation". The carrier is liable for indemnity for any damage occurred in the consignment if it happened during the period of the pos- session the carrier. The exemption is possible on the basis of exempting factors listed itemized. The system of contractual liability for damages of the "new" Civil Code is close to the structure of the "second family of regulation". Its substance is that the basis of liability is specified in an abstract general clause that disregards the itemized enumeration of exempting factors. In our opinion, the real way of international harmonization of laws is the application of the Rotterdam Rules in some kind. We summarize its method and opportunities in the summary, of which the success of the so-called soft law seems to be lifelike for the most part.

Taking the Hungarian law into consideration, the new Civil Code makes an adequate background also regarding carrier's liability by having formed an objective liability system in respect of contractual liability for damages, but its direct application is not life- like. We have outlined the possibility of a uniform regulation under the level of law, including all sectors of transport in the de lege ferenda proposal that would fix the most important elements of liability, too. It would be close basically to the liability system of the first family of regulation that appears in other international codices of carriage law – CMR, COTIF-CIM – as well, so it could be applicable also within multimodal systems.

Structural construction of the Dissertation and Research Methods applied in the Dissertation

In the course of preparation of the Dissertation, we have applied research methods being characteristic to jurisprudence in general.

The primary method is the historical description and analyses of the economic and social changes causing development of laws. This scientific sphere has its roots going back to the Roman law that is worked up first of all on international level, but some segments of it also on Hungarian professional level. *We could rely on foreign research, theses, databases and protocols almost exclusively for having thorough knowledge of the issue from historical viewpoint.* Beyond the historical and analysing description and assessment of the international sources of law, it is an important research method to compare them and to draw the conclusions. Because of the international feature of the issue, this phase of the research was carried out also by virtue of working up of foreign bibliography in the first place, but some domestic sources were at our disposal, as well.

In the course of interpretation of international sources of law, we relied on texts in English language first of all, but when a certain source of law was available also in Hungarian based on an official translation (Brussels Rules, CISG), we relied on the

Hungarian text. In certain cases it was justified a joint analyses and comparison of the English and Hungarian texts because of the anomalies of translation presented in the dissertation. Moreover, it was necessary to analyse also the official translation of the general clause of contractual liability for damages of the „new" Civil Code into English in order to reveal parallels and divergences between certain international regulations (e.g. CISG) and the "new" Civil Code.

Structural elements of the dissertation

The first part wishes to offer a survey on development of the whole maritime private law: it provides a very detailed historical summary of the formation and development of the modern maritime carriage law and of its establishments in four separate chapters. It is important to work up the legal development thoroughly and in details because of two factors. Partly because a summarizing publication in Hungarian language was not performed in this issue in the recent decades, this process is unknown for the „profession", too. It is important also because review of the extremely large bibliography in English language can hardly be expected from those who work in the practice, but even from lawyers who are interested for the issue tangentially.

We put the emphasis of the historical summary on international legal development because the domestic scientific results did not play a direct role in forming the maritime carrier's liability structures being in force. It is examined based on that, by virtue of what antecedent (Harter Act) the modern maritime carriage law was evolved and why the development and unification of the concerned laws became justified on the turning point of the 18th and 19th century. Changes in world politics and economy from the 1970s are also presented that started the legal development and harmonization activ- ities of UNCITRAL. The conventions of maritime carriage law created as the result of the unification process: the Hamburg Rules, the MTO and the OTT Conventions are also presented. The closing chapter of the first part reveals the changes of markets going together with the globalization on the turning point of the 20th and 21st century and the provisions of the Rotterdam Rules following them. Working up and systematization of maritime carriage law from historical viewpoint, as well as an analysing presentation of the legislative attempts aiming to develop the establishments of maritime carriage law and to unify maritime private law are considered as one of the important results of the dissertation.

In the second part of the dissertation, the determinant sources of maritime private law are summarized from the viewpoint of liability law. We applied the normative and comparative method for that first of all in the sense that we compared the rules of the conventions following each other.

The third part of the dissertation includes three separate chapters. In the first place, we look for the answer to the question what are the legal and material peculiarities that make the service of carriage special and distinguish it, and by virtue of that, also the carrier's liability compared to the localized services being relatively well transparent and

computable. (These factors are based on the results of previous research at the department and its legal predecessors that are linked to the name of Endre Papp, Éva Csizmadia és Gyula Szalay.) Presentation of the connecting between the particular circumstances of carriage and the elements of liability are also emphasized in the dissertation. By means of that, the liability rules of the single sources of law can be classified. Based on them, it can also be analyzed from that viewpoint which family of regulation is the one from the various liability structures that meets the practical requirements for the most part.

In the fourth part, we compared the changes of the previous and the contemporary Hungarian regulation of carriage law aiming whether any fitting into the tendencies of international legal development can be revealed. The Act Nr. 20 of the year 1840 on Carriers et, the Trade law, as well as the structure and the concrete regulation of the previous and the „new" Civil Code are reviewed and compared to the rules of international mainland and maritime carriage law.

In the summary of the dissertation, the reasons are presented that justify professionally the unification of the regulation of various transportation sectors. The legislative methods are also presented that may promote realization of a uniform regulation. Finally our – de lege ferenda – proposals for the changes are drawn up that may realize again the consonance between the carrier's liability systems in the Hungarian and the international structures.

Summing up Scientific Results of the Dissertation, Applicabilities

Working up and systematization of maritime carriage law from historical viewpoint

The unified systematization of international maritime carriage law can be considered as a result of our research, as well as presentation of the single establishments of maritime private law and their changes from historical viewpoint, with special respect to the legal issue of liability.

It was the aim of the dissertation namely to provide essential descriptive analyses also for those who do not want to become immersed in the details of maritime carriage law, but to shed light on the solutions of regulation following the economic and social changes also for dispensers of justice, as well as for participants of trade and of transportation of goods in a surveying and complex way. By virtue of this aim, the dissertation may even contribute to the education of carriage law and trade law.

Revelation and systematization *of the material constituents* of maritime carrier's liability can be assessed as a result. Revelation of the connection between these factors and the elements of liability shall also be emphasised, the assessment of liability structures from practical viewpoint became namely possible by means of that. It is also considered as an essential result of the dissertation. It is also stated in the dissertation that two living legal systems regulate the maritime carrier's liability for the time being. They form two different groups according to the regulation of the issue of liability.

Based on the regulated establishments of law, it can also be stated that a gradual rapprochement can be noticed between maritime carriage law and the regulation of other transportation sectors. But the laws of maritime carriage of goods, with special respect to their aspects of liability, will always differ from those of the other transportation sectors, the cause of which are in the material characteristics of the whole transportation sector. The families of liability are analyzed according to the three regulation elements of liability: the formation of liability, the numerical extent of indemnity and the rules of process of enforcing claims.

Two groups of regulation

As it has been presented in the dissertation, one kind of maritime carrier's liability is the traditional variant, the model of liability for damages of the Brussels Convention and of the Rotterdam Rules, and the other one is the liability structure of the Hamburg Rules and their „satellite" rules, wishing to succeed the previous ones.

The carrier's liability on the basis of regulations of the Rules and of the Codex is an objective liability based on receptum situation. It is however not unconditional: a carrier breaking contract can be exempted by virtue of proving any of the causes of exemption listed according to the configuration of liability. It is a further feature of the regulation that the phase of locatio and of conductio are separated sharply that is reflected in the dual structure of the maritime carrier's liability. The objective liability is completed by a liability of negligence based on the "normal carefulness".

The other group of regulation is the Hamburg Rules and their „satellite" rules. The construction of receptum liability is a constant element of their configuration of liability. A fundamental change came about however at two points: they treat the phases of locatio and conductio consistently from both technical and liability point of view; and they apply the same formula to both that is included in one single general clause. The limits of indemnity and the rules of procedure of asser- tion of claims have also been presented, these were shown together. The content and quantity of the regulation grow and develop linearly in these subjects, there are no essential changes among them.

Both models of carrier's liability in the liability system of the "old", respectively the "new" Civil Code. Comparing the national and international regulations, it can be stated that the system of maritime carrier's liability based on the "classic", itemized causes of exemption (Convention, Hague-Visby Rules, Codex) is reflected by the general clause of special carrier's liability for damages in the "old" Civil Code and its antecedents, and the model based on one single general clause (Convention) is reflected by the general clause of contractual liability for damages in the actu- al Civil Code. Considering the regulations of traditional system of liability, there is no theoretical difference between the liability systems of the carrier's liability in the "old" Civil Code and of the regulations of classic maritime carriage law. Both have an objective structure, and they state the increased liability of carrier in the case of damage to the goods and of delay. They state the factors itemized, in a casuistic list, in the case of a successful proof of which the carrier can be

exempted. Moreover – as it has been presented – fundamentally the same factors appear in the regulation of maritime carriage law based on Anglo-Saxon grounds and in the list of exculpatio of the continen- tal rules. (The regulations regarding „locatio" are basically dissimilar nevertheless.)

The liability model materialized in the Convention is closely related to the CISG however, the regulations of liability law of which are the basis of the model of contractual liability for damages of the Civil Code, as well. The latter have an objective basis, too, considering liability, the liability for damages follows by objective occurrence of damage, and the burden of proof is on the party breaking contract. The condi- tions of exemption are stated in a general rule however, contrary to the itemized "list" of exemptions of the Convention.

In our view, the outlined general clause of the Civil Code can determine just the frameworks with regard to the subject of carrier's liability. The rules of contractual liability for damages are excellently suitable to regulate the liability for indemnity connecting to relative- ly well computable and localized services. Their starting point is namely that the parties fix themselves the rights and obligation to- ward each other in the contract concluded prior to the occurrence of damage, and they can freely consider the risks, as well. Therefore the conduct of causing damage means after all the breach of a contractu- al obligation accepted willingly and consciously. But the legal relation of carriage is more complicated than this. It has much more risks than the easily transparent contracts of sales, undertakings or mandates. It has been presented beforehand that because of this, several material reasons make it necessary to regulate the subject of liability concretely, simply and concentrating on practice.

The causes of that are first of all the inevitable influences deriving in the first place from shifting and from the technologies of forwarding goods, but the multiparticipant nature of carriage realized through forwarding chains, the large-scale character of the service and some other factors presented in this dissertation offer reasons together to a more simple mechanism of the division of risks between the parties. The limited possibility of recognition and predictability of dangers during carriage and the provability of real cause of damages are an important factor because of the receptum position between the parties and because of the difficult computability of external influences going hand in hand unavoidably with carriage.

The general clause of the Civil Code has no respect for these peculiarities of carriage because the clause needs and abstract legal consideration that is not favourable among circumstances of large- scale carriage at all. It has been presented at the same time that the circumstances in the "old" Civil Code regarding exemption are yet integrated to a certain degree by the general clause of the Civil Code, too: the "circumstance out of the scope of control" includes the "unavoidable cause out of the scope of the carrier's activity" and the "internal feature of the shipment" that do not belong to the scope of control of the carrier, but for example the "deficiency of the wrapping unnoticeable from outside" does not belong to the scope of control of the carrier, either. It has also been presented

that the majority of circumstances resulting exemption not only on the basis of the "old" Civil Code, but also on the basis of the maritime versions can be made suitable fully for the concerned factors of exemption, to there are no irreconcilable theoretical differences between both constructions. But details hide substance. The dissertation reveals the links between the model of liability for damages („alternative" liability model) of the Civil Code, the CISG, the Hamburg Rules and the Warsaw Convention, as well.

The so-called "alternative" liability model was codified first in the Warsaw Convention (1924). The text of the formula is presented and analyzed in the dissertation. Its substance is that – in accord with the concerned sources of law – the causes exempting the carrier are presented in one single clause that is based on an abstract, theoretical idea. The Hamburg Rules put the liability formation of the Warsaw Convention into the maritime carriage law by virtue of the general clause also presented in the dissertation. The CISG had a role in the background regarding the break with the traditional regulation. The aim of UNCITRAL was namely by creating rules based on similar idea to establish a uniform system of liability for damages both in the mechanism of trade and of carriage of goods of the international commerce.

The new Civil Code – as it is presented in the dissertation – puts essentially the liability model of the CISG into the general rule of contractual liability for damages. Therefore connections can be revealed on several points between the general clauses of liability for damages of the mentioned sources of law. It is also presented and analyzed in the dissertation that the liability models of all the four sources of law have an objective base: they set out from the objective fact of breach of contract, and the party breaking contract is exempted only if he proves successfully the exempting cause consisting of several elements that are connected to each other. The burden of proof are put on the party breaking contract by the sources of law equally.

Based on that, the purpose of the liability construction named„alternative" by us is identical in the concerned sources of law: to create a balance between services and recompenses, that is to distribute risks proportionally. Considering their logic of regulation and wording however, they are not identical fully with each other, actually they differ from each other on several points. These are presented in the dissertation.

Directions of the international development of laws

For the time being, there is no unified regulation as for maritime carriage law, and especially there are no rules of a complex regulation in force that would include all legal issues of door-to-door carriage transactions based on one contract of carriage and concerning at least two economic subsectors, with special regard to the carrier's liability. This regulation is imperfect also because the rules of single subsectors – for reason of failure of attempts to codification – cover just partly the common problems of the different ways of transportation and carriage. This results in several difficulties and uncertainties in the practice both regarding the carrier's liability and concerning

calculation of the concrete amount of indemnity. These examples and their analysis have been presented in the dissertation.

It is obvious therefore and also according to the regulation tendencies that there is still a demand for a global harmonization of laws. For lack of unified rules, parties concerned in carriage have to determine the conditions of that, the duties of several parties involved in the legal relation, the points of view of division of risks and the conditions of liability individually before concluding every single transaction of carriage. It takes the edge of the consequences of hiatus considerably that so far the unified bills of lading issued by the line conferences have more or less remedied the gaps of regulation and filled them up with contents which the UN and the organizations of representation of interests of maritime trade wished to balance by virtue of general rules to have entered into force. The FIATA Combined Bill of Lad- ing represents a similar means, too. They provide more or less a solution to establish liability and also for the problem of amounts of indemnity to be calculated on the basis of the average value of goods. So practice compensates somewhat the present periodicity and defi- ciency of the regulation (moreover this – namely the periodicity of regulation – gives the economic justification for existence of for- warders, as well).

The future direction of development of laws is yet question- able that may follow three different courses. They represent three different levels of regulation, so they need different kind of compromises. The possible solutions are as follows:

1) Entering of the Rotterdam Rules (Codex) having already been created into force as a global source of law.
2) Creation of "model rules".
3) Establishing general conditions of contract.

These directions of legal development, as well as their chances to be realized are discussed in details in the dissertation. Of the three possible methods of regulation, in our view, this one, i. e. creation of "model rules" has the biggest chance to be realize in medium term. It is a flexible means of regulation that is elaborated and accepted by a global international organization (e.g. UNCITRAL) in optimal case. It does not need a wide-ranging compromise on the part of the countries, it includes namely no commitments done by the single countries.

The aim of the model rules is to regulate a particular sphere of trade law, for example the private law of international carriage of goods. It can be a realistic option because it is accepted by an international organization as a proposal to the text of a regulation that can be applied by the single states as a guidance when they create their national rules. By virtue of that, the practical harmonization of legal systems can also be achieved. Its advantage is that it is not compulsory. This means that the text of model rules can be formed by every single country according to its own national requirements, but it remains the same on the basis of rules. It should be specially underlined that the content of model

rules are elaborated on the basis of the most applicable legal practices as a result of discussions of experts. Thereby regulations will be formulated which are well-tried in the practice and can be applied certainly.

According to that, creation of model rules definitely seems to be an expedient solution in the sphere of maritime carriage law, since – as it has been presented – they do not assign hardly alterable commitments to the countries and they can be built in any legal system with changes and supplements at will. Their application can be effi- cient because they can be changed easier depending on the changes of tendencies of world market and of monetary politics. Thereby – similarly as the convention – they can serve preventive guiding regulatory purposes, with special respect to the quick development of the technology of carriage of goods (e.g. UNCITRAL Model Law on Electronic Transferable Records [2017].

This would mean an especially useful solution for developing economies. They would implement generally valid rules already well-tried in the practice into their own legal system in a way that they form those rules according their own needs in the meantime. It shall be underlined especially that – in spite of their several advantage of application – the practical importance of these means of regulation is not yet self-evident. They can meet the requirements if – following their implementation into the national legal systems – companies and conferences also implement their regulations directly into concrete contracts.

The foregoing and the implementation into national laws are helped by so-called legislative guides being close to the model rules. They provide information for interpretation of the model rules and they highlight their social and economic backgrounds. They mediate thereby some alternative solutions, too, which shall be deliberated when national laws are formulated.

There are two model rules currently in the sphere of international carriage law. The first one was accepted by UNCITRAL in 1982: „The measures regarding units of account and the measures as for adaptation to limitation of liability in the conventions on international carriage of goods and liability".

The other one is the „UNCITRAL Model Law on Electronic Transferable Records" [2017]. This source of law regulates issuance of the „Transferable electronic records" and their application in commercial practice.

Regulation of private law of contracts of carriage and of forwarding "under Civil Code": de lege ferenda

One of the most important innovations of the „new" Civil Code is – as it was presented as appraised and analyzed in this dissertation – that it terminated the uniform system of liability for damages according to the previous Civil Code: it separated the regulations of delictual and contractual liability for damages. The principle of generally expectable conduct (1:4.§ of Civil Code) means the standard for liability for damages caused out of contracts, but in the case of damages caused by a breach of contract, the base of liability

for damages and the exemption are determined by an objective-based general clause consisting of three elements.

Thus the contractual liability for damages, considering its formation, is objective, the burden of proof is on the party breaking the contract, and the terms of exemption are fixed by the referred general rule consisting of several elements. As for maritime carriage law, the same logic is noticeable in the first regulation aiming harmonization of the laws, i.e. in the Convention (and in its „satellite" rules) that (would) have „shifted" the Hungarian carrier's liability from the traditional system still being dominant in international relations to an „alternative" liability structure inspired by the CISG.

It could – as it has been presented – not at all, or it could fill its function effectively just with considerable difficulties and by vir- tue of plenty of time, energy and expenditures. As is has been pre- sented, the causes of that are mainly the material characteristics and the legal features of carriage of goods, and the circumstances of carriage in large scale make it inexpedient to apply it. This new liability system canhardly stand the test of practice day by day.

The situation is very similar also in the case of the Civil Code: although the general clause (6:142.§ of Civil Code) establishes an objective structured liability, too, but its rules are not appropriate „sterilely" to regulate directly the conditions of damages caused by breach of a contract of carriage. We deem unavoidable the solutions of particular structure of carrier's liability being applied internationally in general as lex specialis become part of Hungarian private law. Because of the foregoing, it is justified to reconsider the present regulatory system of contracts of carriage basically and to put it into a new, uniform structure. There are – similarly as internationally – three possible solutions for that: A new rule to be passed: on the level of an act, but at least of governmental decree. It would be an adequate solution to regulate the conditions relating to the large-scale and specific services of carriage in complexity, practically and flexibly. Creating model rules by contribution of the public administration. Further application of unified general conditions of contracts in practice, as well as fitting these conditions to the most up-to- date tendencies of trade. In order to solve entirely the problems of present regulation for contracts of carriage, the solution could be to create an act or at least a governmental decree to regulate the concerned services. It could fully unify the domestic law of carriage of goods. Moreover, it could offer a useful regulation easily applicable also in the case of an inter- national multimodal legal dispute regarding carriage of goods – if the laws of Hungary are applicable by virtue of choice of laws by the parties or on the basis of the private law rules of international conflicts of laws.

It could have a great importance, taking the growing tendency of the international multimodal carriage of goods in Hungary into consideration. If the laws regarding international carriage of goods remain namely segmented, with special respect to the legal issue of liability, it can become then necessary concerning a legal dispute to turn back to the establishment of Hungary's domestic legal system. It is therefore justified to develop a complex regulation that takes the tendencies of unified international regulations and

their lessons into consideration. This act or governmental decree – under the Civil Code – should regulate the relations of storing and warehousing and of the connecting terminal services, the multimodal and the international multimodal carriage of goods, every sector of carriage, the additional logistic services, as well as the legal relations of forwarding. Of course, the legal aspects of liability of the foregoing issues would form the centre of the new regulation. This law may also regulate some important issues concerning the relations of carriage of goods which are not linked directly to their regulations, such as contracts of distribution.

The background and the proper basis of a complex system of rules concerning the relations of carriage of goods would be the Civil Code as a „basis law" that applies some (just some!) points to establish the basic relations of carriage law. The most important elements of liability law to be regulated would be as follows. The centre of the law to be created could be the systematization of carrier's liability, with special regard to the formation of liability. An entirely new system should be formed: it seems reasonable therefore to take the solutions and tendencies of the conventions of international carriage law created in the recent decades into consid- eration. They should be mixed with the solutions of the Hungarian antecedents (traditional carrier's liability for damages) and of course with those elements of the modern regulations of contractual liability for damages that can be brought in line with the material peculiarities of carriage (e.g. extreme outward perils) and with its legal features (e.g. receptum situation), namely with the regulation of formation of liability from objective points of view.

It would result a formation of liability with objective structures on traditional bases that includes the conditions exempting carriers into a casuistic list. From the point of view of the theory of liability, it fit to the construction of objective liability of the Civil Code because it would mean essentially a more concrete („particular") presence of the abstract exemption causes being rooted in the relations of carriage. Thus considering the exemption causes, it would be expedient to turn back to the traditional carriage law and to abandon the „sterile" application of the general clause being abstract and hardly individualized, i.e. too general. The carrier's liability should be taken traceable to exemption causes reflecting practical approach, being simple and tried in the practice. The most up-to-date tendencies of commercial law show namely – by virtue of the Codex – that international regulation also turns back to this introduced and well function- ing model, for it is practical and therefore easily applicable under the conditions of large-scale carriage even without assessing-analyzing and examining efforts from legal points of view. (Regulation of „mainland" variants [CMR, COTIF-CIM] never departed from this concept.)

Legal regulation of indemnity limitation is also indispensable. The limit should be fitted to the international measure evolved in this business line and not be specified in an abstract, too general manner („Under the title of indemnity, damages occurred regarding the services shall be compensated."). In the international regulations – also from the point of view of the extent of liability – damage to the goods, delay in delivery and fault

of locatio in maritime carriage law, as well as the maximal measure of indemnity concerning those ones constitute separate groups. Distinction between those groups of damages should also be considered in respect of the extent of indem- nity. It is also expedient to regulate the detailed rules of procedures and time limits as regards to enforcing claims deriving necessarily from performance of carriage services in a large-scale and monotonous system of carriage of goods having a specific nature. It can be so a guarantee to ensure unification of laws on a higher level not only in legal relations of carriage, but also in so-called background legal relations (e.g. sales, outsources).

These elements of regulation concern liability, but the rules under Civil Code have to regulate necessarily also additional determinant establishments of traditional rules of carriage law. So the following would be regulated – according to the chro- nology of carriage – at the preparatory phase of carriage: general and specific rules as regards to providing vehicle in every branch of carriage, issues of wrapping, loading and securing from considerations of traffic safety, and also in respect of cooperation of the parties, the rules of examination of shipment and deadlines of carriage, as well as the role and content of the consignment note (and of its duplicate, respectively copy) in the fulfilment of carriage of goods. According to the most recent regulation tendencies, the electronic version of consignment note, moreover conclusion and fulfilment of contracts on electronic way as regard to all logistic activities should also be regulated.

The rules of fulfilment of carriage would be also included in the new regulation, with special respect to the issue of obstacles of carriage and of subsequent arrangements authorizing a unilateral amendment of the contract of carriage. The circumstances of delivery to the consignee should also be regulated: notification, unloading, guidelines of examining the vehicle of transport and the consignment, and based on that, rules of taking records of damages. The issue of obstacles to delivery should be regulated by separate provisions.

This law could include general provisions regarding carriage of perilous goods. The classic carriage law establishment of asserting claims deriving from legal relations of carriage, i.e. the reservation could also be regulated, and as for the issue of assertion of claims, the alternative mechanisms solving debates and having become widely used in practice, for example the bases of arrangement of legal disputes by virtue of an arbitration court could also be regulated. (The actual rules of the Civil Code just affects some of these establishments.)

A complex regulation with logistic approach and including all elements of carriage of goods would be thus needed. It should contain concrete and practical rules regarding domestic and international unimodal, as well as multimodal and international multimodal carriage of goods, regarding hub activities between the single legs (e.g. storing, warehousing) and also regarding legal issues of mari- time carriage of goods. Further cases of combined carriage of goods (e.g. RO-RO, RO-LA) should also be regulated. As for legal relations of maritime carriage of goods, the most important documents of line shipping should also be regulated: the bill of lading, the delivery order,

the dock receipt and the mate's receipt, and concerning charter party applied in the course of tramping, unified rules meeting the tendencies of international practice should be created.

This new law, similarly as the Codex, may include, beyond arrangement of carrier's liability and of classic establishments of carriage law connecting to carriage of goods, also substantial issues linked to those ones. For example issues of electronic commerce and electronic following of goods or basic regulation of distribution contracts. This solution could have another positive consequences: the present governmental decrees would become unnecessary that the Civil Code made almost entirely “empty”.