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ORIGINAL PAPER

The contractual liability of the goods carrier under the regulations of the Romanian Civil Code

Cristina Stanciu[1)]

Abstract:
Failure to fulfil the obligations assumed in the transport contract gives rise to civil liability for both the carrier and the sender. Regarding the liability of the sender and the recipient, the applicable rules are those of common law. However, for the carrier, two types of liability must be analyzed: contractual liability and tort liability.
The current legal regime governing contractual liability is established by Article 1350 of the Civil Code. The essential condition for engaging the carrier's contractual liability is the existence of a transport contract. The general conditions for the carrier's contractual liability include: an unlawful act causing damage, the fault of the author, the existence of the damage, and the existence of a causal link between the damage and the unlawful act.
Legal doctrine considers the carrier's liability regime to be stricter than the general contractual liability under common law. This is due to the commitment assumed by the carrier, namely, the obligation to deliver the transported goods to the recipient. Consequently, this obligation is considered a result obligation, meaning that any failure in execution may be equated with an unlawful act.
Thus, the carrier's unlawful acts constitute the legal basis for engaging liability. According to Article 1984 of the Romanian Civil Code, the carrier is liable for damage caused by: the total or partial loss of goods; the alteration or deterioration of goods occurring during transport; the delay in delivering the goods. These three unlawful acts, explicitly listed in the legal text, may lead to the engagement of the carrier's contractual liability. The provisions of Article 1984 of the Civil Code state that total or partial loss of goods, as well as their alteration or deterioration, according to express legal regulations, must occur during transport for the carrier's contractual liability to be engaged.

Keywords: *contractual liability, transport contract, loss, damage.*

[1)] Associate Professor, PhD, University of Craiova, Law Faculty, Department of Private Law, Romania, Phone: 0040744211959, Email: cristina.stanciu1@gmail.com.

The contractual liability of the professional. Contractual liability, in general, has been the subject of numerous analyses in legal doctrine, and the coordinates and principles governing it have been established according to current civil regulations, whether analyzed from a traditional or modern perspective. Most authors, however, opine that—although the legal norm applies to both private individuals and professionals—the contractual liability of the professional should be assessed differently from that of a private individual, with greater severity. In the future, it may even be considered as a second form of general liability, alongside tortious liability (Pop, Popa, Vidu, 2012: 246).

The liability of the professional is dual in nature: tortious liability, when the professional violates professional obligations established by law, and contractual liability, when they enter into a contract with a client that defines the framework for exercising the attributes of their specific activity. Furthermore, the professional's liability is tortious when third parties unrelated to the contract suffer damages as a result of the professional activity.

The rationale behind the distinct assessment of the professional's liability lies in the fact that their activity must be carried out in accordance with the specific legal framework applicable to each type of professional, with maximum diligence and based on rigorous training. The professional must have the ability to anticipate potential harm or damages to the individuals benefiting from their services. The expertise they possess in their field differentiates them from private individuals and requires an impeccable professional conduct. This, in turn, gives new dimensions to their contractual obligations, which, in this context, must be assessed more critically and with greater severity compared to those of a private individual. Moreover, in most cases, the legal framework governing each professional's obligations toward the beneficiary of their services is established through deontological norms regarding the practice of their profession. These obligations, which form the legal framework of their activity, are incorporated into the contracts they conclude in the exercise of their profession, becoming commitments they undertake towards their clients. In other words, the obligations arising from the legal framework of their professional activity become contractual obligations.

The contract, seen as an expression of the parties' interests (Piperea, 2019: 8-13), is performed with a view to achieving the utility sought by each party. For private individuals, this utility is incidental, as they enter into contracts occasionally. However, for professionals, the continuity, volume, and promptness in concluding contracts are of paramount importance. To ensure contractual balance, contracts between professionals and private individuals must comply with consumer protection legislation, commercial practices, and the specific legal framework of the professional's field of activity.

Legal doctrine (Luntraru, 2017: 151-160) notes that, in fact, a special law of professional liability can be distinguished, separate from the classical rules of civil and commercial law—an autonomous law of professional liability with many original elements. This field requires the establishment of special evaluation criteria to determine its legal nature, specific conditions, and foundational principles. One particular aspect of professional liability is the tendency towards the "contractualization" of the relationship between the professional and the beneficiary of their services. This trend personalizes the relationship between the professional and the client and leads to the creation of new types of legal relationships. The content of such contracts is a blend of clauses derived from legal provisions governing the professional's specific legal framework and clauses tailored to the particular circumstances of the client, to whom the professional provides services.

The need for individualization in each situation, the precise determination of contractual content, and the adaptation of the professional's activity to the client's unique circumstances often result in the prevalence of contractual liability over tortious liability in cases of non-performance of contractual obligations.

Within this analysis, we cannot overlook an issue identified by legal doctrine: the possibility for a creditor—where the conditions allow—to choose between invoking contractual liability or tortious liability, depending on what is more advantageous. This issue is discussed in legal literature as the "cumulative liability" problem, which refers not to obtaining double compensation by invoking both types of liability simultaneously or combining them, but rather to the possibility of choosing between one type of civil liability or the other. Moreover, legal scholars firmly state that "the two types of liability cannot be combined or hybridized" (Pop, 2020: 189-193).

The conclusion that emerges is that the debate over whether an injured party, in cases of contractual non-performance by the debtor, has the right to choose between filing a contractual or a tortious claim remains unresolved, with divergent opinions both in Romanian legal literature and internationally. Scholars note that international doctrine allows both possibilities, depending on the legal system in question. For instance, in Germany, England, Switzerland, and Italy, the injured party has the option to choose the type of liability that is more favorable. Conversely, Quebec civil law, which has also influenced the Romanian Civil Code, initially permitted contracting parties to choose between the two types of liability. However, the current approach rejects this option and adheres to the opposite principle: the impossibility of choice.

The Romanian Regulation on Liability adopts the non-cumul principle, promoting the previously analyzed idea: if a valid contract exists between the parties and its non-performance results in damages, the creditor can claim and obtain compensation only under the rules of contractual liability. In other words, there is no right to choose between contractual and tortious liability.

This principle is expressly stated in Article 1350, paragraph 3 of the Romanian Civil Code: "Unless otherwise provided by law, neither party may exclude the application of contractual liability rules in favor of other, more favorable rules."

However, legal doctrine has identified exceptions to this rule. One such exception arises when the non-performance of a contract constitutes a criminal offense. In this case, the injured contracting party may seek compensation either before a criminal court (in which case liability is tortious) or before a civil court (where liability remains contractual). This choice exists regardless of whether the contractual breach committed by the other party was intentional, reckless, or negligent (Pop, 2020: 192).

Another notable exception is found in transport law, specifically in passenger transport, rather than in the transport of goods. Regarding the nature of the obligation, passenger transport involves both an obligation of result and an obligation recognized in legal literature (Pop, Popa, Vidu, 2012: 33-34) as a *safety obligation*—namely, to ensure that passengers arrive unharmed and safely at their destination. While safety obligations are not explicitly codified in legislation, they are considered a subset of obligations to do something, predominantly contractual in nature but sometimes legal. This obligation requires one party to guarantee the safety of the other party or even third parties against risks that threaten their physical security (Pop, Popa, Vidu, 2012: 33). When examining the broader legal framework, it becomes evident that safety obligations are particularly present in consumer law and transport law, especially in passenger transport.

Doctrine is divided on whether non-performance of a contractual obligation can simultaneously be a civil tort. In some contracts, the safety obligation is implied and mandatory for the debtor, as in passenger transport contracts, whereas in others, it is explicitly stipulated by the parties. It is evident that only a formal legislative regulation of safety obligations within the Romanian legal system can settle the existing doctrinal debates. At present, persuasive arguments exist in favor of both approaches, making the issue a matter of ongoing legal discussion.

The liability of the goods carrier – general aspects. Failure to fulfill the obligations assumed under a transport contract gives rise to civil liability for the carrier, as well as for the consignor or consignee, if the consignee has adhered to the contract.

With regard to the liability of the consignor and the consignee, the applicable rules fall under the general contractual liability framework. However, when it comes to the carrier, we observe certain legal particularities that distinguish their liability regime from the general rules of contractual liability. Furthermore, the legal framework governing the carrier's liability requires an analysis of two distinct types of liability: contractual liability and tortious (delictual) liability. Viewed as a whole, the liability of the carrier can be either contractual or tortious.

The legal framework for the carrier's liability is established, at a general level, by the provisions of the Romanian Civil Code: contractual liability is regulated under Article 1350, alongside the provisions in Chapter II – "Compulsory Enforcement of Obligations" from Title V – "Performance of Obligations", Book V – "On Obligations"; while tortious liability is governed by: article 1349 (paragraphs 1 and 2) and article 1357 – liability for one's own actions; article 1349 (paragraph 3), article 1372 (paragraphs 1 and 2), and article 1373 – liability for the actions of another person, article 1376 – liability for damages caused by things under one's legal control.

At a general level, in the law of transport, the carrier's liability is also regulated by Articles 1959 and 1984-2002 of the Romanian Civil Code.

The carrier's tortious liability is governed by the general rules of the Romanian Civil Code, while the carrier's contractual liability is primarily subject to the provisions of special laws applicable to the transport sector. Only in the absence of specific provisions does the general legal framework apply—namely, the rules governing transport contracts and contractual liability under the Civil Code.

The contractual liability of the carrier, as regulated by special transport laws, generally follows the core principles of contractual liability established by the Civil Code.

Tortious civil liability is a specific sanction of civil law, applied for committing an unlawful act that causes damages and has a compensatory nature. Its current legal framework is established by Article 1349 of the Romanian Civil Code, which states that *every person has the duty to observe the rules of conduct imposed by law or local custom and to refrain from infringing upon the rights or legitimate interests of others through actions or omissions*. A person with legal capacity who violates this duty is liable for all damages caused and is obliged to fully compensate for them. Additionally, in specific cases provided by law, a person may be held liable for damages caused by the actions of another person, by things or animals under their control, or by the collapse of a building. Moreover, liability for damages caused by defective products is governed by special legislation.

From a doctrinal perspective, tortious civil liability is defined as "the obligation established by law, imposed on a person (the liable party), to compensate for the unlawful

damage suffered by another person whose rights or legitimate interests have been violated, outside of any contractual relationship" (Pop, Popa, Vidu, 2012: 390).

Analyzing the carrier's liability in general, it is evident that the legal basis for holding the carrier accountable in transport operations has a dual nature: tortious (extracontractual) liability, arising from the violation of general obligations that stem from the carrier's status as a professional; and contractual liability, arising from breach of a transport contract concluded with each consignor individually.

An example of tortious liability is the carrier's failure to comply with the obligation to accept any transport request, within the limits of the type of transport provided. A professional carrier is in a permanent state of offering services to the public and is obligated to accept any transport request unless legal grounds exist for refusal.

This obligation is legally regulated in Article 1958, paragraph 3 of the Civil Code, which states that a carrier that offers services to the public must transport any person requesting their services and any goods for which transport is requested, unless there is a justified reason for refusal. Although the law does not explicitly define "justified reasons for refusal," such situations are found in special laws and transport regulations. Examples include: certain special-category goods that cannot be transported using the carrier's standard means, or hazardous goods, which may pose safety risks and therefore cannot be accepted for transport.

Outside of these exceptions, the carrier is legally required to accept any transport request, whether for scheduled line services or negotiated transport, unless a justified reason for refusal exists. Failure to comply with this obligation triggers tortious liability.

By performing a transport contract, the carrier assumes liability not only towards their contracting party (the consignor or consignee) but also towards third parties. There are cases where third parties suffer damages as a result of actions committed by the carrier in the course of their transport activity, outside the transport contract itself. For such cases, the carrier's liability falls under the category of tortious civil liability, as the harm caused is not contractually linked to the injured third party, but results from the carrier's general duty of care in their professional activity.

The contractual liability of the goods carrier. The contractual liability of the goods carrier presents numerous points of intersection with tortious liability in terms of conditions, enforcement mechanisms, and objectives. The fundamental principle underlying both forms of liability is the compensation for pecuniary damage caused by the unlawful and culpable act of a specific person. There are no essential differences between these two types of liability, as they share the same elements: the existence of damage, the existence of an unlawful act, the commission of the act with fault, and a causal link between the unlawful act and the damage.

However, there are notable distinctions between the two. Contractual liability arises from a contract, whereas tortious civil liability arises from an unlawful act. In contractual liability, only imprudence and negligence are recognized as forms of fault, whereas tortious liability includes all forms of fault. In contractual liability, the debtor's fault is generally presumed, whereas in tortious liability, the author's fault must typically be proven.

Furthermore, under contractual liability, the debtor is not liable for unforeseeable damages, while in tortious liability, under certain conditions, the author of the unlawful act may be held accountable for such damages. In contractual liability, the debtor must be

formally placed in default before enforcement measures can be taken, whereas in tortious liability, default occurs automatically from the moment the unlawful act is committed.

The current legal framework governing contractual liability is established by Article 1350 of the Romanian Civil Code, which stipulates that every person must fulfill the obligations they have undertaken by contract. If, without justification, they fail to meet this obligation, they are liable for the damage caused to the other party and are required to compensate for it in accordance with the law.

Unless otherwise provided by law, neither party may exclude the application of contractual liability rules in favor of other, more favorable rules.

Based on this legal provision, doctrine defines contractual liability as "that form of civil liability which consists of the obligation of a contracting party to compensate, in monetary terms, for the damage caused by the unjustified and culpable non-performance *lato sensu* of a contractual obligation" (Terzea, 2024: 91). The *lato sensu* non-performance of the owed service includes delayed performance, improper performance, or total or partial failure to perform (Pop, Popa, Vidu, 2012: 390).

The essential condition for engaging the contractual liability of the carrier is, first and foremost, the existence of a transport contract. To hold the carrier contractually liable, the transport contract must cumulatively meet the following conditions: it must be a legally valid contract; it must establish direct legal relations between the carrier and the consignor/consignee—that is, between the injured party (creditor) and the party responsible for the damage (debtor); and the damage must result from the total or partial non-performance of an obligation arising directly from the transport contract, i.e., from the contract linking the injured party to the author of the damage (Căpăţînă, 2000: 171).

The conclusion regarding the scope of contractual liability is that it must comply with these conditions. Under the Romanian legal system, anything that falls outside the scope of contractual liability belongs to the domain of tortious liability. Moreover, third parties with respect to the contract in question may invoke only tortious liability.

However, the situation of third parties is more nuanced and allows for exceptions, meaning that there are cases in which third parties, despite not being direct parties to a contract, may invoke contractual liability. One such example is the third-party beneficiary in a stipulation for another. A similar situation applies to the consignee in a transport contract, as these two types of contracts are often compared in terms of their structure. Also included in this category are direct actions within groups of contracts. Another exception is found in combined and successive transport, where, unless otherwise provided by law, liability in such cases may be pursued against the carrier who concluded the transport contract or against the last carrier. Although the last carrier did not participate directly or through representation in the conclusion of the contract, their liability for the deterioration or loss of goods remains contractual (Pop, 2020: 186-188).

If we refer to a "transport enterprise," we are dealing with a legal entity, and the liability in question is no longer direct but rather a contractual liability for another.

The legal framework governing the contractual liability of the carrier, who is a professional, is considered by legal doctrine (Căpăţînă, 2000: 173-175) to be more stringent than general contractual liability. This increased severity arises from the carrier's commitment to delivering the transported goods to the consignee, making their obligation one *of result*. Consequently, any deficiency in execution may be equated with an unlawful act.

The carrier's unlawful acts constitute the legal basis for engaging their liability and may involve non-performance, improper performance, or delayed performance of the contractual obligations assumed by the goods carrier.

In this regard, Articles 1984 and 1992 of the Civil Code establish that the carrier is liable for damages caused by: total or partial loss of goods (violating the duty of preservation), alteration or deterioration of goods occurring during transport (also violating the duty of preservation), delayed delivery of goods (regulated multiple times, involving a breach of the obligation to complete transport within a contractually or legally determined timeframe), and failure to perform the transport (the Civil Code does not specify how damages are calculated in this scenario).

These unlawful acts, expressly enumerated in the legal text, may lead to the carrier's contractual liability.

The transport contract is unique and indivisible, and the carrier's obligations terminate upon delivery of the goods to the consignee. Therefore, the period during which the carrier's contractual liability is engaged begins when the goods are entrusted for transport and ends upon their delivery to the consignee.

This interpretation aligns with Article 1984 of the Civil Code, which stipulates that total or partial loss, alteration, or deterioration of goods, as explicitly regulated by law, must occur *during transport* to trigger the carrier's contractual liability.

Legal doctrine (Baias, Chelaru, Constantinovici, Macovei, 2012: 1994) observes that the phrase *during transport* is not defined by the Civil Code. However, based on an overall interpretation of the legal provisions, this period is understood to span from the moment the goods are handed over for transport by the consignor to the carrier until the consignee takes possession of them. In other words, the duration of the carrier's contractual liability coincides with the period during which the carrier is bound by the duty to preserve the goods.

The carrier's contractual liability for the loss of transported goods. In general, *loss* is understood as the total disappearance of a good or a part of it. However, in transport law, certain situations are assimilated to total loss without constituting total loss *stricto sensu*. According to legal doctrine (Scurtu, 2001: 233), total loss also includes the loss of one package from a set of two or more delivered for transport when the missing package contains the main component of a machine, rendering the remaining parts unusable for their intended purpose. In this case, for the consignee, the loss is considered total. Additionally, total loss is also deemed to occur when the carrier is unable to deliver the goods, even if there is no certainty regarding their actual loss. In some cases, the legislator equates excessive delays in delivery with the loss of the transported goods.

Partial loss refers to any deficiency in number, weight, or quantity.

As with any type of contractual liability, to hold the carrier liable, the conditions for this form of liability must be met cumulatively: the existence of damage, quantified as the lost goods or parts of goods and the transport costs associated with them; the existence of an unlawful act, represented by the carrier's actions or inactions that result in the failure or improper fulfillment of the obligation to preserve the goods; the commission of this act with fault; and a causal link between the unlawful act and the damage suffered.

The Romanian Civil Code, Article 1985, expressly establishes the principle of compensating for damage based on the real value of the lost goods. The determination of the real value is based on the location and time of delivery for transport. Consequently, in

the case of loss, the carrier is required to compensate for *the real value of the lost goods or the lost parts of the transported goods*.

The rationale for calculating compensation based on the location and time of delivery for transport results from the correlation between Article 1985 and Article 1482 of the Civil Code. Article 1482 establishes that the obligation to preserve a good refers to the condition of the good at the moment the obligation arises. Applying this principle to transport contracts leads to the following conclusion: the obligation to preserve implies maintaining the transported goods in the same condition as they were at the time of delivery for transport. Thus, the damage caused by the non-performance or improper performance of the preservation obligation consists of depriving the consignee of the goods in the condition they were in at the time of delivery for transport.

In addition to compensating for the loss of goods, the carrier must also reimburse the transport price, the cost of ancillary services, and transport-related expenses, proportionally to the value of the lost goods or the diminished value resulting from their alteration or deterioration, in accordance with Article 1986 of the Civil Code.

Article 1987 of the Civil Code provides for the possibility of including a declaration in the transport contract regarding the value of the transported goods. The effect of such a declaration is that compensation for loss or damage is no longer calculated based on the real value of the goods but rather on the value established by the parties. If the value of the goods was declared upon delivery, compensation is determined based on that declared value.

However, Article 1987 of the Civil Code limits the parties' freedom in determining the amount of the declared value. If the real value of the goods at the place and time of delivery is lower, compensation is calculated based on that lower real value. In other words, the penalty for declaring an inflated value is that it will be reduced to the actual value of the goods at the place and time of delivery for transport.

The contractual liability of the carrier for damage to transported goods. *The damage* arises when there is a reduction in the quantity of a good or a deterioration in its quality, resulting in a decrease in value or a loss of the advantages the consignee intended to obtain from the goods (Scurtu, 2001: 233, Stănescu, 2017: 48-50).

To engage the carrier's liability, the cumulative conditions for this type of liability must be met: the existence of damage, quantified as the damaged goods or parts thereof and the transport costs related to those goods; the existence of an unlawful act, referring to the carrier's actions or omissions that lead to the failure or improper fulfillment of the obligation to preserve the goods; the commission of this act with fault; and a causal link between the unlawful act and the damage suffered.

Article 1985 of the Civil Code establishes the principle of compensating damages based on the real value of the goods. The determination of the real value is made by reference to the place and time of delivery for transport. Consequently, in the event of alteration or deterioration of the goods, the carrier is obliged, according to civil law provisions, to cover the depreciation in value, with this depreciation being calculated based on the real value of the goods.

Legal doctrine (Baias, Chelaru, Constantinovici, Macovei, 2012: 1994-1998) notes that the legal text does not explicitly define the legal nature of declaring the value of transported goods. However, considering its effects, the declaration of value cannot be

regarded as anything other than a conventional evaluation of the goods' value, as it does not meet the requirements to be classified as a penal clause.

Additionally, the carrier must reimburse the transport price, the cost of ancillary services, and transport-related expenses, in proportion to the decrease in value caused by the alteration or deterioration of the goods, as stipulated in Article 1986 of the Romanian Civil Code.

The contractual liability of the carrier for failure to perform transport. It is established under Article 1992 of the Civil Code, which holds the carrier liable for any damage caused by the non-performance of transport. Special legislation determines, in detail, the specific conditions for engaging liability in each type of transport, as well as the limits within which this liability operates. As a general rule, the carrier is liable for the damage caused by the failure to carry out the transport.

Although the legal provisions governing the contract for the transport of goods are considered sufficient in addressing various legal issues, it is noteworthy that the Romanian Civil Code, within its regulations on the contract for the transport of goods, does not provide a solution for determining the damage caused by non-performance of transport.

Legal doctrine (Cotuțiu, 2015: 120-122) has argued that, in such situations, given that civil law serves as the general framework in relation to transport law, the applicable solution should be drawn from general legal principles, particularly Article 1531 of the Civil Code, which upholds the principle of full compensation. This article grants the creditor the right to full reparation of the damage suffered due to non-performance, which includes both the actual loss sustained by the creditor and the benefit of which they have been deprived. Additionally, depending on the circumstances, the creditor may also be entitled to compensation for non-pecuniary damage. In determining the extent of the damage, consideration must also be given to the expenses reasonably incurred by the creditor to prevent or mitigate the loss.

This approach aligns with the principles governing tortious civil liability, as reflected in Article 1385 of the Civil Code, which sets out the scope of compensation.

Of course, while these principles form part of the general legal theory governing contracts for the transport of goods, special laws take precedence. Therefore, the specific provisions of special transport laws will apply first, both in terms of calculating compensation and in determining cases where liability may be limited or aggravated.

The contractual liability of the carrier for delay is regulated under Article 1969 of the Civil Code, which establishes the principle that transport must be carried out within the time agreed upon by the parties. This is the general rule. If the parties have not set a specific timeframe, it is presumed that a timeframe still exists, and it will be determined based on the practices established between the parties, the customs applicable at the place of departure, or, in the absence of such criteria, based on the particular circumstances of the transport.

If the carrier fails to complete the transport within the agreed timeframe, they may be required to pay compensation to the entitled party. According to legal provisions, when a transport document is issued, it must specify the timeframe for performing the transport (Article 1961, paragraph 2 of the Romanian Civil Code). Additionally, under Article 1984 of the Civil Code, the carrier is liable for damages caused by the delayed delivery of goods. A delay in delivery constitutes a breach of the obligation to perform transport within a

specific timeframe, whether established by contract or by law. The parties may agree on a single global deadline for the entire journey or divided timeframes for each stage of the itinerary.

Furthermore, Article 1992 of the Civil Code regulates not only non-performance of transport but also liability for delays. Thus, the issue of delayed transport and the carrier's liability for the resulting unlawful act is extensively regulated by the Civil Code (Baias, Chelaru, Constantinovici, Macovei, 2012: 2000; Cotuțiu, 2015: 119-120).

Currently, some carriers operate under timeframes established by law or regulatory authorities, others set their own deadlines unilaterally and make them publicly known, while some negotiate them contractually (Scurtu, 2001: 50-59).

Special legislation determines, in detail, the specific compensation amounts for transport delays and the limits within which this liability applies for each mode of transport. However, as a general principle, the carrier is liable for damages caused by delays. Although not expressly stated, the legal framework suggests that refunds of the transport price and transport expenses apply only in cases of loss or damage to goods, not for delays.

Liability in special cases where the carrier may refuse transport. Article 1988 of the Civil Code regulates special cases in which the carrier may refuse to perform transport. This regulation addresses two key aspects: the carrier's freedom to accept or refuse the transport of a certain category of goods and the exceptional legal framework applicable when the carrier accepts such goods for transport, deviating from general liability rules. According to legal provisions, the carrier is not obliged to transport documents, cash, securities, jewelry, or other high-value goods.

If, however, the carrier agrees to transport such goods, they are liable only for the declared value in case of loss, damage, or deterioration. Moreover, if the nature of the goods or their value was misrepresented, the carrier is fully exonerated from liability.

Article 1988 of the Civil Code must be interpreted in conjunction with Article 1958, paragraph 3 of the Civil Code, which establishes the carrier's general obligation to transport any goods for which transport is requested, unless there is a justified reason for refusal. Thus, Article 1958, paragraph 3 serves as a general rule, while Article 1988 provides an exception to this rule.

From the perspective of the carrier's liability, invoking the situations regulated by Article 1988 is tantamount to the absence of an unlawful act, which is the basis for engaging tortious liability.

Additionally, it should be noted that Article 1988 does not prohibit the conclusion of a transport contract for documents, cash, securities, jewelry, or other high-value goods. Instead, it establishes a protection mechanism in favor of the carrier who accepts such a contract. Thus, according to this article, in the event of a breach of the preservation obligation due to loss, damage, or deterioration of the transported goods, the carrier is liable only for their declared value.

If a different nature of the transported goods was declared, the carrier is fully exonerated from liability. Likewise, if a higher value than the actual value of the transported goods was declared, the carrier bears no liability.

The contractual liability of the carrier who undertakes to transport goods using another carrier's lines. Under Article 1998 of the Romanian Civil Code, a carrier executing a transport contract may commit to carrying out the transport either exclusively

on their own operational lines or in combination with the lines of another carrier. When both types of operational lines are used—those of the initial carrier and those of another carrier—Article 1998 of the Civil Code provides two distinct solutions. For transport carried out on the initial carrier's own lines, the classic liability regime applies, governed by the specific provisions of the contract for the carriage of goods. However, for transport conducted on another carrier's lines, the initial carrier's liability is governed by the legal framework of a commission contract, as the initial carrier assumes the status of a commission agent (comisionar-expeditor). In other words, the initial carrier does not personally perform the transport on another carrier's lines but instead hands over the goods for transport to be executed by the carrier whose operational lines are used (Baias, Chelaru, Constantinovici, Macovei, 2012: 2004).

The liability of the commission agent (comisionar-expeditor) differs from that of a carrier. The commission agent is liable not only for their own actions but also for those of the carrier, as they are the party responsible for organizing the transport. Furthermore, the commission agent is also liable for the actions of the person they have substituted in their place. Additionally, the commission agent is personally liable toward third parties with whom they have contracted for the organization of the transport.

In a broader legal context, the liability of the commission agent is structured on two levels: liability for their own actions and liability for the actions of others. Within the freight forwarding contract, the legal provisions governing liability include Article 2068 of the Civil Code, which regulates a specific segment of the commission agent's liability, namely liability for transport delays, loss, destruction, theft, or damage to the goods.

Liability for cash on delivery and customs formalities. The carrier's liability for collecting cash on delivery (COD) amounts imposed on the transport by the consignor and for fulfilling customs operations is regulated by the rules governing mandates (Article 1993 of the Romanian Civil Code).

The transport price may be paid either by the consignor or the consignee. The consignor also has the option to pay the price provisionally at the time of handing over the goods, while requiring the carrier to collect the transport price from the consignee upon delivery and subsequently remit the amount to the consignor. This process is referred to as contra cash on delivery (CCOD).

The Civil Code does not define the concept of COD, but according to rail transport legislation, COD is a procedure through which the consignor uses the services of the railway transport operator to collect the value of the transported goods from the consignee.

COD may apply not only to the transport price but also to the price of the transported goods themselves. In such cases, the carrier is obligated not to release the goods to the consignee until the outstanding amount is paid. If the carrier fails to comply with this obligation, they will be required to compensate the consignor for the resulting loss.

Liability in successive or combined transport. Unlike previous legislation, the current legal framework, as defined by Article 1957 of the Romanian Civil Code, explicitly distinguishes between successive transport and combined transport.

Successive transport refers to transport carried out by two or more successive carriers using the same mode of transport. In contrast, combined transport involves the same carrier or successive carriers using different modes of transport. In both cases,

carriers take over and hand over the transported goods to each other until they reach their destination, without the consignor's intervention.

Regarding liability for this type of transport, unless otherwise provided by law, in the case of successive or combined transport, a liability claim may be brought against either the carrier who concluded the transport contract or the final carrier in the chain.

In terms of compensation, each carrier is liable for damages in proportion to their share of the transport price.

However, if the damage was caused intentionally or due to the gross negligence of one of the carriers, that carrier bears full responsibility for compensation. Additionally, if a carrier proves that the damage did not occur during their portion of the transport, they are not required to contribute to the compensation.

If the condition of the goods is not documented when transferred to the next carrier, it is presumed that they were handed over in good condition from one carrier to another.

In successive or combined transport, the final carrier represents all preceding carriers in matters concerning the collection of transport fees and the exercise of contractual rights. If the final carrier fails to fulfill these obligations, they are liable to the previous carriers for the amounts due to them (Articles 1999-2000 of the Romanian Civil Code).

Final Aspects. In terms of the legal framework governing its liability, the carrier, as a professional, is subject to a dual liability regime: tortious liability, when breaching professional obligations established by law, and contractual liability, when entering into a contract with a client. Additionally, the professional's liability is tortious when third parties suffer damage in relation to the contract as a result of the carrier’s professional activity.

The expertise that a professional benefits from in their field is a key element that differentiates them from a private individual and requires a higher standard of conduct, which must be assessed with greater severity. For this reason, the contractual liability regime of the carrier, as a professional, is considered by legal doctrine to be more stringent than general contractual liability. This is due to the carrier’s fundamental obligation to deliver the transported goods to the consignee. Consequently, this obligation is one of result, meaning that any failure in performance may be equated with an unlawful act.

The carrier’s unlawful acts form the legal basis for engaging their liability, which may arise from non-performance, improper performance, or delay in fulfilling the contractual obligations undertaken in the transport of goods. In this regard, the Romanian Civil Code expressly provides that the carrier is liable for damages resulting from total or partial loss of goods, alteration or deterioration of goods occurring during transport, delay in delivery, and failure to carry out the transport. These unlawful acts, explicitly enumerated in the legal text, may lead to the engagement of the carrier’s contractual liability.

In the realm of contractual liability involving professionals, there is a contradictory dynamic. On one hand, there is a growing need for adhesion contracts, driven by the fast-paced nature of modern life, which demands efficiency in legal transactions and leads to the standardization of contracts concluded by professionals with private individuals—a phenomenon referred to as the "instrumentalization" of contracts. On the other hand, there is an increasing need to protect private individuals, which manifests legally in the necessity to individualize each case, precisely define contractual

terms, and adapt the professional's activities to the unique situation of each client. This latter aspect often leads to the prevalence of the contractual liability regime over tortious liability when a professional breaches their contractual obligations.

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