Capita Selecta

Greek Transport Law

Overview of the Greek Road Transport Law

Greek law is assigned to the Continental European legal community and more specifically to its Central European group. While Greek Commercial law is influenced by French law, its Civil law is influenced by German law.

A Greek feature is the high share of road transport in freight transport. While in other EU countries the combination of road, rail, air and sea transport is the rule, in Greece the transport and logistics market has so far focused mainly on over-the-road transport or on shipping when it comes to supplying the islands. Heavy rail transports are mainly realized via the rail network.

The applicable rules depend on the international or domestic/internal dimension of the carriage by road. The freight law, which is applied to internal transports, is essentially regulated in art. 95-107 of the Law of Commerce (hereinafter referred to as LC). The Greek Civil Code (hereinafter referred to as CC) is additionally applied to any existing gaps in the freight law.

The LC dates from 1835 and is a literal translation of the 1832 Napoleon Code. Since that time, much has changed due to special laws[1]. Only very few regulations of the LC from this past time are still valid today, among them also the art. 90-107, which concern the carrier and the freight forwarder.

Therefore, the question whether the current freight law still meets the modern requirements of such a dynamically developing field of law, such as transport law, is a fair one to ask.

The legislature would be well advised – following the example of Austria and Belgium – to extend the Geneva International Convention CMR (1956) application to national transport, as has already been done in the case of extending the Hague-Visby rules to intra-Greek maritime transport, or to follow the example of the German legislature which, with the Transport Law Reform Act of 1998, based its national road transport law on the CMR provision.

[1] See also KIANTOU-PAMBOUKI, *Basic Principles of Road Transport Law (in Greek)*, 1989, p. 43.

The General freight law regulates the paid transportation of both goods and persons through analogous application. Transporting goods by sea is, however, not included in the general freight law; it is, however, governed by the specific provisions contained in maritime freight law. Excluded from the scope of the Freight Law are all parcel, postal and courier services, which are regulated by special standards.
General terms of a contract play an important role due to the low regulatory density of the freight contract in Art. 102-107 LC and the long validity period of these regulations.
Very often in the field of freight law terms and conditions for liability limits are used for both the carrier and the freight forwarder. They must be effectively included in the contract. They are subject to the mandatory law governing freight law and must fulfill the special requirements of art. 332 and 334 CC. In contrast, the agreeing to a disclaimer is invalid.[2]
Greek Transport law differentiates between the forwarding contract (defined in detail under: 2), which is regulated in art. 95-101 LC and the contract of carriage in art. 102-107 LC. Some common rules apply to these two types of contracts, i.e. art. 96, 100 and 107 LC. In Greek law, as in other countries, distinction between the two types of contracts poses problems in legal practice. Making this distinction is difficult because modern logistics companies offer all kinds of logistics services and sometimes appear as a freight forwarder, sometimes as a freight carrier in the legal sense.

1. Concept and legal nature of the contract of carriage by road

By means of the freight contract, the carrier undertakes to transport the goods to the agreed place of delivery from the time the goods are taken over and to deliver them undamaged to the consignee named in the consignment note within the agreed time. The sender undertakes to pay the carrier the agreed fee.
The parties have many obligations, many of which are not established by law. In addition to the obligation to provide transport, the carrier has the obligation to provide a reliable vehicle.
The sender, in addition to its obligation to pay the carriage charge, is obligated to inform the carrier in accordance with the principle of good faith regarding the quality of the goods (art. 288 CC). This is especially important when transporting dangerous goods. It shall also provide the freight forwarder with all accompanying documents or documents necessary for freight transport.

[2] Court of Appeal of Athens, 5922/1986, EED 1988, p. 54.

In Greek law the contract of carriage is qualified as a contract of work. Accordingly, the rules of the works contract of art. 681-702 and of the mutual obligations of art. 380 CC are applicable.

The freight contract is a consensual agreement. This means that the freight contract already comes about with offer and acceptance and not only with the takeover of the goods by the carrier.

The contract of carriage is concluded without certain form. Thus, it can be concluded even verbally, without it being necessary to issue any document. Obviously, the possibility exists for issuing private documents as a means of proof, such as the consignment note and the bill of lading. The consignment note is a private document issued by the sender or the commissionaire, must bear a date, mention the kind, weight and the quantity of the goods to be carried, as well as the time limit within which the transportation must be executed; it must mention the name and domicile of the commission transportation agent, the name and domicile of the road carrier, it is delivered to the carrier in order to accompany the goods until their final destination (art. 101 LC). The road bill of lading is a commercial paper.

The freight contract is always related to a basic transaction.

The transaction underlying the transport may be a purchase agreement, e.g. purchase contract or a license agreement or contract of use, e.g. rent. After completing the basic transaction, a transport contract is concluded in the form of a freight or forwarding contract.

In many cases, by including sub-carrier and other service providers (such as warehouses or port operators) will require the conclusion of other contracts, such as deposit agreements, service contracts, customs clearance and finally, insurance contracts (transport, transport liability and storage insurance).

In many cases different means of transport are often used. Combined is the form of transport executed via two at least different means of transport, but through a single contract. The difference between combined and mixed carriage, is that, in the first case, unloading of the goods from the one vehicle and loading on the other is necessary. In Greece exists no specific provisions for combined transport. Each segment of the combined transport (for example road and rail carriage), is governed by its own independent and separate regime.[3] According to case law, the liability of the carrier is based on the legal system of the last means of transport.[4] However, the view of the law that legal liability rules should apply to the stretch of road on which the damage occurred is also taken into account.

[3] See Gologina-Oikonomou, Liability in Multi-modal Handling of Goods during Transport (in Greek) 2000, p. 30f.

[4] Court of Appeal of Piraeus, 176/90, ED

However, this view of the law presupposes that the place of damage is known, which is often not the case.
In the Greek Transport law is lacking the legal concept of a successive carrier as defined in art. 34 et seq. CMR.
In addition to the delivering goods and payment for the freight, an additional debt may be agreed under the contract of carriage. In this case, the contract of carriage constitutes a mixed contract, in which the provisions of the contract of carriage as a main contract and the envisaged arrangements for the additional debt are to be applied as well.
For example, an agreement can be agreed to, in the way that the delivery of goods and payment for the freight takes place step by step. In this case, the provisions of the freight contract are applicable as the main contract and only supplementary to the rules of the mandate contract (art. 713-729 CC).
To a limited extent, storing goods is a secondary obligation of the carrier with regard to the contract of carriage; if the transport is not carried out immediately, then the goods are not delivered immediately or an interruption in the transport is required. In that regard, the pre-, intermediate and additional storage of goods is part of the freight law obligation to provide custodial care.[5]
Finally, the freight contract is a contract that benefits third parties as defined in art. 410 CC, if the recipient of the goods to be transported is other than the sender, since the recipient is not party to the contract of carriage but rather, is the beneficiary.
The contract of carriage shall distinguish between the contracting parties on the one hand and the persons involved in the transport operation on the other.
Contracting parties to the freight contract are only the carrier and the sender.
However, either from the beginning or during the execution of the contract, it is possible for other persons to get involved, such as the consignee, the commissionaire, the agent and other persons.
Whereas the carrier often uses a sub-carrier, the forwarder is often the sender. This means that in this sub-freight contract, the main carrier acts as the sender and the sub-carrier as the carrier. Thus, it is important to note which party is connected to which party through which contract, with which rights and obligations. This is often made more difficult by the fact that these contracts are concluded only through the transfer of freight documents and the information contained in them is misleading.

5 Zekos, *transport contracts and the carrier's liability under Greek law (in Greek)*, 2002, p. 7 ff.

2. The liability of the carrier

The liability of the carrier is a custodial liability. This means that the carrier will only be liable if the goods are in his care, i.e. are in his immediate area of access, i.e. during the period from receipt of the goods until their delivery.

The liability is similar to the liability as defined in the CMR, i.e. strict liability ("liabililty without fault"). The carrier is liable in accordance with art. 102 and 103 LC and art. 330, 681, 685 and 690 CC for all cases of loss, damage to the goods and exceeding of the delivery time. The carrier is also liable to its client (consignor / customer) for all assistants and subcontractors entrusted with carrying out the transport.

In contrast to the CMR, the Greek Commercial law contains no provisions on packaging, loading and stowage. If, however, the carrier has made such a commitment, he could be called upon to fulfill this obligation.

It is therefore recommended that the parties to the contract note this issue in the contract of carriage. The jurisprudence has decided in this regard that the sender undertakes to package and load the agreed freight in such a way that the carrier or third parties are not harmed by defective packaging.[6]

The carrier is exempt from liability only if the damage is unavoidable, was due to force majeure or is the result of the sender's behavior or due to defects in the goods or is due to quality defects (art. 102 LC) and packaging defects. The latter disclaimer is not regulated in the LC, but according to art. 300 CC derived from the general liability principles of the Civil Code. The carrier thereby meets the burden of evidence and proof.

The existence of force majeure is affirmed, for example, in cases in which the damage has occurred as a result of a coincidental and unforeseeable event which the carrier has undertaken in accordance with the duty of care that needs to be exercised when carrying out a business transaction as defined in art. 330 CC, and which event could not be warded off, this as stated by the Supreme Court (Areopagus).[7]

The existence of force majeure has been affirmed in the case in which major floods damaged the cargo in Athens in 1994. In this case, the unexpectedly large floods destroyed the goods despite the carrier exercising due diligence when storing them, because his delivery could not be delivered immediately, but rather had to wait until the next day.[8]

6 District court of Athens 3243/2005, EMD 2007, p. 85.
7 Areopagus 384/83, NB 31,1585.
8 Court of Appeal Piraeus 68/99, EED 1999, p. 301.

Force majeure is further assumed in cases where the theft is committed either by force, as in the case of robbery, or in an extraordinary manner, through the use of unrecognizable or exceptional means or in general under exceptional circumstances, so that the theft could not be avoided even if the carrier or his vicarious agent had acted with the utmost care.[9]
According to case law, theft is in fact not a case of force majeure because it can be avoided by exercising necessary care. The existence of force majeure has also been rejected by case law in cases where the damage was caused by careless loading and faulty stowage of the cargo or the lack of maintenance or a defect in the vehicle, since the causes of the damage were foreseeable events and the damage could be avoided by exercising the necessary care.[10]
The liability of the carrier is characterized by the fact that, in contrast to art. 23 CMR, there is no maximum liability in the domestic/internal road freight transport law. However, the parties have the option of contractually agreeing on a maximum liability. Such an agreement is subject to the limits of freight law and must meet the special requirements of art. 332 and 334 CC. Accordingly, agreeing to a liability disclaimer is invalid.
After all, the carrier cannot only be contractually liable but also non-contractually.

3. Complaints and claim periods

The carrier is, according to art. 104 LC, upon acceptance of the goods without complaint and payment of the freight fee, no longer subject to recipient liability. This also leads to the inadmissibility of an action brought against the carrier. The exemption from liability according to art. 104 LC, which is not considered ex officio during the process and must therefore be asserted, presupposes that the recipient has the opportunity to inspect the goods before they are accepted. This does not apply insofar as the complaint is based on the provisions in the CMR.
Thus, Greek freight law with regard to the complaint differs largely from the corresponding provision of art. 30 CMR.
Art. 107 LC provides that the claims against the carrier and the freight forwarder expire within six months for inland transport and within one year for trans-border transport, even in the case of gross negligence. The latter, however, has been displaced in trans-border transport since the entry of the CMR.

9 Areopagus 479/2006.
10 Court of Appeal of Athens 2109/2004.

The period begins with delivery, and in case of total loss, it begins with the day on which the goods should have been delivered. According to art. 937 CC, the statute of limitations for tort claims is five years.

Judicial assertion of claims takes place through the filing and delivery of the application to the defendant. Since the service is not ex officio, the plaintiff must arrange for the application to be delivered to the defendant.

According to art. 255 CC, the statute of limitations is suspended in the case of force majeure or in the event that the claimant did not assert his claims for the debtor's malicious behavior during the last six months prior to the expiration of the statute of limitations. The statute of limitations shall be interrupted upon recognition of the claim by the obligated party as well as any legal action or any other legal procedures that have been taken according to art. 260 and 261 CC, whereupon the statute of limitation starts up again immediately thereafter.

Court costs are only partially indemnifiable. The unsuccessful party bears responsibility for paying the court costs according to articles 176 and 178 of the Greek Code of Civil Procedure. The party is required to pay court costs, unless the litigation contains particularly difficult legal issues to be discussed, then a proportionate share can take place.

As far as attorney's fees are concerned, the principle that each party is required to pay its own attorney's fees and costs applies.

The duration of a first-instance civil procedure is eleven months on average. The duration of an appeal is much shorter.

The last major amendment of the Code of Civil Procedure in 2016, which completely abolished the possibility of postponing a trial, is expected to further shorten the length of civil proceedings because postponement was the main reason for the long trial and the consequent overburdening of the courts.

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