

Konrad Garnowski

Uniwersytet Szczeciński

konrad.garnowski@usz.edu.pl

ORCID: <https://orcid.org/0000-0002-7976-1333>

Liability for damage associated with the modification and withdrawal from the contract of carriage under international conventions and Polish law

<http://dx.doi.org/10.12775/SIT.2023.002>

1. Introduction

Regulations on the contract of carriage of goods provide for a characteristic legal concept, called the right of disposal. It is a subjective right that may belong to the consignor or the consignee and which consists in the ability to make unilateral declarations of intent, resulting in the modification or termination of the contractual relationship.¹ Right of disposal broadly includes the power to modify the contract of carriage and to withdraw from it.² The

¹ D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe. Komentarz*, Warsaw 2014, p. 220; K. Wesołowski, *Umowa międzynarodowego przewozu drogowego towarów na podstawie CMR*, Warsaw 2013, p. 233.

² W. Górski, K. Wesołowski, *Komentarz do przepisów o umowie przewozu i spedycji: Kodeks cywilny – Prawo przewozowe – CMR*, Gdańsk 2006, p. 122; D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo prze-*

exercise of this right does not require any justification and may also occur for reasons attributable solely to the subject entitled to dispose of the goods.³ In addition to the occurrence of the typical effect of the exercise of this right, which includes the modification or termination of the legal relationship, it is also possible that damage may occur, both to the property of the person performing the right of disposal and to the carrier.

This article analyses the concept of disposal of goods from the perspective of liability for damage arising from this activity. The analysis includes a comparison of the regulations of international conventions regulating road transport (CMR convention⁴), rail transport (CIM convention⁵) and air transport (Montreal Convention⁶), as well as Polish domestic law (Polish Transport Law⁷ and Polish Civil Code⁸). On this basis, an assessment of the norms adopted in the respective legal acts and the choice of the optimal measure is made. In the final part of the article, a proposal for possible directions for the development of domestic law is presented.

wozowe, p. 220; T. Szanciło, *Prawo przewozowe. Komentarz*, Warsaw 2008, p. 239. In the past, even the view has been expressed that the right of withdrawal includes the right of disposal of the goods (W. Górski, A. Żabski, *Prawo przewozowe. Komentarz*, Warsaw 1990, p. 180).

³ D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 220; D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Konwencja o umowie międzynarodowego przewozu drogowego towarów (CMR). Komentarz*, Warsaw 2015, p. 154; T. Szanciło, *Prawo przewozowe*, p. 237.

⁴ Convention on the Contract for the International Carriage of Goods by Road signed in Geneva on 19 May 1956.

⁵ Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) – Appendix B to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 as amended by the Protocol of Modification of 3 June 1999 (Vilnius).

⁶ Convention for the Unification of Certain Rules for International Carriage by Air signed in Montreal on 28 May 1999.

⁷ Polish act of 15.11.1985 Transport Law (consolidated text of 22.11.2019, Journal of Laws of 2020, item 8).

⁸ Polish act of 23.4.1964 Civil Code (consolidated text of 09.06.2022, Journal of Laws of 2022, item 1360).

2. Liability of the carrier towards the person entitled to dispose of the goods for damage related to modification of contract

A comparison of the regulation of the rules of carrier liability in the various acts should begin with the consideration of the grounds for this liability. Under Polish domestic law, the right to unilaterally modify the contract of carriage is provided for in Polish Transport Law.⁹ Pursuant to Article 54 (1) of Polish Transport Law, a person authorised to dispose of the goods may give an instruction to the carrier with respect to the modification of the contract of carriage, unless the circumstances indicated in the final part of this provision occur.¹⁰ Exercise of the above right is connected with the carrier's liability based on two grounds, i.e. non-performance or improper performance of the instruction regarding the modification of the contract of carriage (Article 70 in conjunction with Article 54 (1) of Polish Transport Law) and failure to notify the person authorised to dispose of the goods of obstacles preventing execution of the instruction (Article 70 in conjunction with Article 54 (2) of Polish Transport Law).

Among acts of international law, the possibility of modifying the contract of carriage unilaterally is provided for in all the conventions in question. In the event of such a situation, the Montreal Convention provides only one, but different from the above-mentioned, ground for liability. It is related to one of the general principles of transport law, according to which during the act of disposal of the goods it is necessary for the person exercising this

⁹ Marginally, it may be noted that in some cases, national law may apply to international transport. This possibility is explicitly provided for in Article 1(3) of Polish Transport Law. This would apply to cases where, despite the international nature of the carriage, it does not fall within the scope of a particular convention (e.g., Article 1(4) of the CMR convention provides that convention shall not apply to funeral consignments or furniture removal).

¹⁰ The carrier is not obliged to carry out the instruction if: 1) the order is impracticable; 2) the execution of the order would cause disruption to the carrier's operations; 3) the execution of the order would violate applicable regulations; 4) the special conditions in force have not been observed.

right to produce the consignment note.¹¹ Consequently, the Montreal Convention stipulates the carrier's liability if the carrier carries out the consignor's instructions for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt (Article 12 (3) of the Montreal Convention). The CMR Convention, on the other hand, is a kind of synthesis of Polish Transport Law and the Montreal Convention. Article 12 (7) CMR provides for the carrier's liability under two of the three grounds of liability indicated earlier: failure to carry out the instructions of the person authorised to dispose of the goods (as in Polish Transport Law) and carrying out the instructions without requesting a consignment note (as in the Montreal Convention). Despite the literal limitation of the scope of the first type of liability for non-performance, it should be assumed that it will also apply to improper performance. The CIM convention is more precise in this regard than the CMR convention and provides explicitly for the carrier's liability not only for complete failure to carry out an order, but also for failure to carry it out properly (Article 19 § 6 CIM).¹²

In order to evaluate the different ways of regulating the grounds of carrier liability, with regard to all three international acts, it should be noted that there is a conspicuous lack of a provision establishing the carrier's liability for failure to notify the person authorised to dispose of the goods of obstacles to the execution of the given instructions. This problem is not marginal, because, contrary to appearances, it does not refer only to the mere fact of failure to provide information, but it also involves the much more significant consequences that are associated with the ineffectiveness of the act of disposing of the goods. The alerting function of the carrier's obligation is momentous from this perspective, since the person authorised to dispose of the goods should obtain full

¹¹ Article 53 (3) of Polish Transport Law, Article 12 (5) (a) CMR, Article 19 § 1 CIM, Article 12 (3) of the Montreal Convention.

¹² Despite the differences in the scope of liability, the literature points out the essential similarity between Article 19 CIM and Article 12 CMR (M.A. Clarke, D. Yates, *Contracts of Carriage by Land and Air*, London 2004, p. 152, <https://doi.org/10.4324/9781315795881>).

knowledge of the inability to effectively exercise this right, and have the opportunity to respond appropriately to the new circumstances (for example, by indicating another place of delivery or changing the route). In this regard, the regulation provided for in Polish Transport Law, according to which the carrier's failure to notify the authorised person of the impossibility of execution of the order results in the carrier's liability, should be considered more reasonable.¹³

In addition, in relation to all international acts, one may have doubts concerning the separate basis of liability in case where the carrier carries out an order without requesting a consignment note. In such a situation, liability may be incurred towards the person actually authorised to dispose of the goods, after the unauthorised person gave the instruction. It may be argued that a separate ground for liability in these circumstances is not necessary at all. It is supported by the fact that the right of disposal is a kind of discretionary right to change or terminate the legal relationship.¹⁴ If the act of disposal is carried out by an unauthorised person (for example, a consignor who has handed the consignment note to the consignee allowing him to dispose of the goods), then such an act will have no legal effect and the contract in its original form will be binding. However, if the carrier carries out the order, he will be liable under the general rules provided in each act for loss or damage to the goods or for delay in delivery (Articles 17 et seq. CMR, Articles 23 et seq. CIM, Articles 18 and 19 of the Montreal Convention),¹⁵ and therefore the additional liability on this

¹³ As to the existence of this kind of liability under international conventions, divergent positions are presented. For example, with regard to the Montreal Convention, it is indicated that the carrier will be liable under the general rules of Article 18 et seq. (R. Schmid, E. Giemulla, *Montreal Convention*, Alphen aan den Rijn 2011, art. 12 para 34), while in the case of the CMR Convention, on the other hand, the need for the complementary application of the domestic law is emphasized (K. Wesołowski, *Umowa*, p. 263 with the literature cited therein).

¹⁴ D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 222; D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Konwencja*, p. 154.

¹⁵ Also: D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Konwencja*, p. 329.

account contained in another provision is superfluous. It is also confirmed by the conclusions drawn from the analysis of the reverse case, in which an order is issued by an authorised person, producing legal effects, and the carrier ignores it and performs the contract on the original terms, for example, by delivering the goods to the previous consignee. In this situation, undoubtedly, the carrier will be liable for the loss of the goods, since it will be delivered to an entity other than the consignee designated by the effective act of disposal of the goods.¹⁶ The lack of a separate type of liability in such a situation is fully understandable, since all the problems associated with it can be resolved by reference to the general principles of liability regulated in Chapter IV of CMR, Title III of CIM and Chapter III of the Montreal Convention. The same applies to the discussed situation, for which, however, an additional ground for the carrier's liability is provided.

With regard to the scope of the carrier's liability, it should be noted that the CMR and CIM conventions, as well as Polish Transport Law, do not explicitly define the circle of entities towards which the carrier may be held liable. However, bearing in mind that the emergence of the type of liability in question is related to the exercise of the right of disposal, which may belong either to the consignor or the consignee, there is no doubt that the liability can be incurred towards either of these entities.¹⁷ In contrast, the Montreal Convention suffers from a flaw in the scope in question. The provision of Article 12 (3) of the Montreal Convention covers only the liability of the carrier in the event of the execution of an order of an unauthorised consignor. This regulation must be based on the assumption that, in principle, it is the consignor who disposes of the goods on the basis of the consignment note.¹⁸ While this is in line with the general model adopted in the conven-

¹⁶ R. Schmid, E. Gjemulla, *Montreal*, art. 12 para 29.

¹⁷ On the basis of CMR: M.A. Clarke, *International Carriage of Goods by Road: CMR*, London 2009, p. 86, <https://doi.org/10.4324/9781315850276>; J. Temme, in: K. – H. Thume, *Kommentar CMR: Übereinkommen über den Beförderungsvertrag im internationalen Strassengüterverkehr*, Frankfurt am Main 2013, p. 312.

¹⁸ R. Schmid, E. Gjemulla, *Montreal*, art. 12, para 3.

tion, the legislator has overlooked the situation where the unauthorised person giving the order is the consignee. This will be relevant in the case of granting the right of disposal to the consignee on the basis of an appropriate agreement of the parties confirmed by an entry in the air waybill or the cargo receipt (Article 15 (2) of the Montreal Convention). The permissibility of such a solution is not in doubt.¹⁹ If it were otherwise and the right to dispose of the goods could only be vested in the consignor, then the requirement to produce the consignment note would become unnecessary at all, since its purpose is to avoid conflicting orders of the consignor and the consignee.²⁰ In this context, narrow scope of the carrier's liability, which is limited only to the case of the issuance of an order by an unauthorised consignor is not justified and results in a clear disadvantage for the consignee. In this regard, the regulation provided by the Montreal Convention is incomplete. Definitely more justified is the solution provided for in the CMR, CIM and Polish Transport Law, under which the circle of entities is not limited in any way.

Referring to the scope of the carrier's liability, it should be noted that under Polish Transport Law, liability under the titles indicated in Article 70 of the Transport Law is absolute.²¹ The only exonerating basis is the occurrence of the prerequisites indicated in Article 54 (1) and (2).²² However, this liability is limited in amount

¹⁹ See: R. Schmid, E. Giemulla, *Montreal*, art. 15, para 10; P.S. Dempsey, M. Milde, *International Air Carrier Liability: the Montreal Convention of 1999*, Montreal 2005, p. 117; M. Polkowska, I. Szymajda, *Konwencja montrealaska. Komentarz: odpowiedzialność cywilna przewoźnika lotniczego*, Warsaw 2004, p. 46.

²⁰ D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 246; A. Kolarski, *Prawo przewozowe. Komentarz*, Warsaw 2002, p. 82; T. Szanciło, *Prawo przewozowe*, p. 239.

²¹ W. Górski, K. Wesołowski, op.cit., p. 185; M. Stec, *Umowa przewozu w transporcie towarowym*, Kraków 2005, p. 286.

²² At the same time, the doctrine points out that these prerequisites are defined imprecisely, because if the circumstances of Article 54 of Polish Transport Law occur, it is difficult to discuss the carrier's liability at all, since the act of disposal is ineffective (D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 330; T. Szanciło, *Odpowiedzialność kontraktowa przewoźnika przy przewozie drogowym przesyłek towarowych*, Warsaw 2013, p. 338; A. Kolarski, op.cit., p. 122).

and, in accordance with Article 84 of Polish Transport Law, compensation on this account may not exceed the compensation due in case of loss of the goods. Also under the CMR convention it is accepted that Article 12 (7) introduces absolute liability of the carrier.²³ Due to the analogous wording of Article 12 (3) of the Montreal Convention, the same character should be given to the liability of the carrier in international air transport.²⁴ CIM convention, on the other hand, is more diversified. The provision of Article 19 § 6 CIM stipulates that the carrier's liability for non-performance or improper performance of additional orders is a fault-based liability, while the compensation may not exceed that provided for in case of loss of the goods. Liability in the event of execution of the consignor's order without requesting a consignment note, on the other hand, is shaped in the same way as in the CMR and is an absolute liability, although a limitation in amount has been introduced here as well (Article 19 § 7 CIM).

It follows from the above remarks that with regard to the right to modify the contract by giving subsequent orders, all acts, except the CIM convention, provide for the absolute liability of the carrier. In order to assess the validity of this approach, it should be noted that, as a general rule, the carrier's liability for loss of goods, damage to goods and delay in delivery is considered to be strict liability or fault-based liability, depending on the act regulating the particular contract of carriage (Article 17 CMR, Article 23 CIM, Article 18 of the Montreal Convention, Article 65 of Polish Transport Law).²⁵ Admittedly, the act of disposing of the

²³ K. Wesołowski, *Umowa*, p. 494; J. Temme, in: K.-H. Thume, *Kommentar CMR*, p. 312; less explicitly: D.J. Hill, A. Messent, D. A. Glass, *CMR: Contracts for the international carriage of goods by road*, London 2018, p. 112, <https://doi.org/10.4324/9781315095622>.

²⁴ See also: R. Schmid, E. Giemulla, *Montreal*, art. 12, para 38; M. Polkowska, I. Szymajda, *Konwencja montrealaska*, p. 42.

²⁵ The strict liability is referred to in the domestic doctrine and court case law (W. Górski, E. Mendyk, *Prawo transportu lądowego*, Warsaw 2005, p. 58; T. Szanciło, *Odpowiedzialność*, p. 169; judgment of District Court in Białystok dated 16.11.2011 r., VII Ga 117/11, available: www.bialystok.so.gov.pl, accessed: 11.11.2022), with J. Napierała in the past noting the specific approach to the principle of risk in Transport Law (J. Napierała, *Uwagi w sprawie odpowiedzialności przewoźnika w nowym prawie przewozowym*,

goods does not change the general rules of liability for the goods and delay in delivery and the liability in question relates to the mere fact of non-performance or improper performance of the order to modify the contract, nevertheless, the imposition on the carrier of absolute liability may be questionable.²⁶

This becomes apparent, firstly, when taking into account the fact that if the change in the contract occurred as a result of the agreement of the parties, the carrier's liability would be limited to the scope typical for the particular branch of transport. At the same time, in the case of a unilateral change and independent of the carrier, the liability is more severe. Secondly, it is important to draw attention to an example cited in the doctrine of Polish domestic law to justify such far-reaching liability. In the author's opinion, the analysis of this case leads, from the perspective under discussion, to a conclusion partially different from the commonly accepted one. Namely, it is assumed that Article 70 of Polish Transport Law is a special basis for liability, covering all types of damage, including those that are generally covered by the general rules of car-

"Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1985, No. 4, p. 166). The Montreal Convention also points to the strict liability (R. Schmid, E. Gie-mulla, *Montreal*, art. 18 para 2). With regard to the regulations of the CMR Convention, it is assumed that the liability of carrier is a fault-based one (K. Wesołowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Konwenc-ja*, p. 220; judgment of Polish Supreme Court of 26. November 2019, IV CSK 415/18, available: www.sn.pl, accessed: 11.11.2022; judgment of the Court of Appeals in Warsaw of 5. February 2014, VI ACa 879/13, available: <http://orzeczenia.waw.sa.gov.pl>, accessed: 11.11.2022), although there are also views expressed in case law pointing to strict liability (Judgment of Polish Supreme Court of 19. February 2022, IV CKN 732/00, unpublished; judgment of Polish Supreme Court of 17. November 1998, III CKN 23/98, OSNC 1999/4/85; judgment of Polish Supreme Court of 27. May 1985, I CR 144/85, OSNC 1986/6/99; judgment of the Court of Appeals in Krakow of 22. November 2017, I ACa 535/17, available: <http://orzeczenia.krakow.sa.gov.pl>, accessed: 11.11.2022; judgment of the Court of Appeals in Gdansk of 17. April 2014, V ACa 136/14, available: <http://orzeczenia.gdansk.sa.gov.pl>, accessed: 11.11.2022; judgment of the Court of Appeals in Warsaw of 7. November 1995, I ACr 606/95, OSA 1997/7-8/45).

²⁶ A number of other criticisms have also been expressed under domestic law with regard to the regulation in question. See for example: A. Kolar-ski, *op.cit.*, p. 123; T. Szanciło, *Prawo przewozowe*, p. 288; D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 330; M. Stec, *op.cit.*, p. 286.

rier liability under Article 65 of Polish Transport Law.²⁷ It is also pointed out that acceptance of the opposite view would lead to unjust consequences. If, for example, the carrier received a request to shorten the route of transportation due to the risk of deterioration or destruction of perishable goods caused by a sudden change in the weather and a drop in temperature,²⁸ or the consignor's discovery of such a risk already after the start of transportation,²⁹ he could refuse to perform it, and then invoke the exonerating premise indicated in Article 65 (4) (3) of Polish Transport Law (special susceptibility of the goods to damage due to defects or natural characteristics). Such an approach, according to the prevailing view, would be contrary to the principles of equity.

Acceptance of the above reasoning, however, results in transferring to the carrier the risk of the occurrence, after the conclusion of the contract, of fortuitous circumstances not related to the carriage itself in the technical sense (e.g. weather conditions). In some cases it might lead to the carrier being burdened with the consequences of the consignor's failure to adequately plan the carriage process. If unforeseen circumstances arise after the conclusion of the contract and during its performance, the mere fact that the carrier remains the holder of the shipment should not result in burdening him with the whole risk of damage or destruction of the goods. It is the authorised person who holds the legal title to the goods, and the carrier is merely performing the service of translocating the goods in accordance with terms of the previously concluded contract. Therefore, under the regulations on the disposition of the goods, the view can be defended that in the situation at hand the titleholder should still bear the risk of damage or loss of the goods, if the reasons for this are not related to a breach of the carrier's obligations under the contract of carriage.

²⁷ D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesołowski, *Prawo przewozowe*, p. 331; A. Jaworski, *Prawo przewozowe. Komentarz*, Warsaw 2012, p. 140; T. Szanciło, *Prawo przewozowe*, p. 338; A. Kolarski, op.cit., p. 122.

²⁸ A. Kolarski, op.cit., p. 123.

²⁹ T. Szanciło, *Prawo przewozowe*, p. 339.

In order to choose the optimal principle of carrier liability, all of the above arguments should be taken into account. In view of the shaping of the rules of liability as a strict liability or fault-based liability, the imposition of absolute liability on the carrier for non-performance or improper performance of the instructions of the person authorised to dispose of the goods seems unjustified. For this reason, the measure adopted in the CIM convention, which provides for the fault-based liability of the carrier, deserves approval. The very fact that the consignor and consignee are granted such far-reaching rights under the provisions on the disposal of goods creates a threat to the interests of the carrier, and the additional imposition of absolute liability only exacerbates this situation. It would be therefore sufficient to establish the liability of the carrier as a fault-based liability. As the example of the railway convention shows, such a solution is possible without compromising the consistency of the regulations on the carrier's liability under the contract of carriage. At the same time, such a regulation makes it possible to assert claims against the carrier in the event of unjustified refusal to carry out an order (resulting, for example, in spoilage of food products), since there is no doubt that such action will be culpable on the part of the carrier.

Summarising the remarks on the carrier's liability in the event of modification of the contract of carriage, it should be noted that in terms of grounds for liability, the optimal approach is the one provided by Polish Transport Law, which includes liability for non-performance or improper performance of an order to modify the contract of carriage and failure to notify the person authorised to dispose of the goods of obstacles preventing performance of the order. A similar regulation is provided for in CIM convention, but it covers only the first of the cited grounds, which shows that domestic law is more comprehensive in this regard. Polish law is also devoid of the shortcomings of international conventions, related to the incomplete regulation of entities to which the carrier is liable (Montreal Convention) and the unnecessary ground for liability in the event of the execution of the order of an unauthorised person (CMR, CIM, Montreal Convention). However, with regard to

the principle of liability, the norm provided by CIM Convention, in which the carrier's liability for failure to carry out or improperly carry out the instructions of an authorised person is a fault-based liability, deserves approval. This regulation is more reasonable than the absolute liability present in the other acts.

3. Liability of the carrier towards the person authorised to dispose of the goods for damage related to withdrawal from the contract

Regulations on liability connected with withdrawal from the contract of carriage are much less extensive. International conventions do not provide for the possibility of withdrawal from the contract of carriage at all, and therefore these acts also do not mention liability on this account. Of the acts in question, only Polish Transport Law grants a right of withdrawal shaped in a manner typical for the disposal of the goods and unlimited as to the reasons (Article 53 (1) of Polish Transport Law). Withdrawal on this basis can therefore occur at any time and regardless of the circumstances. The entity entitled to withdrawal is only the consignor, which is an obvious consequence of the fact that only this person (and not the consignee) is a party to the contract of carriage concluded with the carrier. The regulations do not explicitly provide for the carrier's liability in the event of withdrawal on this basis. The probable reason for the omission of this issue is that the provision of Article 53 of Polish Transport Law concerns, by definition, withdrawal for reasons beyond the carrier's control, but resulting from the subjective decision of the consignor. The legislator considered that in such a situation there are no grounds for the consignor to be granted any claims.³⁰

³⁰ However, the literature notes that if the withdrawal were to occur for reasons attributable to the carrier, the application of Article 471 of Polish Civil Code in conjunction with Article 90 of Polish Transport Law may be considered (W. Górski, K. Wesołowski, *op.cit.*, p. 122).

In addition, reference should be made to Article 783 of Polish Civil Code, which provides for the possibility of withdrawal from the contract by the consignor if the commencement or performance of carriage is temporarily hindered by circumstances relating to the carrier. This provision, although it also concerns withdrawal from the contract of carriage, has a different function than the withdrawal stipulated in Article 53 (1) of Polish Transport Law and does not fall within the right of disposal of the goods. This is because the regulation of Civil Code deals with punitive withdrawal in the event of non-performance by the carrier for reasons attributable to him, although not necessarily caused by his fault.³¹ According to Article 783 of the Civil Code, in such a situation, the consignor is obliged to settle the relevant part of the remuneration, but is also entitled to claim compensation when the obstacle forming the basis for withdrawal is a consequence of circumstances for which the carrier is responsible. The above provision, however, refers only to the grounds for the carrier's liability, but does not specify its principle, so the general rules of carrier's liability will apply in this regard.

An unambiguous assessment of the above regulations and the choice of an optimal solution is not possible, since this issue depends on the future formation of the scope of the right of disposal in general. If, following the measure adopted in international conventions, one were to consider the abandonment of the unlimited right of withdrawal from Article 53 (1) of Polish Transport Law, the issue would become irrelevant. If, on the other hand, the right to withdraw from the contract of carriage were to be retained in the form provided for in Article 53 (1) of Polish Transport Law, then supplementing this regulation with liability issues would be unnecessary. This provision is intended to provide the

³¹ A. Raczyński, *Komentarz do art. 783 Kodeksu cywilnego*, in: *Kodeks cywilny. Tom III. Komentarz. Art. 627–1088*, ed. M. Gutowski, Warsaw 2022, para 3; D. Fuchs, A. Malik, *Komentarz do art. 783 Kodeksu cywilnego* in: *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczególna (art. 765–921 (16))*, ed. M. Fras, M. Habdas, Warsaw 2018, para 1; A. Zbiegień-Turzańska, *Komentarz do art. 783 Kodeksu cywilnego*, in: *Kodeks cywilny. Komentarz*, ed. K. Osajda, W. Borysiak, Warsaw 2022; para 3.

consignor with the opportunity to withdraw from the contract at any time, regardless of the circumstances on the part of the carrier, so granting of compensation claims is not necessary. On the other hand, if the withdrawal from the contract was to occur due to non-performance or improper performance of the obligation, then it would be sufficient to refer to Article 783 of Polish Civil Code or the general rules related to the performance of reciprocal obligations, on the grounds of which the basis for withdrawal may also be found in Article 491 of Polish Civil Code. Thus, the existing regulations would have to be considered sufficient.

4. Liability of the person entitled to dispose of the goods towards the carrier for damage related to change of the contract and withdrawal from the contract

A separate issue is the liability of the person entitled to dispose of the goods towards the carrier in the event of damage resulting from the act of disposal of the goods. In the case of withdrawal under Article 783 of Polish Civil Code, the absence of such claims is justified in context of the hypothesis of the legal norm under this provision, which covers only the case of withdrawal from the contract due to circumstances concerning the carrier. Despite this, the carrier was granted the right to adequate compensation for the part of the carriage performed within the limits of what he saved on the cost of carriage. Under Polish Transport Law, the situation of the carrier is shaped much more strictly. Although the regulations on the modification of the contract of carriage provide for the obligation to cover claims arising from the modification (Article 54 (3) of Polish Transport Law), this regulation does not cover the damage suffered by the carrier.³² Subsequently, in the case of withdrawal under Article 53 (1) of Polish Trans-

³² D. Dąbrowski, in: D. Ambrożuk, D. Dąbrowski, K. Wesółowski, *Konwencja*, p. 230.

port Law, the carrier is also not granted the right to compensation, but moreover he is not even entitled to a partial settlement of remuneration. Bearing in mind that under Polish Transport Law modification of the contract of carriage and withdrawal from it can occur for any reason (and therefore also for reasons solely on the part of the consignor), depriving the carrier of all claims is unjustified and demonstrates the inconsistency of domestic law. Since the carrier was granted certain claims in the situation provided for in Article 783 of Polish Civil Code, in which withdrawal from the contract occurs for reasons attributable to the carrier, this should be all the more true in the situation of withdrawal for reasons beyond the carrier's control under Article 53 (1) of Polish Transport Law. This is also supported by a comparison of withdrawal under Article 53 (1) of Polish Transport Law with another regulation of domestic law such as Article 746 § 1 *in fine* of Polish Civil Code, which, on the basis of a contract of mandate, entitles the contractor to claim compensation from the principal who has terminated the contract without a valid reason.

In the international conventions, the protection of the carrier is much more explicit, although due to the adopted approach, these acts deal only with the issue of modification of the contract, not withdrawal from it. The provisions of Article 12 (5) (a) *in fine* CMR and Article 19 § 1 CIM, in addition to the obligation to reimburse the carrier, also explicitly provide for the obligation to compensate for damage.³³ This is undoubtedly a legitimate regulation, since there is nothing to support the view that the person authorised to dispose of the goods should be exempted from any kind of liability for the consequences of the change of contract. As a result of the exercise of right of disposal, the carrier is exposed to completely independent and fundamental changes in the contractual relationship, which can occur at any stage of carriage. In this context, the regulations provided for in the conventions find

³³ Under the CMR Convention, the doctrine has expressed the view that these costs in some situations should be paid in advance (R. Loewe, *Commentary on the convention of 19 May 1956 for the international carriage of goods by road (CMR)*, Geneve 1975, p. 35).

a much stronger justification than the incomplete regulations of Polish Transport Law.

5. Final conclusions

The regulations on liability for damage related to the disposal of the goods contained in the particular acts vary, and their juxtaposition allows to see the advantages and disadvantages of measures adopted in each one of them. On the background of international regulations, the provisions of Polish domestic law compare favourably, with some reservations. With regard to the grounds and scope of the carrier's liability for actions related to the modification of the contract of carriage, a positive assessment should be given to the regulation provided for in Polish Transport Law, under which the basis of liability towards the authorised person is the non-execution or improper execution of the order to modify the contract of carriage and the failure to notify the authorised person of the obstacles preventing its execution. However, as part of *de lege ferenda* postulates, a conclusion can be made that absolute liability should be mitigated and replaced by fault-based liability, following the model of CIM Convention.

It is not possible to formulate clear *de lege ferenda* proposals with regard to the liability in the event of withdrawal from the contract by the consignor. This is because the proper course of development will depend on whether the right of withdrawal will be maintained, and if so, in what form. If the broad right of withdrawal provided for in Article 53 (1) of Polish Transport Law were to be retained, there would be no need for additional regulation of the carrier's liability. Instead, for the case of withdrawal for reasons attributable to the carrier, the existing regulation (Article 783 of Polish Civil Code) would be sufficient. However, a change is desirable with regard to the claims of the carrier in the event of damage incurred by him in connection with the act of disposal of the goods. In this regard, the carrier's rights should be shaped along the lines of the regulations of international conventions. Accordingly, in ad-

dition to the possibility of claiming appropriate remuneration, in the event of damage to the carrier's property due to circumstances on the part of the person exercising the right to dispose of the goods, the carrier should also be entitled to a compensation claim.

SUMMARY

Liability for damage associated with the modification and withdrawal from the contract of carriage under international conventions and Polish law

The article presents the issue of liability for damage caused by the performance of the so-called right of disposal, which in broad terms includes the ability to amend the contract of carriage of goods and withdraw from it. The author conducts a comparative analysis of the regulations provided for in the uniform international conventions regulating road transport (CMR Convention), rail transport (CIM Convention) and air transport (Montreal Convention), and in Polish domestic law (Transport Law and the Civil Code). On this basis, an assessment of the norms adopted in the respective acts and the choice of the optimal way to regulate particular issues is made. The author comes to the conclusion that each of the analysed acts contains regulations that deserve approval and stand out from others, but at the same time certain defects are evident in each of them. Taking into account the conclusions formulated, in the final part of the article, the author proposes possible directions for the development of Polish domestic law.

Keywords: transport law; CMR convention; COTIF/CIM convention; Montreal Convention; disposal of goods

STRESZCZENIE

Odpowiedzialność za szkody związane ze zmianą i odstąpieniem od umowy przewozu na gruncie konwencji międzynarodowych i prawa polskiego

W artykule przedstawiono problematykę odpowiedzialności za szkody powstałe na skutek wykonywania tzw. uprawnienia do dysponowania przesyłką, obejmującego w szerokim ujęciu możliwość zmiany umowy

przewozu rzeczy oraz odstąpienia od niej. Autor przeprowadza analizę porównawczą uregulowań przewidzianych w jednolitych konwencjach międzynarodowych regulujących transport drogowy (konwencja CMR), transport kolejowy (konwencja CIM) oraz transport lotniczy (konwencja montrealaska) oraz w polskim prawie wewnętrznym (ustawa Prawo przewozowe i Kodeks cywilny). Na tej podstawie dokonana jest ocena unormowań przyjętych w poszczególnych aktach oraz wybór optymalnego rozwiązania poszczególnych zagadnień. Autor dochodzi do wniosku, że każdy z analizowanych aktów zawiera regulacje zasługujące na aprobatę i wyróżniające się na tle innych, ale jednocześnie w każdym z nich widoczne są pewne wady. Przy uwzględnieniu sformułowanych wniosków w końcowej części artykułu przedstawiono również propozycję możliwych kierunków rozwoju prawa krajowego.

Słowa kluczowe: prawo transportowe; konwencja CMR; konwencja COTIF/CIM; Konwencja montrealaska; dysponowanie przesyłką

BIBLIOGRAPHY

- Ambrożuk D., Dąbrowski D., Wesołowski K., *Konwencja o umowie międzynarodowego przewozu drogowego towarów (CMR). Komentarz*, Warszawa 2015.
- Ambrożuk D., Dąbrowski D., Wesołowski K., *Prawo przewozowe. Komentarz*, Warszawa 2014.
- Clarke M.A., *International carriage of goods by road: CMR*, London 2009.
- Clarke M.A., Yates D., *Contracts of Carriage by Land and Air*, London 2004.
- Dempsey P.S., Milde M., *International Air Carrier Liability: the Montreal Convention of 1999*, Montreal 2005.
- Fuchs D., Malik A., *Komentarz do art. 783 Kodeksu cywilnego*, in: *Kodeks cywilny. Komentarz*, Vol. 5: *Zobowiązania. Część szczególna (art. 765–921 (16))*, ed. M. Frasz, M. Habdas, Warszawa 2018.
- Górski W., Mendyk E., *Prawo transportu lądowego*, Warszawa 2005.
- Górski W., Wesołowski K., *Komentarz do przepisów o umowie przewozu i spedycji: Kodeks cywilny - Prawo przewozowe – CMR*, Gdańsk 2006.
- Górski W., Żabski A., *Prawo przewozowe. Komentarz*, Warszawa 1990.
- Gutowski, M. (ed.), *Kodeks cywilny*, Vol. 3: *Komentarz. Art. 627–1088*, Warszawa 2022.
- Hill D.J., Messent A., Glass D.A., *CMR: Contracts for the international carriage of goods by road*, London 2018.

- Jaworski A., *Prawo przewozowe. Komentarz*, Warszawa 2012.
- Loewe R., *Commentary on the convention of 19 May 1956 for the international carriage of goods by road (CMR)*, Geneve 1975.
- Kolarski A., *Prawo przewozowe: komentarz*, Warszawa 2002.
- Napierała J., *Uwagi w sprawie odpowiedzialności przewoźnika w nowym prawie przewozowym*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1985, No. 4.
- Polkowska M., Szymajda I., *Konwencja montrealaska. Komentarz: odpowiedzialność cywilna przewoźnika lotniczego*, Warszawa 2004.
- Raczyński A., *Komentarz do art. 783 Kodeksu cywilnego*, in: *Kodeks cywilny*, Vol. 3: *Komentarz. Art. 627–1088*, ed. M. Gutowski, Warszawa 2022.
- Schmid R., Giemulla E., *Montreal Convention*, Alphen aan den Rijn 2011.
- Stec M., *Umowa przewozu w transporcie towarowym*, Kraków 2005.
- Szanciło T., *Prawo przewozowe. Komentarz*, Warszawa 2008.
- Szanciło T., *Odpowiedzialność kontraktowa przewoźnika przy przewozie drogowym przesyłek towarowych*, Warszawa 2013.
- Thume K.-H. (ed), *Kommentar CMR: Übereinkommen über den Beförderungsvertrag im internationalen Strassengüterverkehr*, Frankfurt am Main 2013.
- Wesołowski K., *Umowa międzynarodowego przewozu drogowego towarów na podstawie CMR*, Warszawa 2013.
- Zbiegień-Turzańska A., *Komentarz do art. 783 Kodeksu cywilnego*, in: *Kodeks cywilny. Komentarz*, ed. K. Osajda, W. Borysiak, Warszawa 2022.

