Transport law in Slovenia

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1. Introduction

Movement of goods and persons contributes significantly in the development of every nation and the world as a whole. An efficient transport system is essential for political, strategic and economic development of countries, as well as it improves generally the quality of life. The world of transport has changed considerably over the last few decades. The phenomenon of globalization points towards a wide expansion and intensification of global trade.

There is no doubt that carriage by sea is a predominant mode of transport. The statistics show that 90% of merchandise is transported by sea. Perhaps even more significantly, around 69% of freight transport in ton-kilometers between member states of the European Union and about 42% of all trade within EU and its member countries is sea-borne, with inland waterways accounting for between a further 2% and 3%.[1] Transport by sea makes a vital contribution to the economic growth; however at the same time it inevitably entails considerable threat to marine environment. Of course, other forms of unimodal transport also play a significant part in transportation of goods and persons, usually preceding or subsequent to sea carriage.

From the earliest times and throughout the years, the Republic of Slovenia, with its strategic position bordering Italy, Austria, Hungary and Croatia, and the efforts of the Slovene legislator in keeping up with trade developments, has played an important part in the development and unification of transport law. Slovenia is one of the most prosperous new members of the EU, being a European country on the Mediterranean side of the Alps, which is indeed shown in its coat-of-arms and the flag.

Slovenia is a civil law country with the result that the doctrine of *stare decisis* is not observed. When applying legal rules, Slovenian judges are independent from higher courts which have already issued an opinion in the same matter. The only formal exception are the legal opinions of Plenary Meeting of the Supreme Court of the Republic of Slovenia, which are binding upon senates of the Supreme Court unless changed at a new Plenary Meeting of the Supreme Court. The Plenary Meeting of the Supreme Court of the Republic of Slovenia (composed of all Supreme Court Judges) adopts principal legal opinions on issues important for the uniform application of laws, as well as legal opinions on questions arising out of court practice.[2]

Maritime cases fall exclusively under the jurisdiction of District Court of Koper and the Court of Appeal of Koper, whereas other transportation cases can be also heard by other district courts and courts of appeal. The right to appeal to the Supreme Court of the Republic of Slovenia (based in Ljubljana) is permitted in certain circumstances. Although Slovenia is a civil law country, it is fair to say that Slovenian courts play an important role in developing uniform international and EU transport law.

The purpose of this article is to provide a short overview of the Slovenian transport legislation regarding carriage of goods, passengers and their baggage, as well as recent case law.

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[1] Sir Rober Coleman's lecture held at the International Maritime law Institute (IMO IMLI), Malta, 2009.
[2] N. Pian Nahtigal, M. Kalas: *Comparative study of "residual jurisdiction" in civil and commercial disputes in the EU* National report for Slovenia, Šelih & Partners, p. 3.

2. Transport legislation

2.1. General observations

Despite of diverse and sometime confusing definitions of "transport law" or "traffic law" it is nowadays well established that transport law *stricto sensu* (i.e. carriage of goods, passengers and baggage) covers maritime law, inland waterways law, aviation (air) law, rail law, road law and multimodal law. Transport law *lato sensu* is a mixture of private and public law, i.e. civil, trade, labor, criminal, administrative and international law, including the rules resolving conflict of laws.

The main goal of transport law is to achieve international uniformity, certainty and justice. Slovenian scholars and other legal experts are well aware and convinced that the progressive harmonization and unification of international trade law (including transport law), in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all countries on a basis of equality, equity and common interest, and to the well-being of all peoples.[3]

Article 8 of the *Constitution of the Republic of Slovenia*[4] provides that national law and other regulations must be in accordance with generally valid principles of international law and international agreements (e.g. conventions, protocols, etc.) by which Slovenia is bound. Ratified and published international agreements are directly applied by the Slovenian courts. In other words, national law is subordinated to international law.

Contracts of carriage of goods and persons are governed in general terms by Chapter 14 of the *Code of Obligations*[5] (Arts. 666–703). It is worth observing that in practice those provisions (predominantly *ius dispositivum*) are rarely applied, i.e. only in cases where a specific mode of transport is not regulated by a separate piece of legislation.

Slovenian legislation also includes *Transport of Dangerous Goods Act,*[6] which governs transport, packaging conditions and vehicles used for transportation of such goods. Its provisions apply to carriage of goods transported by air, rail, road and sea.

EU plays an important part in the process of unification of transport law with its treaties, regulations, directives, court decisions and other sources of law which are also often relevant also third countries. A good example is the *EU Council Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents as amended by the Regulation No. 889/2002*, which has brought several almost revolutionary novelties (e.g. the two-tier liability system in case of death and personal injury of passengers, unlimited liability) and has influenced the ICAO to produce the 1999 Montreal Convention.

2.2. Carriage by sea

What is striking and to some extent taken for granted, is that Europe is almost surrounded by the sea and also penetrated by it as well as by waterways, navigable or capable of being made so. As stated before, especially for maritime law unification is of paramount importance. As

[3] See the Preamble of the new Rotterdam Rules (2009).
[4], Off. Gaz. RS, Nos. I 33/1991, 42/1997, 66/2000, 24/2003, 69/2004, 68/2006.
[5] Off. Gaz. RS, Nos. 38/2001, 32/2004, 28/2006, 29/2007, 40/2007, 97/2007.
[6] Off. Gaz. RS, No. 79/1999, 69/2002, 2/2004, 101/2005, 33/2006, 41/2009.

Griggs pointed out, "*The sea with its winds, its storms and its dangers never changes and its demands a necessary uniformity of juridical regime. The consequence is that those involved in the word of maritime trade need to know that wherever they trade the applicable law will, by and large, be the same".*[7]

Slovenia with its strategic position and the Port of Koper is itself a maritime transit country within the EU. The extensive *Maritime code* has entered into force on May 12th 2001 and comprises 999 articles.[8] Part 6 of the code is devoted to maritime contracts, e.g. shipbuilding contracts, carriage of goods under bills of lading and charter-parties, carriage of passengers and luggage, through carriage, combined transport and bareboat charters.

Insofar as the carriage of cargo is concerned, Slovenia is bound by the 1924 *Hague Rules*. Despite of the fact that the 1968 and 1979 Protocols have not been ratified, the Maritime code provisions regulating carriage of goods by sea are based on the *Hague-Visby Rules* as amended by the 1979 Protocol.

From a pure legalistic point of view, the *Hague-Visby Rules* function well in practice; however, the sea carriage like any social phenomenon is subject to continues improvements. Slovenia is well aware that the world we live today is constantly influenced by globalization, climate changes, financial crisis, technological advances, modern gigantic ships, further evolution of containerization, carriage of new dangerous cargo, electronic commerce, etc. Therefore, any future law must grapple and respond adequately to the new shipping world.

Currently, one of the difficult dilemmas is whether the *Hague-Visby* provisions are still adequate or rather out of date? For example, they apply only "tackle-to-tackle", they do not apply to "deck cargo" and "economic losses", they do not deal properly with the carrier's and shipper's obligations and they lack appropriate rules on e-commerce.[9]

Slovenia as a cargo interest nation would be probably better off with the *Hamburg Rules* (1978). However, due to fact that they are not generally accepted, the new *Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules)* is considered a fair substitute. On the other hand the new convention is complex in substance and drafting and some provisions are ambiguous which may give rise to prolonged litigations to establish clear meanings.[10] In our opinion, Slovenia should sign the *Rotterdam Rules* on September 23, 2009 and then take a "wait and see" approach before ratifying the new convention, in order to find out what is the prevailing EU position.

Finally, it is worth mentioning that Slovenia is bound by a majority of the IMO and other maritime conventions (e.g. *CLC, Fund, HNS, MARPOL, SOLAS*), the key provisions of which are reflected in the Maritime Code. The latter also includes certain rules and principles from other conventions which are not binding Slovenia, e.g. the 1974 *Athens Convention* and the 1989 *Salvage Convention*.

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[7] P. Griggs: *Obstacles to Uniformity of Maritime law*, The Nicholas J. Healy Lecture, J. Mae. l. and Com 34/2003 191 at p. 192.

[8] Off. Gaz. RS, No. 26/2001, 21/2002, 110/2002, 110/2002, 2/2004, 37/2004, 98/2005, 49/2006, 120/2006

[9] F. Berlingieri: *The UNCITRAL Draft Convention on the Carriage of Goods (Wholly of Partly) (by Sea)*, Zbornik PFZ, 58, (1-2), 2008, p. 48.

[10] ESC, pp. 4 , 12-14 available on http://www.europeanshippers.com/docs/esc_analysis_paperfin.pdf .

2.3. Carriage by inland waterways

Carriage of goods by inland waterways is governed by the *Inland Navigation Act*[11] which is to great extent based on the *Maritime Code*, especially with respect to the carrier's liability for goods and passengers.

2.4. Carriage by air

In addition to rapidly developing space law, air law is the youngest branch of transport law. It represents a remarkable example of how existing legal rules can be swiftly adapted to the impressive technological progress.[12] Since last century, carriage by air has been growing and expanding rapidly. Recent development of air transportation is the result of growing number of passengers and cargo transported by air. As in all legal branches this area has been under the influence of problems arising from legal practice.

Slovenia has adopted all major public and private international air law conventions, such as the *Chicago Convention* (1944), convention on recognition of property rights in air transport (1948) and the *Warsaw Convention* of 1929 as amended too many times and now replaced by the modern *Montreal Convention* (1999). For unknown reason Slovenia is not party to the *Rome Convention* (1952) and its *Protocol* (1978).

It goes without saying that Slovenia complies with all EU regulations concerning liability of air carriers, denied boarding and delays, compulsory insurance, etc.

The most important provisions of the *Montreal Convention* and the EU aviation regulations were incorporated in the *Obligations and Property Rights in Air Navigation Act.*[13] It is worth nothing that according to the Slovenian law some of the limits of liability of the carrier are lower which, of course, would apply to internal carriage only.

The important public part of air carriage is covered by the *Aviation Act*[14] which is based on the *Chicago Convention*, regulating conditions and requirements regarding aircrafts, air personnel and other professionals, air traffic and other air-related issues.

2. 5. Carriage by rail

Historically, in Slovenia rail transport played a pivotal role for carriage of passengers and cargo. Today the situation is different. At the EU level the volume of goods transported by rail has significantly diminished. At present, the main goal is to improve, restructure and strengthen transportation by rail. According to the *White Paper*,[15] the main objective is not just to modernize the existent infrastructure but also to avoid trains running empty, to move trucks from roads on trains and to develop and improve international passengers' services.

Recent report proved that Slovene infrastructure is underdeveloped and that standards and capacity no longer correspond to modern transport requirements.[16] The latest EU

[11] Off. Gaz. RS, No. 30/2002.
[12] I. H. Dideriks – Verschoor: *An introduction to air law*, Kluwer law International, 1997, p. 1.
[13] Off. Gaz. RS, No. 12/2000.
[14] Off. Gaz. RS, Nos. 18/2001, 110/2002, 114/2002, 31/2005. 39/2005, 49/2006, 79/2006, 113/2006, 10/2007, 68/2008, 33/2009.
[15] *White paper – European transport policy for 2010: time to decide*, pp. 6 – 13.
[16] Single Programming Document Slovenia 2004-2006.

developments try to reconstruct and modernize the existing railway system to accommodate current requirements. Unfortunately, the main obstacle is still unfinished second rail track from Koper to Divača.

International carriage by rail is regulated by the 1999 version of *COTIF Convention* with *CIM* (cargo) and *CIV* (passengers) which was adopted by Slovenia.

Slovenian rail transport is governed by the *Railway Transport Contracts Act*[17] and special tariffs. The law reflects the provisions of the aforementioned international convention and regulates carriage of passengers (liability of the carrier for carriage of passengers and luggage), carriage of cargo (conclusion and performance of contract of carriage, amendment of contract of carriage, liability of carrier for loss of cargo), combined transport, etc.

Railway safety is governed by the *Safety of Railway Transport Act*[18] which among other things regulates public transport, railways lines, railways vehicles, traffic regulations, system of signaling, protection of railway lines and other issues.

The main difference between Slovenian and international law is related to the question of the carrier's liability. According to the Slovenian law the carrier may limit his liability only if he proves that the loss has occurred without his intent (willful misconduct) or gross negligence.

2.6. Carriage by road

The private legal sphere of road carriage is regulated by the *Road Transport Contracts Act*[19] specifying carriage of passengers and goods in national and international carriage unless otherwise stated in international agreement.

In case of international carriage by road, two conventions apply: *CMR* (1956) for goods and *CVR* (1973) for passengers. Slovenia has adopted the first one only, although both of them are incorporated into national legislation which tends to strengthen the carrier's liability.

Public road law is governed by the *Public Roads Act*[20] which *inter alia* provides for the construction, maintenance and safety of state-owned roads as well as regulations regarding traffic safety and supervision. *Road Traffic Safety Act*[21] includes traffic rules, provisions regarding vehicles, special obligations of passengers and safety issues, etc. The *Road Transport Act*[22] regulates transport of passengers in internal and international carriage, carriage of goods (national and international permits), road duties, etc.

2.7. Multimodal carriage

Multimodal transport system emerged as a modern concept with the advent of container "revolution" in late fifties of the last century. Containers are suitable means for effecting multimodal transport and heighten the transportation of goods across the globe.

[17] Off. Gaz. RS, No. 61/2000.
[18] Off. Gaz. RS, Nos. 85/2000, 110/2002, 45/2004, 102/2004, 61/2007.
[19] Off. Gaz. RS, Nos. 126/2003, 102/2007.
[20] Off. Gaz. RS, Nos. 29/1997, 18/2002, 50/2002, 110/2002, 131/2004, 92/2005, 33/2006, 45/2008, 57/2008, 42/2009.
[21] Off. Gaz. RS, Nos. 83/2004, 35/2005, 51/2005, 67/2005, 69/2005, 76/2005, 97/2005, 108/2005, 25/2006, 70/1006, 105/2006, 123/2006, 133/2006, 139/2006, 37/2008, 56/2008, 57/2008, 73/2008, 58/2009 37/2008.
[22] Off. Gaz. RS, Nos. 59/2001, 76/2003, 113/2003, 63/2004, 26/2005, 131/2006.

Shippers and consignees are often interested in dealing with one party (MTO), who arranges for transportation of goods from a door to door basis and assumes contractual responsibility throughout. However, there is no uniform international legal regime or rules in the course of a multimodal transport operation. It is worth to observe that absence of uniform rules led to problems in the matter of carriers' responsibility and the liability for loss of or damage to the goods. There have been several attempts to unify the liability system for multimodal transport, for example the *UN Convention on Multimodal transport* of 1980 which has never come into force. In practice parties commonly use the *FIATA Multimodal Transport Bill of Lading* and a few other standardized contracts based on the *UNCTAD/ICC Rules for Multimodal Transport Documents* (1991).

Slovenia with its strategic position should continue developing multimodal transportation with the aim to diminish the discrepancy in forms of transport in the developed European countries in the shortest time possible.[23] It is laudable that the major liability provisions of the 1980 *Multimodal Convention* based on the presumed fault have been incorporated into Slovenian *Maritime Code*, the *Obligations and Property Rights in Air Navigation Act* and the *Road Transport Contracts Act,* which is somewhat a similar approach as engraved in the forthcoming *Rotterdam Rules*. For example, if a multimodal transport operator agrees to perform carriage of goods by ship, rail and road under Slovenian law, he will be liable uniformly for the whole transportation with the same possible exclusions and limits of liability as provided for a shipowner.

3. Selection of recent Slovenian transport case law

3.1. Carriage by road

Carrier strict liability for the loss of cargo – application of due diligence with respect to one of the CMR exonerations of liability (2006, Supreme Court, III Ips 13/2006)

The road carrier is strictly liable for goods, subject to certain exclusions of liability. In order to determine whether he could avoid the loss of cargo in international carriage by road, the criteria is his due diligence. The carrier has not been prudent enough in establishing the identity of persons which at the time of delivery of cargo fraudulently introduced themselves as those entitled to receive the goods on behalf of consignee. This mere circumstance shows that he was not sufficiently diligent and therefore he could not rely on the exclusion.

The defendant transported the goods by road to Kiev (Ukraine) where they were stolen. The court of first instance dismissed the claim for the loss of cargo, holding that the defendant (the carrier) was not liable for loss of cargo. The court of appeal emphasized that according to international law the carrier's liability was strict but in this case had to be exempted because of the "well organized theft" which the carrier could not avoid or prevent.

In this case the international CMR consignment note was issued. The court noted that according to Art. 17, §1 of the *International Convention on the Contract on International Carriage of goods by road (CMR)*, the carrier is strictly liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. However, Art. 17, §2 stipulates that the carrier shall be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise

[23] Journal »Promet«, Vol. 17, No. 1 (2005) pp. 43-53.

than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent

The courts of first and second instance established that the carrier after reaching Kiev did not verify the identity of persons which were not entitled for the delivery of the cargo, even though the carrier did not receive exact instructions regarding their identification. The key issue was to establish whether "a well organized theft" (without cooperation of the carrier) was such a circumstance which could not be avoided by the carrier. The court of appeal confirmed the first instance judgment, holding that the carrier could not prevent neither avert the fraud. For all these reasons the carrier could not be found strictly liable and could not be charged for the alleged damage.

It was held by the supreme court that the lower courts misinterpreted article 17 of the CMR. The carrier could rely on the exclusion of impossible avoidance and prevention of the loss only if he had exercised due diligence in this respect. The highest court of Slovenia was of opinion that the carrier's diligence regarding delivery of the goods to wrong persons was insufficient in order to rely on this defense.

Payment of freight (2003, Court of Appeal, Cpg 1407/2003)

The case involved international carriage of goods by road; therefore the court applied the International Convention on the Contract on International Carriage of goods by road (CMR). However, the Convention itself does not contain express provisions related to the consignee (payer). As a result, the court applied the provisions of the Slovenian Road Transport Contracts Act and provisions of the Obligations Act.

The main issue in this matter was who had to bear the expenses for international carriage of goods by road, i.e. who had to pay the freight. The additional question was whether the *CMR Convention* contains express provisions regarding the payer of the carriage.

It was held court that according to Arts. 659 and 670 of the *Obligations Act* (the 1978 predecessor of the *Code of Obligations*), the recipient of the consignment is bound to pay the freight to the carrier upon the receipt of the goods. If the columns 14 of the consignment note issued by the plaintiff for the performed carriage containing instructions for the payment of freight were empty or marked with EXW (EX WORKS), the freight should be paid by the consignee, in this case the defendant. The fist instance decision was upheld by the appellate court.

3.2. Carriage by rail

International carriage by rail – consignment note - error in application of substantive law (1999, Supreme Court, Ips 94/99)

International carriage by rail performed on the basis of consignment note, which was not edited according to the provisions of CIM Convention, is not deemed to fall under CIM. The carrier performing the carriage of goods by rail is the railway, whether or not the user of transport services used its own wagon.

The court of first instance dismissed the claim because it was time barred. It established that the parties of the dispute concluded a contract of affreightment according to CIM. According to Art. 58 of CIM the period of limitation for an action arising from the contract of carriage is one year.

The court of appeal sustained the view of the court of first instance, however, the "revision" against the judgment was successful. It was held by the supreme court that both first and second instance courts were mistaken in applying the substantive law. The supreme court reversed the judgments of the courts of first and second instance and remanded the case to the court of first instance.

The plaintiff issued a receipt which was not a consignment note in accordance with CIM, thus the period of limitation of one year could not be applied. Consequently, the carriage by rail was not performed under the provisions of CIM. The court pointed out that according to Art. 11, §1 of the CIM, "*the contract of carriage shall come into existence as soon as the forwarding railway has accepted the goods for carriage together with the consignment note. Acceptance is established by the application to the consignment note and where appropriate, to each additional sheet, of the stamp of the forwarding station, or accounting machine entry, showing the date of acceptance".*

Furthermore, according to Art. 12, §2 of the CIM "*the railways shall prescribe, for both petite vitesse and grande vitesse traffic, a standard form of consignment note, which must include a duplicate for the consignor. The choice of consignment note by the consignor shall indicate whether the goods are to be carried by petite vitesse or by grande vitesse. A request for grande vitesse over one part of the route and petite vitesse over the remainder will not be allowed except by agreement between all the railways concerned. In the case of certain traffic notably between adjacent countries, the railways may prescribe by the tariffs the use of a simplified form of consignment note."* The Court stressed that Art. 13, §4 clearly defines "*that the consignment note shall not be replaced by other documents or supplemented by documents other than those prescribed or allowed by the Uniform Rules, the supplementary provisions or the tariffs".*

For all these reasons, the supreme court held that the plaintiff could be defined as a carrier and the railway should take over the goods only if the conditions under Art. 3 of CIM were fulfilled. The lower courts ascertained that the plaintiff possessed its own wagons. However, the ownership of the wagons did not mean that the owner could be defined as the carrier. It was held that this statement is in accordance with Art. 8, §1 which defines that "*in the case of the haulage of privately owned wagons, special provisions are laid down in the Regulations concerning the international haulage of private owners' wagons by rail (RIP), Annex II to the Uniform Rules. However, the revision court held that the plaintiff shall be defined not as carrier but as mandatory".*