

ARE THE PROVISIONS OF ALBANIAN CIVIL CODE ENOUGH GOOD IN ORDER TO OFFER A BETTER PROTECTION TO THE PASSENGERS AND THE GOODS? A THEORETICAL AND PRACTICAL VIEW ON THESE PROVISIONS AND OTHER LEGAL ACTS DISCIPLINING THIS FILED

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Abstract

Transportation is a process that has been in help to human kind in every time. It has existed in different manners and forms. First of all, it has been a matter of fact than the society set some rules in order to discipline it. From a historical prospect even the first acts of our newborn state have ruled the transport, firstly as a process and a necessity of civil circulation. Then, through years it got the concept of a contract, specifying the parties, their rights and obligation. The transport contract is named under different names and contracts in accordance with the terms of time.

The main goal of this article is not only to offer a historic view of this contract, but to sit in to the provisions of actual Civil Code. The transport contract will be analyzed in a critical view, underlying the problems of it. The weak judiciary practice is a key problem of this paper.

In order to offer a full view of our legislation, the paper will offer in the last part of it a specific view of all types of transport, regulated under specific Codes.

The recommendations are addressed both to the legislator, to the public authorities and to the government.

Keywords: Transport contract, transporter, receiver, sender, goods and liability

Introduction

The transport contract is one of the most used in civil circulation. It has been used from the existence of the society. In different moments of

Albanian State, in accordance with the conditions of time and society, the values of this contract has been different.

Nowadays, the legislation has made nearly a complete regulation of this contract, expanding it in five Codes, such as: Civil Code, Road Code, Maritime Code, Air Code and Railway Code of the Republic of Albania. It is clear that the provisions depend on the type of transport.

The necessity to write an article related to transport contract derives from the lack of doctrine and jurisprudence in this field. The article offers a general overview of transport contract, based on the specific of each code and its provisions. The passengers should know their rights in case of personal and material damages, the prescription terms and the cases where the transporter's liability is excluded.

A historical view on the Albanian legal acts before the '90-s

Albanian State has passed in different stages of its creation, until it takes form and was known in 1912. During this time the territory has been occupied or part of him has been governed by Albanian Principalities.

The Statutes of Shkodra⁸⁰ (Nadin, 2002)

The Statutes of Shkodra were legal acts which regulate the economic and social relationship of the time. They had a specific article⁸¹ on a group of persons which travel together.

It is explicitly clarified the figure of the leader of the group. If we make an analogy with the contract of transport nowadays, it referees to the transporter. He should take all his responsibilities in case of damage or injury of the entire group. Also, we should emphasize the own responsibility of one of the group members, when with his actions, he causes any damage. In this case, this group member takes his own responsibilities.

Certainly, this provision was very advanced for the time. It clearly regulates the situation where a group travels together.

⁸⁰The Statutes of Shkodra dated on the early of XIV century until 1496. The original text is divided in chapters, which according to legislative technique refers to article.

⁸¹ Chapter no. 80, which provides: "If some people leave the city to go together to the forest, on the market or somewhere else, everyone must be protected ingoing and return and no one should be separated from the group. If any of the travelers will miss something, the leader of the group will compensate the damage. Even if there is no damage, but if the leader of the group lost the group direction, he is fined in 12 Grosh, which is divided in half between the Earl and the Commune. If a robbery with violence happened when the group is together on the track, the damage done unwittingly during the day or night should be paid. If someone departs before or stays behind the group and gets any damage, he takes his own responsibilities, while his friends do not have any obligation, according to the habits of the country."

The Civil Code of 1929⁸²

The Civil Code of 1929 is known for the modern way of ruling the civil and familiar relationships of the time. The transport contract of the time is regulated under the article 1788 – 1789 and it is named “*the carry contract*”. The carry contract is used for the transport of the goods and persons. In both cases, the carrier should take the appropriate measures, in order to guarantee the security of the persons and the conditions of the goods.

These provisions have underlined the liability of the carrier, not only of goods but also in case of persons, from the begging to the last moment of the carry. Also the article 1788 has listed some circumstances, where the carrier do not have the liability, such as: force majeure, the vices of goods, or in the case that the damages are because of the means of the transport etc.

The article 1789 has some provisions on the form of the carry contract. From the literal interpretation, it clearly states that there is no obligation of the form. It can be done in different ways and it is permitted the proof with witness, regardless the value of the goods⁸³. In any cases, the form should be in accordance with the provisions of commercial laws and the laws of public entrepreneurship of the carrying.

The Civil Code of 1981

The Civil Code of 1981 is characterized from the Principles of the Party-State. The key principle is the principle of centralization, the lack of the exploiter classes and the elimination of private property. This was the spirit of entire Code.

The provisions of the transport contract are very narrow and the Council of Ministers is obliged to draft secondary legislation in order to discipline it (Teliti, 2013). The transport contract is regulated under the article 234 – 248. The parties in this contract are the transporter, the sender and the receiver. The transporter is a public enterprise, only the transport enterprise. This subject is responsible for transporting the goods in time and taking care of them from the moment of taking this delivery till consigning it to the receiver. In the case of delay in delivering the goods, the transporter is obliged to pay a fine to the receiver. Even here is highlighted the role and the intervention of the state, because the Council of Ministers determines the value of it.

⁸² This is the first Albanian Civil Code, which has taken mainly the model and the concepts from French Civil Code. The other part is based on Italian, German and Swiss Civil Code.

⁸³ The article 1789 it refers: “.. even the goods value more the 200 gold francs....” This provision highlights the influence of the French State in Albanian newborn State.

Also, the Council of Ministers has the competences to rule the conditions of transport and the liability in all the cases that one party fail to fulfill the contractual obligation arising from this contract.

As the conclusion, we could affirm that it doesn't exist the free will of contractual parties and the state has found different ways to interfere and eliminate the contractual freedom.

The transport contract under the Civil Code of 1994

Transport contract and its characteristics

After the fall of communist regime in Albania, the biggest changes were reflected everywhere in different fields. The changes of political view were accompanied by changes in government, legislation, public policy etc.

In fact, the new establishment government could not be effective if the democratic wind would not blow in the legislation. The first legal acts that were adopted were the law “On the main constitutional dispositions”⁸⁴, the law “On the organization of justice and the constitutional court”⁸⁵ and the law “On human rights and fundamental freedoms”⁸⁶. These laws replaced the Constitution of 1976 which was the worst one, in the field of human rights and economic freedoms of citizens.

So, the provisions and the protection of fundamental freedoms gave a great impulse to the development of political, economic and social rights. The private property and the private economic initiative were on the basis of economic system. So, the government approved the law no. 7850, dated 29.07.1994 “The Civil Code of the Republic of Albania”. This code was adopted according to models, the German and Italian one. That is why it reflects some problems. Even though it has been amended several times, its structure has not been changed. The first part regulates the contracts in general, under the legal actions and the second one refers to special contracts.⁸⁷

The transport contract is ruled by the article 877 – 900 of the Civil Code. For the first time, this contract makes special provision for the transports of persons⁸⁸ and the transport of the goods⁸⁹. This important act clearly states that these provisions are applied in the air transport contract,

⁸⁴ Law no. 7491, dated 29.04.1991 “On the main constitutional dispositions”.

⁸⁵ Law no.7561, dated 29.04.1992 “On the organization of justice and the constitutional court”

⁸⁶ Law no. 7692, dated 31.03.1993 “On human rights and fundamental freedoms”.

⁸⁷ The first part, besides the contracts, rules the natural and legal persons, the legal actions, the property and the real rights, the heritage, the obligations etc...

⁸⁸ Article 877 – 879 of the Civil Code.

⁸⁹ Article 880 – 900 of the Civil Code.

water one, railway and postal transport contract, in the case that the specific legislation is lacking.

With the transport contract, the transporter undertakes to transport people and goods from one place to another place⁹⁰. This definition is too poor and does not underline any of the essential elements of the contracts and gives only the aim of it. A common reader does not get which are the elements of it, so: the parties, the rights and the obligations of them and other characteristics. Another definition gave from Albanian lawyer is: “The transporter with the transport contract undertakes to transport from one place to another passengers, goods and luggage, and the passenger, the consignor of goods or luggage is obliged to hand them over and to pay the price” (Semini, 2006).

Both of definitions give a general view on the transport contract focused mainly on the process of moving, of changing the destination from one place to another of passengers and goods. The second one is a little bit more detailed on emphasizing on specific element the price.

Which are the characteristics of transport contract⁹¹?

a. The parties

This is a key characteristic in this contract. According to our doctrine and Italian one, a contract has only two parties. Referring to the concept of legal acts, the contract is a legal action with two parties. So, the contract is a legal action, through which one or more parties create, change or terminate a legal relationship. This definition of contracts creates the possibility that even one party, which is established from one or more persons, natural or legal ones, to conclude a contract. Is it possible? (Serie Manuali Giuridiche, 2013)⁹² According to my perception that is not possible, because the contract means a relationship between two parties, their wills are in opposite

⁹⁰ The definition is the result of merging the provisions of article 877 and 880.

⁹¹ The article 676 of Civil Code provides: “The contract is concluded when the parties have shown their will mutually, by agreeing for all its essential conditions”.

In fact this provision is not complete, because according to the general theory of legal actions in general and contracts, in particular and to the Albanian doctrine on contracts, the parties should agree for all the elements of the contract, not only to the essential one. This is because of in the case of an offer if the acceptor does not agree to a common condition; this means a rejection of the offer and a new one.

For further information read the article 665 – 671 of Albanian Civil Code.

Then we should have a look to article 663 which clearly states: “The required conditions for the existence of the contract are: the consent of the party that assumes the obligation; the legal cause on which the obligation is based on; the object that forms the matter of the contract and the form required by law”.

So, these are the four conditions which represent a sine qua non the contract will not be able to produce its legal consequences.

⁹² The Italian doctrine approves the idea that even one party has the will to relate a contract, which could create, change or end up a legal relationship.

directions and they are going to meet to the same point, which is the aim of the contract, expressed in rights and obligations of the parties.

Also the second part, it refers to some contracts, which could consist on two parties or more than two. Even this perception is not totally rights. If we have a look to all the specific contracts, they provide rights and obligation for only two parties. The only exception is the joint venture, that it is a contract, not a legal person⁹³.

Analyzing the transport contract of goods, there are three parties: the transporter⁹⁴, the sender and the receiver⁹⁵. In this case, there are two different doctrines. The first one affirms that the transport contract is a contract in benefit of a third person. The second one affirms that the transport contract, even though has three parties, is a bilateral contract.

If we make a systematic interpretation to the articles that rule this contract, we definitely could affirm that in the first part the parties in the contract are only two: the sender and the transporter. In this moment, only these two parties have rights and obligations. We do not have here the role and the will of the receiver. He does not have obligations.

After the sender gives and passes the property of the goods to the transporter, this party is obliged to fulfill its obligation according to the contract conditions. Then, he passes all the rights of the contract to the receiver in the moment that the delivery is in time or there is delay⁹⁶. Till this moment we could admit the idea that the transport contract is a contract in benefit of a third person, in favor of the receiver. But the following articles have foreseen obligations for him, such as: the obligation to control the quality and the state of goods, or to pay the price etc. the receiver has rights and obligations, being part of the contract as an usual party.

So, in this context the transport contract is a bilateral one, even though it has three parties which clearly express their will in a single aim and direction.

b. The form

⁹³ Read the article 1074 – 1112 of Albanian Civil Code.

Besides this, the law no.9901, dated 14.4.2008 “On traders and the companies” does not mention the joint venture in the list of companies, regulated under this law.

Even tough, according to the law no. 9723, dated 03.05.2007 “On national registration center”, the joint venture should be registered, but only formally. This does not mean that this registration gives the legal personality, because only the members have it.

⁹⁴ Transporter could be a natural or legal person who has a license for exercising this activity according to the legislation into force.

⁹⁵ The sender and the receiver could be natural or legal persons, who needs to transport goods and baggage.

Also the sender and the receiver could be the same person in the transport contract of persons.

⁹⁶ Read the article 887 to the Albanian Civil Code.

The legislation does not make any special provision about the form of transport contract of goods. If we read clearly all the articles, there are a lot of documents that the sender should give to the transporter, which not only provide the existence of the contract, but there are related to the quality, quantity, weight etc of the goods.

The sheets of accompaniment are an important document in this contract. Their role is to verify and show the conditions of goods. The transporter has the obligation to compare them with the quality of goods and to complain to the sender when there are inconsistencies between what is written in the sheets of accompaniment and the reality.

Besides this role, these documents clearly express the relationship between the sender, the transporter and the receiver, as part of them is the name of the receiver.

If we refer to the transport contract of persons, the ticket is the document that proves the existence of a legal relationship between the passenger and the transporter.

In both cases, the documents or the ticket just prove this relationship. The form has probation effect, not substantiation one.

c. The term

In general, the term is not one of essential elements of contract.⁹⁷ By reading and analyzing the articles that rule the transport contract, the term is a very important element. The transporter should transport the passengers, the goods and the luggage on time.

The obligation to deliver the goods on time rests also over the sender. In both cases, the parties should take their own responsibilities and to compensate the damage. Even when the transport contract is free, when the transporter should transport passengers, he should take his own responsibility, which is expressed in compensating the damages.

The legislator has provided the liability of the receiver if he does not get the goods on time from the transporter. So, every delay on sending the goods on time, transporting them and receiving the goods on time causes the responsibility of the appropriate party and the obligation to compensate.

Every delay in the process of transport obliges the transporter to take the responsibilities and to compensate the damage. The Albanian Civil Code has made special provisions in the case that the transport is carried out by more than one person. When the transport is realized from two or more transporters, they have solidary and joint liability⁹⁸. The legislator has known

⁹⁷ The legislator and the general Albanian doctrine on obligations and contracts clearly admit that the essential elements in a contract are: the free will without vices of the parties, the object of the contract, the legal cause and the form. The last one gets importance when there are special legal provisions.

⁹⁸ Article 895 -896 of Albanian Civil Code.

the right to be excluded from the responsibility to each transporter, if he proves that he has done it on time, without delays. Consecutive transporters are obliged to check in and to verify the quality and the state of goods in accordance with the description in the sheet of accompaniment. If they have not declared any claim, then it works out the presumption, the goods are in accordance with these documents.

The rights and the obligations of the parties⁹⁹

The transport contract is bilateral one; even three parties would conclude it. So it would produce direct consequences to the transporter, sender and the receiver.

Even though, this is the most important part of contract and the parties should read it very carefully, before signing it, the Albanian legislator has provided only some general articles. In fact all the provisions seem similar to other contracts, with the specifications that this contract has. The legislator has provided through a reference article that these articles are applied only if special provisions for specific transport contract are absent.

Through the transport contract the parties pass the right of ownership from one to other. This element is related to the rights and obligation to the transporter. Also, this is the moment when the subjects are contract part and come out of this.

So, in the moment that the sender delivers the good to the transporter passes him the ownership of goods. When the transporter delivers the good to the receiver passes him the ownership of them.

Why should discuss on these two important moments?

First of all, these moments are essential in explaining why the transport contract is a bilateral contract with three parties.

Secondly, these moments are strongly closed to the rights and obligations that the parties have during the process of transporting, so moving the goods from the departure to the destination.

Why is so important for the transporter to have the right of ownership to goods?

This moment is relate with the right that has the transporter in case that some external facts inhibit or make difficulties for the transporting of goods. In any case, the transporter should communicate and wait for further instructions from the sender. If that is not possible, the transporter has the right to sell the goods with the best price or to deposit them. So, he could not be able to do all this actions if he has not the ownership of goods.

⁹⁹ This article would analyze the obligations of them, because the right to one party it clearly corresponds to the obligation to the other and vice versa.

We affirm that the term is an essential element of the transport contract. The transporter should transport the goods on time. This party will take the responsibilities in case of delays. But also, the transporter has a lot of responsibilities in case of loss, total or partial damage of goods. The legislator has listed all the circumstances that exclude the transporter from the liability¹⁰⁰.

When some transporters have to do the transport they have a solidary and joint liability. This is a conditional responsibility that means: if each of transporters proves that the loss or damage of the goods has not happened during his part of road, he does not take any responsibility. So, they have to be very careful. They should have a look to the consignment note of the goods and verify them. In the absence of a declaration it is presumed that the goods are delivered in good conditions.

The sender has the obligation to put in the goods on time to the transporter, with his means and costs. Also, he should give to the transporter the consignment note, at the same number of the transporters if there is more than one. The sender should clarify the receiver, the destination and the time that the transport should be done. He should have the right of ownership to goods in order to pass it to the transporter. During all the process of transporting, the sender should provide instructions for the transporter if there are difficulties.

The receiver should be on time in getting the goods and unload them with his own expenses. At this moment the transport contract has realized its aim and the last owner of the goods is the receiver. Also, the main obligation of him is to check and verify the state of goods in accordance with the consignment note.

The price of transport could be done by the sender or the receiver, depending on what the contract has foreseen.

If these parties do not fulfill their obligations on time, they should take their own responsibilities and compensate the damage to the transporter.

Another problem has to do with the provisions of Albanian Civil Code in relation with the respective prescription terms. There are specific provisions on the general articles the rule the institute of prescription. So, referring on the article 115, point c, the prescription term depends on the type of transport. The prescription term is 6 month in case of road, railway and air transport and a year for maritime or mixed transport.

The articles that rules the general transport contract has some provisions on the right of claim of sender and receiver in case of loss or damage of goods. In such cases, the receiver should claim to the transporter in the moment that he could notice the damage, but within 20 days from the

¹⁰⁰ Article 889 of Albanian Civil Code.

date of receipt. The second term is a decadent one, which referees exactly to the provisions of the article 893.

Albanian jurisprudence on transport contract

Even though the transport is a very useful contract nowadays, we do not have a lot of practice. So we are mentioning only those cases that we could have the possibility to find.

The Supreme Court in the decision of 2012 has considered a contract related between a legal entity and one municipality as an entrepreneurship contract which the aim was to offer the interurban transport. Even though during her explanations and justifying the facts, the court mention that the object of the contract is to transport persons and a part of her decision is based on a specific law that rules the road transport, the result of that is that this contract is an entrepreneurship one¹⁰¹. In fact the Supreme Court is mainly based on the secondary legislation and pointing out in some how the will of municipality, which prevails over the legal entity¹⁰².

In another case, that it would be very interesting to our article, the Supreme Court has only emphasized the autonomy of will between parties in a transport contract. Basing in this principle, it has decided that the competence to judge and decide for the conflict is the Arbitrage Court in London¹⁰³.

The court of Appeal has taken a right decision in the case of delays from the transporter. It has analyzed correctly all the articles of the contract and has interpreted the behavior of the parties before and after the conclusion of the contract. It has concluded that even though one party has used the means of another person for transportation, he is in his role as a transporter. In this case in this case, he has failed to fulfill its contractual obligations and should compensate the damage because of delay¹⁰⁴.

It would be called a success of Albanian Justice the decision of the Court of Appeal¹⁰⁵ which makes clear the limits between labor contract and transport contract, thereby pulling down the decision of the District Court of Tirana. It is awful to support the claims deriving from a transport contract in a labor contract and to pretend the resolution of the labor contract without

¹⁰¹ For further facts read: The Supreme Court, decision no. 22, dated 17.01.2012.

¹⁰² During the Supreme Court explanations, we could clearly read that the contract between this two parties is based on the free will and the principle of equality. But in the end, by listing all the Decisions of Council of Ministers and the Council of Municipality, the will of municipality is prevails over the will of other party.

¹⁰³ For further facts read: The Supreme Court, decision no.452, dated 11.11.2010 and 09.12.2010.

¹⁰⁴ For further facts read: Court of Appeal, Tirane no. 2001, dated 09.10.2013.

¹⁰⁵ For further facts read: Court of Appeal, Tirane no. 419, dated 01.03.2012.

legal reasons. The Court of Appeal has interpreted correctly the contract between the parties and therefore giving a decision which is based on law, evidence and facts.

Most of court decisions reflected here has to do with the liability of the transporter in case of delay. The decisions are mainly based to the provisions of Civil Code and to other laws depending on the type of transport.

Some special provisions of transport contract according to other Codes

This last part of the article gives a general view of the specific elements of transport contract according to Road Code, Maritime Code, Air Code and Railway Code of the Republic of Albania. The aim of this is to offer a full view of transport contract, based on general and special provisions. All these Codes are accompanied with subsidiary legislation.

The Road Code¹⁰⁶ mainly rules technical aspects of the circulation of the cars, trucks, bicycles etc, the road signs, planting trees etc. A special characteristic, which is a principle of Albanian Civil Code, is the principle of solidarity and jointly¹⁰⁷. It clearly states same cases by specifying that:

a. the person that has the ownership of the car has joint liability with the person that violated the rules(if they are different),

b. the person who violated the rules and took and administrative fine has a joint liability with the person in charge with the supervision of the first one;

c. the legal entity or the non-profit organization, even an abstract concept, has joint liability with the person, that represents them, when he violates the road traffic rules.

In any case, the ownership of the car, the supervisor and the legal entity or the non-profit organization has the right of restitution from the violator of the rules.

It is very interesting a provision of this Code, exactly the article 197 as: “The obligation to pay the fine as an administrative measure is not transmitted to the inheritors”¹⁰⁸.

¹⁰⁶ Law no. 8378, dated 22.07.1998 “Road Code in Republic of Albania”.

¹⁰⁷ Article 194 of the Road Code.

¹⁰⁸ This provision should be interpreted through extension interpretation. According to our civil provisions the rights and the obligation in general pass from the devisor to his inheritors, excluding only the personal rights or personal obligations, which are strongly related to the person of devisor.

At this point, surely we could ask: Is the obligation to pay a fine, in case of an administrative measure, a personal obligation?

If we analyze that from the point of view, that the devisor has violated the road traffic rules and this has only to do with him, so we could consider it as a personal obligation.

This act has a lot of provisions if the violation of road rules constitutes an administrative offense or a criminal one.

The Maritime Code¹⁰⁹ rules marine and sailing activities, which mainly include: maritime transport of goods and people; activities in seaports; industrial and sport fishing; scientific and archaeological research; maritime tourism etc. The field of application of this law is very wide and it includes provisions related to Civil Code, Labor Code, Commercial Law, Public International Law etc. So, it is a kind of act which states between private law and public one, depending on the relations that it rules.

The sixth part of this code regulates the maritime contracts, referring explicitly to Civil Code and other laws¹¹⁰. Also, this Code provides special provisions for maritime transport contract¹¹¹ with the main focus on the liability of the transporter and the cases of excluding it¹¹².

The transporter should take care and has the liability from the moment that he gets the goods from the sender, during the transport and till the moment that he consigns them to the receiver.

The passengers maritime transport contract and the liability of the transporter are ruled from article 272 to article 289. The ticket is the document which proves the legal relation between the passenger and the transporter. The transporter should take all his responsibilities for personal damages of the passenger and other damages caused to him or his baggage. The Maritime Code has special provisions on the limits of the liability in case of passengers transport contract, depending if it is personal damage or material damage. The transporter has this liability even when the transport contract is free of charge. The agreement which limits the rights of passenger for compensating the damages to life and his health is invalid to the transporter.

From the other side, the obligation to pay a fine, it doesn't seem to be a personal obligation, basing on the concept what the personal obligations are.

From my point of view, this provision is not in accordance with the Civil Code ones. Nevertheless, *lex specialis derogat lex generalis*.

¹⁰⁹ Law no. 9251, dated 08.07.2004 "Maritime Code in Republic of Albania".

¹¹⁰ The Maritime Code gives provisions on labor contract, on sale contract of cruise means, contract of the construction of cruise means, transport contract etc.

¹¹¹ Article 225 - 249 of the Maritime Code.

¹¹² The article 229/ point 3 has listed a lot of cases that transporter is excluded from his liability such as: fire, unless it is caused by his error, force majeure, military actions, rebellion or civil protests etc.

So, the list of cases that the transporter is excluded from his liability on maritime transport is wider than the list according to Civil Code, which rules the transport contract in general.

Also the article 230 has provisions on the limits of liability of the transporter and the captain of the cruise means, expressing it in a certain value in comparison with the value of goods.

Some specific characteristics of this Code are the provisions on mortgage and pledge on cruise means. These provisions even though referred to the Civil Code offer different rules, especially on the validity time of the mortgage¹¹³ on cruise means and the ways of creating it. Some interesting provisions are those on the order of preferences on the pledges on cruise means, which in some explicitly cases are preferred over the mortgage.

The Air Code¹¹⁴ rules besides the specifics of civil aviation, in the context of public law, also the rights of passengers and the liability in civil air transport contract, in the case of delays, damage and loss of luggage, but also the liability in case of death or bodily injuries of the passengers or third parties.

In the case that air transportation is subject to the Montreal Convention, jurisdiction is governed by this Convention¹¹⁵. When the Albanian courts have jurisdiction under the Montreal Convention, for claims to compensate the damages on death or bodily injury of the passenger, it should be raised before the court in the place where the passenger has temporary or permanent address on the day of the accident. Also this code has specified the limits of the liability depending on different data. The prescription term of the right of passenger to search the compensation of personal and material damages is three years from the moment that the passenger knew about the damage and the responsible person.

The Air Code has known the joint and solidary responsibility for the damages caused by consecutive airplanes.

Even rail transportation is nearly towards the abolition, due to the depreciation of railway; our state has approved the **Railway Code**¹¹⁶. This act has some provisions on the passengers' transportation and goods one, making reference to the law in force which rules transport contracts, concretely to the Civil Code. So, this code is very poor in his provisions related to transport contracts of passengers and goods.

Conclusions

The transport contract is closely related to the economic state in each society. During the communist regime, we could affirm that the free will of

¹¹³ The validity time of mortgage according to Civil Law is 20 years. The validity time of mortgage on cruise means according to Maritime Code is 10 years.

¹¹⁴ Law no. 10040, dated 22.12.2008 "Air Code of the Republic of Albania", amended with the law no. 10484, dated 24.11.2011.

¹¹⁵ The Albanian State has ratified it through the law no. 9255, dated 15.07.2004 "Convention for the Unification of Certain Rules for International Carriage by Air" and known as Montreal Convention.

¹¹⁶ Law no. 9317, dated 18.11.20014 "Railway Code of the Republic of Albania".

contractual parties has not exist and the state has found different ways to interfere and eliminate the contractual freedom.

The legal framework on transport contract is nearly complete. Every type of transport is ruled under different codes and special secondary legislation, having their common rules and specifics one.

The specific element of the transport contract is the presence of three parties. Even though it is a bilateral contract because the will of the parties is expressed in different moment and it goes in a single aim and direction.

The legislation does not make any special provision about the form of transport contract. The two documents such as: the sheet of accompaniment and the ticket only prove the relation between the transporter and the passenger or the receiver.

The term is an essential element of transport contract and the transporter should transport the passengers, the goods and the luggage on time, otherwise he should take his own responsibilities. The principle of the joint and solidary responsibility is present in all types of transport.

The provisions of Civil Code in comparison with the other codes provisions, such as: Road Code, Maritime Code, Air Code and Railway Code, regulates clearly the transport contract in private relations. The other codes rule them not only in private context, but merging it with public interest and context.

The prescription terms of passenger rights are different in Civil Code and other codes, especially the claims on compensating the personal and material damages. We strongly recommend being a unification of these provisions or to be used blanket articles.

The main problems of transport contract have to do with the application of it. Because of lack of information, passengers do not know their rights, so they do not go to court or do not use alternative dispute resolutions in order to protect them and to get the compensation of the damage. This is strictly related to the absence of the judicial practice.

We, strongly, recommend to public structures and other organizations, governmental or non profit ones, to take public awareness campaigns, in order to give and share information about passenger's rights in transport contract.

We really appreciate the efforts of the government on drafting the laws and establishing the public structures, but all these efforts do not have value if the citizens do not know and exercise their rights. We need good laws, but better good practice.

The responsible structures and public institutions should take their own responsibilities in order that the legislation on transport contract to be totally applied according to national and international provisions.

An organized control from joint structures would increase the liability of the transporters when they are transporting goods or passengers.

References:

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Albanian Civil Code of 1981

Albanian Civil Code of 1994

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