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A Regulation Method of the Carriage Contract in Domestic Legal System

The author aims to find the optimal method of regulating the contract of carriage in domestic law. The author considers the method of independent (single) regulation of this contract, including the implementation into national law of solutions arising from international conventions regulating the contract of carriage in particular branches of transport, the method of regulation by reference to convention law, and the method of incorporation into internal law of provisions taken from international conventions. Having considered the problems resulting from the assumed degree of integration of national regulations with the solutions stemming from international law, as well as the unifying or branch character of the regulation, the author argues in favor of adopting a unified regulation, included in the Civil Code, which appropriately formulated references to international conventions should accompany.

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1 Introduction

In most countries, provisions of carriage law that regulate the carriage contract create a specific mosaic[1]. This is down to a branch-like approach to its regulation. General provisions, included in civil or commercial codes, are usually accompanied by several detailed laws scattered around different legal acts that prescribe the carriage contract in more detail about individual transport branches[2]. This is not only due to technical and use-related differences between different kinds of transport but also due to historical determinants. National carriage law in individual countries is largely based on solutions adopted in its international dimension (international conventions) that regulates the carriage contract in particular law branches. The development of this law, whose roots date back to the second half of the 19th century, has a branch-like character[3].

Regarding the contract for the carriage of persons, the question of differentiation of its regulation also results from EU activity. Since the beginning of the 1990s, institutions of the European Union (before: European Communities) have been issuing regulations that make up a system of

1 The term „mosaic" in reference to the state of regulation of the carriage contract was used by Władysław Górski, *Prawo transportowe* (Szczecin-Zielona Góra: Zachodnie Centrum Organizacji, 1998), 28. Even though it has been a few decades now since then, the state of affairs has not changed, or perhaps even deteriorated. Today we should rather talk about a „jungle" of laws, which, contrary to a mosaic, does not become any clearer when looked at from a certain distance.

2 Dorota Ambrożuk, Daniel Dąbrowski, Konrad Garnowski and Krzysztof Wesołowski present a review of the state of regulation of the carriage contract in selected countries in their monograph *Umowa przewozu osób i rzeczy w prawie polskim* (Warszawa: Wolters Kluwer, 2020). It is also discussesd by Dorota Ambrożuk, Daniel Dąbrowski, Krzysztof Wesołowski in *Umowa przewozu osób* (Kraków-Legionowo: edu-Libri, 2018), 154-57.

3 For the development of international (conventional) carriage law, see Dorota Ambrożuk, Daniel Dąbrowski, Krzysztof Wesołowski, *Międzynarodowe konwencje przewozowe* (Szczecin: Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, 2019), 15-52.

passenger protection[4]. They apply to „Union" transport[5], including national carriage. Because they do not regulate the carriage contract comprehensively, even despite the incorporation of international law standards (which will be addressed later), acts of national law also apply here[6].

Standardization of the carriage contract in Polish law relies on multiple sources and dimensions[7]. The Civil Code[8] stipulates a regulation of a standard form carriage contract (Title XXV). These provisions are applied to the contract type discussed, which is not regulated by special

4 The following regulations (broken down by individual branches of transport) are the core of the EU passenger protection system: 1) Regulation (EC) No 2027/97 of the Council of 9.10.1997 on air carrier liability in respect of the carriage of passengers and their baggage amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13.5.2002. 2) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11.2.2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91. 3) Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5.7.2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. 4) Regulation (EU) No 2021/782 of the European Parliament and of the Council of 29.04.2021 on rail passengers' rights and obligations. 5) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23.4.2009 on the liability of carriers of passengers by sea in the event of accidents. 6) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004. 7) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16.2.2011 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004.

5 Each of these regulations includes different criteria for their application. In a certain simplification we may say that they are applied to carriage within the EU and to carriage that starts or ends in the EU and is operated by means of transport registered in EU countries.

6 Krzysztof Wesołowski, „Konsekwencje sposobu unormowania ochrony pasażerów w prawie Unii Europejskiej", [in:] *Zmiany prawodawstwa gospodarczego w okresie transformacji ustrojowej w Polsce,* ed. Tadeusz Kocowski, Katarzyna Marak (Wrocław: Wydawnictwo Uniwersytetu Ekonomicznego we Wrocławiu, 2014), 400-401.

7 Dorota Ambrożuk, „Wielowarstwowość regulacji prawnej: uwagi na tle unormowania umowy przewozu w prawie krajowym", [in:] *O pojmowaniu prawa i prawoznawstwa. Profesorowi Stanisławowi Czepicie in memoriam,* ed. Ewelina Cała-Wacinkiewicz, Zbigniew Kuniewicz, Beata Kanarek (Warszawa: C.H. Beck, 2021), 211-222.

8 Act of 23 April 1964 (consolidated text, Dz.U. (Journal of Laws) of 2022 item 1360 as amended).

rules in force in individual transport branches (Article 775 CC). Therefore, provisions other than the code play a more important role in practice. They include the Carriage Law of 15 November 1984[9], the Maritime Code of 18 September 2001[10], the Aviation Law of 3 July 2002[11], and the Postal Law of 23 November 2013[12]. The marginalisation of provisions laid down by the Code relating to the carriage contract was reinforced further by an amendment of the Carriage Law by the Act of 2 September 1994 on amending the act - Carriage law[13], which changed the scope of its application (Article 1(1)) so that instead of identifying transport branches that are covered with it, it now names types of transport that are not covered with it (maritime, air and horse transport). This change means that, in essence, this act was given a general character that spans across transport branches. Therefore, it applies to carriage contracts in which the means of transport is not specified and also to types of carriage where the Civil Code would apply directly before this amendment (e.g. overhead hoist transport or belt transport)[14].

The Carriage Law is, however, anachronistic. It was passed under different social and economic conditions. Even though it has been amended many times, its most important provisions, i.a. carrier liability, amount of compensation, and redress remained practically unchanged. Some reservations may also be signalled regarding civil law provisions that regulate the carriage contract. However, paradoxically, even though they are older than the provisions of the Carriage Law, they seem to comply with current requirements better (mainly as they are less formalised). Therefore, undoubtedly, regulations of the carriage contract must be ordered and substantively amended in Polish law[15].

This article aims to answer the question about the regulation method of the carriage contract in domestic law. The substantive content of the amendment must be left beyond its scope. The following methods of

9 Consolidated text, Dz.U. (Journal of Laws) of 2020 item 8.
10 Consolidated text, Dz.U. (Journal of Laws) of 2018 item 2175 as amended.
11 Consolidated text, Dz.U. (Journal of Laws) of 2022 item 1235 as amended.
12 Consolidated text, Dz.U. (Journal of Laws) of 2022 item 896.
13 Dz.U. (Journal of Laws) no. 111, item 536.
14 Cf. e.g. Krzysztof Wesołowski in: Dorota Ambrożuk, Daniel Dąbrowski, and Krzysztof Wesołowski, *Prawo przewozowe. Komentarz* (Warszawa: Wolters Kluwer, 2014), 20.
15 See in particular Ambrożuk, Dąbrowski, Garnowski, Wesołowski, *Umowa przewozu osób i rzeczy w prawie polskim*, 25-26.

regulation must be examined: single regulation in one or a few statutes, also including through incorporation into the national law of measures stipulated in conventions; regulation by reference to an international convention; and regulation through incorporation into the domestic law of measures stipulated in international conventions. The choice of one of these regulation methods requires a prior answer to questions concerning the degree of interference of the national regulation with solutions resulting from international and the unifying or branch character of the regulation.

When we talk about a regulation method, we may also give some thought to the fact whether the regulation of a carriage contract should be done in an act or acts that comprehensively govern the question of carriage in individual transport branches, that is, taking administrative law issues or crews-related labour law into consideration[16], or whether it should remain purely a civil law issue. Nevertheless, by default, we must reject comprehensive standardization of transport problems in its branches, including the carriage contract. It would break the obvious bond of the regulation of this agreement with the entire civil law „background" of this regulation[17].

16 We may encounter such a comprehensive regulation i.a. in the French 2010 transport code which regulates transport-related administrative issues (regarding road, rail, inland, air and maritime transport) and the very contract for the carriage of persons and goods in individual transport divisions. However, this regulation is not consistent because provisions of the civil code and the commercial code relating to the carriage contract in road and inland transport are still effective. For more see Yves Reinhard, Izabelle Bon-Garcin, Maurice Bernadet, *Droit des transports* (Paris: Dalloz, 2010), 364-69; Cécile Legros, Valérie BaillyHascoët, Frédéric Letacq, Gaelle Bonjour, *Transport Law in France* (Alphen aan den Rijn: Wolter Kluwer, 2012), 21-23.

17 See Zbigniew Radwański, „Zielona Księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej" *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, vol. I (2007): 12. See also Leonard Górnicki in: *System prawa prywatnego,* vol. I, *Prawo cywilne – część ogólna,* ed. Marek Safjan (Warszawa: C.H. Beck, 2007), 118; Daniel Dąbrowski, „Potrzeba zmian w krajowym prawie przewozowym", [in:] *Zmiany prawodawstwa gospodarczego w okresie transformacji ustrojowej w Polsce,* ed. Tadeusz Kocowski, Katarzyna Marak (Wrocław: Wydawnictwo Uniwersytetu Ekonomicznego we Wrocławiu, 2014), 77.

2 The degree of integration with the regulation in international conventions

Looking at the issue of standardization of the carriage contract from the point of view of the regulation method, the prime question is the degree of admissible interference of the national regulation with standards in force in international transport. The carriage contract is one of the few such regulations exist. Therefore, they may be a certain model for the national legislator, who, adopting their provisions, may base them to a lesser or greater degree on the content of a specific international convention. It is also possible to „extend" such conventions' provisions to cover national carriage by references included in domestic law and even by incorporating conventional measures to external law.

The existing form of carriage law for relying on models developed in conventions is not uniform. During the creation of the Carriage Law, the question of compliance with international regulations in force in individual transport branches became entirely secondary. It was assumed that convention-based measures are not always compliant with the principles of the then social and economic regime. The greatest controversies were ignited around the problem of limits on the amount of compensation, that is, the idea of such a limitation[18] and the application of a relevant measure in the form of special drawing rights (SDR)[19]. Regardless, it was believed that the national regulation of the carriage contract must have disciplining solutions in place (e.g. the obligation of carriage or financial penalties). This issue was addressed differently only in maritime law. The regulation of the carriage contract already in the first Polish Maritime Code of 1961[20] was largely based on the provisions of the Brussels Convention for the Unification of Certain Rules of Law relating to Bills of Lading. Regarding the carriage of persons, the legislator referenced the Athens Convention[21] (Article 176 of the Maritime Code of 1961). Similar regulation methods

18 Władysław Górski, *Umowa przewozu* (Warszawa: Wydawnictwo prawnicze, 1983), 226-227.

19 Maria Dragun, *Kwotowe ograniczenie odpowiedzialności przewoźnika w międzynarodowym prawie przewozowym* (Toruń: Uniwersytet Mikołaja Kopernika), 167-171.

20 Act of 1 December 1961 (Dz.U. (Journal of Laws) of 1998 no. 10, item 36 and of 2000 No. 109, item 1156 and No. 120, item 1268).

21 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done on 13 December 1974 at Athen.

were applied for the new 2001 Maritime Code and air transport (in terms of carrier liability) after excluding this branch of transport from the scope of the Carriage Law, done by the Aviation Law of 3 July 2002.

Today, arguments that point out that stipulations of international conventions are not appropriate for national carriage have lost their validity. Domestic carriage does not differ substantively from international transport. Of course, in the latter case, there are additional problems associated with crossing borders (e.g. passport obligations, customs obligations, or health and safety requirements). Still, relevant provisions in international conventions that govern the carriage contract are far few between and do not affect how the remainder of the provisions are understood and applied.

Therefore, it seems that the national regulation of the carriage contract should be the closest to solutions developed in international transport. They are characteristic of economies based on free-market principles. Therefore, there are no axiological inconsistencies here. At the same time, provisions of conventions reflect a compromise between the different interests of participants of the carriage process, developed through years of negotiating the convention's content and then through their application. Unifying the international and national regulation would undoubtedly increase legal awareness of parties to the carriage contract and other stakeholders (recipients, forwarders, or insurers). It is essential that carriers who, by default, operate international carriage often provide national transport services, not only in the territory of their state but also in other countries (cabotage). National carriage is also often a link in the international carriage chain. Therefore, it would not be good for principles of executing such carriage to diverge from rules applicable in international transport, as is the case now.

3 Scope of unification of the regulation across transport branches

Advocating maximal approximation of the carriage contract the domestic law with international regulations directly impacts the question of unification of the regulation. This postulate means that we must abandon the unification of rules, at least in the scope the national legislator outlined in

1984. Rules resulting from international conventions have a branch-like character.

Unification of the rules of the carriage contract using Carriage Law was seen as an indisputable and original achievement of Polish legal thought. Nevertheless, this idea must be verified considering new social and economic or political determinants, especially the Polish economy's close ties with the European and global economy. Most of all, the unification of provisions on the contract for the carriage of persons is not currently possible because EU regulations across branches also apply directly to national carriage. Therefore, we may only discuss the unification of the regulation of the contract of carriage of shipments (goods). Still, here too doubts arise. The main argument that speaks for having to unify the regulation of the carriage contract that lays the basis of the Carriage Law (creation of a uniform transport system[22] that takes into account the growing role of combined carriage, assumed in relation to the concretization process) is not convincing when looking at it from the perspective of a few years. While we must agree that technological progress meant a significant increase in container carriage and largely removed the differences in transport risk in individual transport branches[23], it still did not substantially accelerate the unification process in Europe or internationally.

International law regulations have not been standardized, though we may see a certain approximation of the content of individual international conventions (this applies in particular to simplifying and de-formalising international railway law by amendments to COTIF introduced by the Vilnius Protocol[24]). Therefore, most countries opt for a branch-related approach when it comes to domestic law. Germany is an exception, wherein in 1998, amendments were made to the Commercial Code

22 Cf. e.g. Władysław Braś, „Unifikacja prawa przewozowego jednym z warunków stworzenia jednolitego systemu transportowego" *Przegląd* komunikacyjny, no. 6 (1969): 203.

23 Ibidem; Władysław Górski, „Zasięg unifikacji prawa przewozowego" *Acta Universitatis Nicolai Copernici, Prawo*, XXVIII (1990): 65. Cf. also e.g. Mirosław Stec, *Umowa przewozu w transporcie towarowym* (Kraków: Zakamycze, 2005), 39-41; Tomasz Szanciło, *Odpowiedzialność kontraktowa przewoźnika przy przewozie drogowym przesyłek towarowych* (Warszawa: C.H. Beck 2013), 28-31.

24 Convention concerning International Carriage by Rail (COTIF) done at Berno on 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (consolidated text, Dz.U. (Journal of Laws) of 2007 no. 100 item 674 amended).

(§ 407–§ 475h), thus standardizing road, railway, air, and inland transport fairly uniformly[25].

Irrespective of this, the idea of unification in the shape of the Carriage Law has been controversial from the beginning. Doubts surrounded, in particular, the question of covering air transport with this act[26]. In the remaining branches of transport, the unification introduced by the Carriage Law also suffered some limitations (separate laws for individual branches of transport were placed in implementing acts and in rules and regulations, which, at least in the initial period of application of the act looked more like normative acts rather than standard form contracts since the Minister approved them). This all means that the idea of a cross-branch unification of the regulation of the carriage contract is not a value that balances the need to uniform, or at least harmonize, the national rules applicable to this contract with regulations resulting from international conventions.

The above does not mean we must completely resign from an autonomous uniform regulation of the carriage contract in national law. However, it concerns a general regulation that does not refer to a specific transport branch. There are a few arguments for such a uniform regulation, more comprehensive than the one included in the Civil Code. First, some carriage does not fall under basic transport branches (e.g. horse transport, pipeline transport, or overhead hoist transport). Then we have the following: bus carriage is not covered in any convention; Poland is not bound by the Convention on the inland carriage; or the fact that carriage contracts that do not specify the means of transport through which the carriage will be done must be regulated (e.g. in the case of courier carriage). Irrespective of this, such regulation is indispensable for assessing non-localized damage, that is, damage that occurred in the multimodal carriage that cannot

25 Cf. e.g. Beate Czerwenka in: *Münchener Kommentar zum Handelsgesetzbuch,* vol. VII (München: C.H. Beck 2009), 4-9; Rolf Herber, „The New German Transport Legislation" *European Transport Law*, no. 5 (1998): 591 – 606. The contract for carriage of resettlement property was regulated separately (§ 451 – 451h) and so was the multimodal carriage contract (§ 452-452d). Maritime transport (of persons and goods) was regulated in a separate book of the Commercial Code.

26 Cf. e.g. Albin Kolarski, „Z dyskusji nad projektem ustawy Prawo przewozowe" *Problemy Ekonomiki Transportu*, no. 4 (1984): 6; Władysław Górski, „Kształtowanie się nowego prawa przewozowego" *Studia Iuridica Maritima*, no. 3 (1991): 34 and 36; Mieczysław Sośniak, „Nowe polskie prawo przewozowe (Próba wstępnej oceny niektórych rozwiązań ustawowych)" *Problemy prawa przewozowego*, no. 9 (1987): 11-13.

be attributed to individual carriers[27]. This regulation must not remain multi-layered, as is the case at present, where in parallel, there are the general provisions of the Civil Code and a uniform non-code regulation contained in the Transport Law, also of general application. The principles of correct legislation advocate doing away with this multidimensionality. These principles stipulate that we must reduce the number of legal provisions, making it possible to keep the legal system consistent[28]. The current regulation does not meet this requirement. Many provisions of the carriage contract included in the Civil Code and the Carriage Law get duplicated. Anyway, the subsidiary application of civil code provisions encounters certain problems. It is not always easy to determine whether and to what degree these provisions should be applied[29]. Keeping one regulation of the carriage contract would remove existing doubts[30]. There should be no doubt that the civil code is the right place for such regulation. Arguments for such a solution include the strict tie between this regulation and other code provisions that apply mostly to legal acts, including contracts, and the idea of comprehensive codification[31].

4 Selection of a regulation method

Resignation from a uniform regulation of the contract for carriage of goods in basic branches of transport means that countries need to create their provisions referring to individual types of transport in one or a few legislative acts (e.g. by certain incorporation into the domestic law of the content of individual international conventions) or by „extending" the application

27 Cf. Daniel Dąbrowski, „Przewóz multimodalny w świetle unimodalnych konwencji przewozowych" *Przegląd Prawa Handlowego*, no. 11 (2015): 30 ff.

28 Dąbrowski, „Potrzeba zmian w krajowym prawie przewozowym", 77. Cf. § 4(1) of the Rules of Legislative Technique which are an annex to the regulation of the President of the Council of Ministers of 20 June 2002 on „Rules of Legislative Technique" (consolidated text, Dz.U. (Journal of Laws) of 2016 item 283.

29 Cf. e.g. Stec, *Umowa przewozu w transporcie towarowym*, 34 ff.

30 Dąbrowski, „Potrzeba zmian w krajowym prawie przewozowym", 78. Cf. Marian Kępiński, Michał Seweryński, Adam Zieliński, „Rola kodyfikacji na przykładzie prawa prywatnego w procesie legislacyjnym" *Przegląd Legislacyjny*, no. 1 (2006): 95.

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of provisions of international conventions to cover domestic carriage by reference or by their incorporation. All these methods are used in the European practice. Sweden may serve as an example here where road transport of goods is regulated by a separate law that implements the CMR convention[32], with the difference. However, that provisions of this act are semi-imperative and may be amended to the benefit of the sender[33]. A similar act, based on the COTIF convention and its annexes RU/CIV and RU/CIM[34], was passed regarding the carriage of persons and goods by rail[35]. On the other hand, regarding air carriage, the Montreal Convention applies as a relevant reference[36]. The situation in Denmark looks similar too. Rail transport of persons and goods is regulated in a separate act, while air carriage (also national) is governed through reference to the Montreal Convention[37].

The Polish legislator also uses each method (save for incorporation). While countries may autonomously prescribe for such agreements (e.g. Civil Code, Carriage Law), the method of certain implementation served to regulate the contract for the carriage of goods by sea against a bill of lading in the maritime code in a way that corresponds to the regulation included in the Hague Rules. The Polish legislator also uses the method of a simple reference to conventional rules. Examples here may be seen in some provisions of the Maritime Code regarding a contract of carriage of persons[38] and the act Aviation Law for air carrier liability[39].

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32 Convention on the Contract for the International Carriage of Goods by Road and Protocol of Signature done at Geneva 19 May 1956.

33 Cf. Hugo Tiberg, Johan Schelin, *Transport Law in Sweden* (Alphen aan den Rijn: Wolters Kluwer, 2012), 157.

34 Convention concerning International Carriage by Rail (COTIF) done in Bern on 9 May 1980 (Dz.U. (Journal of Laws) of 1985 no. 34 item 158) amended by the Vilnius Protocol of 3 June 1999 (Dz.U. (Journal of Laws) of 2007 no 100 item 674).

35 Tiberg, Schelin, *Transport Law in Sweden,* 176.

36 Ibidem, 181. Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999. Cf. Anders Hedetoft, Henrik Frandsen, Peter Holm Jensen, *Transport Law in Denmark* (Warszawa: Wolters Kluwer, 2012), 143-144, 168.

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38 E.g. Article 41(1), Article 97, Article 181(1), Article 272, Article 279 of the Maritime Code of 18 September 2001 (consolidated text, Dz.U. (Journal of Laws) of 2018 item 2175 as amended).

39 E.g. Article 208 of the Aviation Law of 3 July 2002 (consolidated text, Dz.U. (Journal of Laws) of 2020 item 1970 as amended).

Various methods of reference to international conventions may be noted in domestic law. Sometimes a convention addressing a specific problem is mentioned without a clear identification but with a reservation that it is a convention binding on Poland (e.g. Article 208 of the Aviation Law). Such a tactic has the advantage of automatic incorporation into the domestic law of all amendments and supplementations of the convention binding on Poland on their entry into force. This also applies to an entirely new international convention that addresses a given matter where a country making this reference becomes a party to it. The second approach involves a reference to a specific international convention with a reservation that the reference should include further amendments of supplementation of this convention but that they will become legally binding after entry into force and promulgated appropriately (e.g. Article 41(1), Article 97 Article 272 or Article 279 of the Maritime Code). Such a technique allows automatic inclusion to the domestic law of subsequent protocols and conventions that amend and supplement the convention specified in the referring provision. However, when a new convention that addresses the same subject matter is ratified, incorporation of this convention requires that the referring provision be amended. The third way involves indicating a specific convention without a reference to subsequent amendments and supplementations, which may be effected after entry into force of the referring provision (Article 181(1) of the Maritime Code). This tactic requires that the referring rule be amended where the convention is amended. Failure to implement such a modification may result in the duality of the state of law - the convention in the amended or supplemented form will be applied to international relations subject to its application, whereas in external relations – the convention in the form it was referred to in the referring rule will apply. It would seem that when it comes to the carriage contract, we may be tempted to regulate it by reference to international conventions binding on Poland and regulating a given type of carriage contract without specifying which convention is meant. Ratification of further conventions that regulate this matter or changes (protocols) to them requires the consent of the Sejm expressed as an act. It is because they include a statutory matter (Article 89(1)(5) of the Constitution). Such a manner of ratification of acts of international law that govern the carriage contract should ensure the legislator's control over the content of the law in force. Also, it would not be necessary for this control to be doubled by amendments of statutory referring provisions should Poland adopt the amendments in international

law regulations. An erroneous ratification practice that emerged about certain protocols[40] calls for certain caution in this regard.

In turn, incorporating provisions of international carriage conventions does feature in the EU's legislative practice. The regulations on the carriage of persons referred to at the beginning of this study do not include a comprehensive standardization of the subject matter of the contract for the carriage of persons. They only correct and supplement regulations in the conventions-based law. The EU law largely took over them, an integral part of this system. Various techniques for including provisions of international conventions to the EU law were put to work. For example, even though air regulations refer to the Montreal Convention,[41] they do not incorporate its provisions. However, it has been an element of the Union's law since the EU acceded to this convention[42]. In turn, according to Article 216(2) TFEU[43], agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. This means that provisions of the Montreal Convention and provisions of EU regulations that modify and supplement the regulation contained in the Convention apply in „Union" relations. The application of the Montreal Convention as a Union system of passenger protection does not fundamentally diverge from the application of the convention in other relations. Nevertheless, the role of the Court of Justice of the European Union in the process of interpretation of conventions must be emphasized.

Regarding rail transport and inland waterways transport, this question looks quite different. Even though the EU acceded to COFIT[44] and the Athens convention in the wording of the 2002 Protocol[45] (with the

40 See Krzysztof Wesołowski „Wybrane problemy stosowania konwencji międzynarodowych zawierających ujednolicone normy prawa prywatnego materialnego", [in:] *O pojmowaniu prawa i prawoznawstwa. Profesorowi Stanisławowi Czepicie in memoriam*, ed. Ewelina Cała-Wacinkiewicz, Zbigniew Kuniewicz, Beata Kanarek (Warszawa: C.H. Beck, 2021), 199-210.

41 Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) of 28 May 1999.

42 Council Decision of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), OJ L 194, 18.7.2001.

43 Consolidated version of the Treaty on the Functioning of the European Union of 25 March 1957, OJ C 326, 26.10.2012, 47-390.

44 Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (Dz.U. (Journal of Laws) of 2007 no. 100 item 674 as amended).

45 The European Union acceded to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea by Protocol of 2020, on the basis of

effect resulting from Article 216(2) TFEU), it first incorporated CIV[46] (by Regulation No. 2021/782 – railway regulation) quite extensively by including an extract from this convention in Annex 1. In turn, Regulation No. 392/2009 (inland waters regulation) served the same purpose for the Athens convention. However, the incorporation does not cover some of the convention's provisions (i.a. jurisdiction-related provisions were left out, concluding that such issues are EU's sole competence).
Such reference to the provision of a convention in EU regulations means that in relations resulting from the acts mentioned above, these provisions are not applied as provisions of an international convention but as provisions of Union law. This has specific effects, especially for interpretation. Irrespective of slightly different rules of interpretation[47] and axiology adopted, languages other than authentic languages are becoming more important[48]. Naturally, this does not mean that the body of views of legal scholars and commentators and judicial decisions developed in applying these provisions as convention-based rules must be disregarded in interpreting such provisions. Nevertheless, it may be concluded that the creation of a new legislative act, even if its content is very similar to the provisions of the applicable international convention, does not allow full enjoyment of the advantages of a referral. This is why, as it seems, this way of incorporating provisions of conventions is not useful for regulation by domestic law[49].

Assuming that provisions that regulate the carriage contract in basic branches of transport should be maximally similar to analogical

two Council Decisions of 12 December 2011.

46 Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) Appendix to the Convention concerning International Carriage by Rail (COTIF).

47 For the interpretation of provisions of the Union law see Zbigniew Radwański, Maciej Zieliński in: *System prawa prywatnego*, vol. I, *Prawo cywilne – część ogólna*, ed. Marek Safjan (Warszawa: C.H. Beck, 2007), 183-185.

48 On the contrary, Daniel Dąbrowski, referring to recital 14 of the preamble to Regulation 1371/2007 that contains an intent of building a system of compensation for passengers created by this regulation on the basis of uniform provisions of CIV, postulates that the rule of interpretation of EU legislative acts be rejected in the interpretation of provisions of Annex I to Regulation 1371/2007 and that the French language version be given primacy.

49 In the case of EU law, as a rule created in all official languages of the European Union, it does not solve the problem of inconsistencies between individual language versions of the regulation either. It brings about problems of the order of application of provisions, that is not always solved *expressis verbis*.

international regulations, the most appropriate method of regulation would be through reference (ideally in the Civil Code) to international conventions. Applying this method would ensure that the text of a legislative act is concise and the legal measures regulated in this act are consistent with analogical institutions present in international transactions. This would eliminate the risk of improper transposition of provisions of conventions to Polish law. This would also allow the use of abundant achievements of the judicature, legal scholars, commentators, foreign courts, and authors. The requirement for the regulation to be concise is also not without significance. The only risk of such a solution is the imprecision of a reference that causes doubts as to the scope of provisions to which this reference is made[50]. However, it is rather marginal.

An international convention to which domestic legislation refers, although concerning internal relations, retains its international character. It remains a certain micro-system that is autonomous towards other systems, including the system that incorporates it. It has consequences, for example, in terms of interpretation of the rules of conventions[51] or the filling of cavities[52]. This means that a text expressed in an authentic language or languages of the convention[53] should be the subject of application and interpretation. In contrast, the interpretation of such convention should be in line with rules of interpretation of provisions of

50 See more in Krzysztof Wesołowski, Daniel Dąbrowski „Koncepcja hipotetycznej umowy jako podstawy odpowiedzialności przewoźnika w konwencjach przewozowych" *Problemy Transportu i Logistyki*, no. 1 (2017): 547.

51 See Martin Gebauer, „Uniform Law, General Principles and Autonomous Interpretation" *Uniform Law Review*, no. 4 (2000): 683-705; Marcin Czepelak, *Umowa międzynarodowa jako źródło prawa prywatnego międzynarodowego* (Warszawa: Wolters Kluwer, 2008), 395; Ambrożuk, Dąbrowski, Wesołowski, *Międzynarodowe konwencje przewozowe,* 153-155.

52 Daniel Dąbrowski, „Luki w konwencjach przewozowych", [in:] *Societates et obligationes – tradycja, współczesność, przyszłość, Księga jubileuszowa Profesora Jacka Napierały,* ed. Adam Olejniczak, Tomasz Sójka (Poznań: Wydawnictwo Naukowe UAM, 2018), 89-99.

53 An example here may be the judgement of the Supreme Court of 22 November 2007, III CSK 150/07, OSNC-ZD 2008, No. 2, item 53 with the commentary by Krzysztof Wesołowski, LEX/el.2010. However, it must be acknowledged that recently the awareness of the need to apply rules typical to interpretation of international law to the interpretation of international conventions that include uniform rules of private (civil) law has recently experienced significant improvement.

international conventions, in particular with relevant directives resulting from the Vienna Convention on the Law of Treaties (hereinafter VCLT)[54].

As has already been mentioned, Poland is not bound now by an international convention that regulates the contract for inland carriage. Therefore, when it comes to the carriage of goods by inland waterways, it would be advisable to ratify the Budapest Convention[55], especially since it is a relatively modern legislative act that legal scholars and commentators consider positive. It would then be possible to reference this convention to regulate the contract of inland carriage. However, an alternative is possible here. This Convention could also cover the national carriage, according to Article 31[56].

5 Conclusions

These comments suggest that regulating the carriage contract in domestic law should consider various regulation methods. A general uniform regulation in the Civil Code (not a framework regulation as is the case now) should be accompanied by appropriately formulated references to international conventions that prescribe the carriage contract in individual transport branches. Suppose we assume that the Code was to apply not only as an auxiliary regulation for carriage regulated by international conventions but also that it was to apply directly to the carriage where there are no such regulations, to carriage by unspecified modes of transport, and to non-localised damage in the multimodal carriage. In that case, this Code should be supplemented with provisions that govern the so-called disposing of

54 Vienna Convention on the Law of Treaties of 23 May 1969 (Dz.U. (Journal of Laws) of 1990 no. 74 item 439). For rules of interpretation of international conventions that contain harmonised rules of civil law see Krzysztof Wesołowski, Dorota Ambrożuk, „Interpretacja postanowień konwencji międzynarodowych zawierających normy o charakterze cywilnoprawnym" *Lingwistyka Stosowana*, no. 4 (2017): 165-176.

55 Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) done at Budapest on 22 June 2021.

56 Cf. Marian Rusak, Krzysztof Wesołowski, Elżbieta Załoga, *Uwarunkowania wdrożenia w Polsce postanowień Konwencji budapesztańskiej w sprawie przewozu ładunków w żegludze śródlądowej* (Szczecin, 2003) (unpublished).

the goods, carrier liability, determination of compensation (sum limits)[57] and declaration of a special interest in delivery.

On the other hand, references to international conventions that regulate the carriage contract in individual transport branches should not be limited to liability principles (as is the case now in air transport). Still, they should also consider other regulations laid down in conventions.

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57 The postulate of introduction to the Polish law of limitation to the sums of compensation is flagged up by for example Dorota Ambrożuk, *Ustalenie odszkodowania w prawie przewozowym w odniesieniu do przewozu przesyłek* (Warszawa: Wolters Kluwer, 2011), 271-272.

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