

THE RIGHT TO CLAIM (RIGHT OF ACTION) UNDER THE CMR CONVENTION - THE EXAMPLE OF POLISH CASE LAW*

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ABSTRACT

The Convention on the contract for the international carriage of goods by road (CMR) does not expressly determine the entity who has the right to make a claim against the carrier in the event of damage to or loss of goods. There is often doubt as to whether the sender, the consignee or both have this right. The situation becomes complicated especially in the case of carriage performed by several carriers, when one carrier acts as a sender with respect to another. The problem outlined is solved in a different way in the various states party to the CMR Convention. The aim of this article is to present the way in which it has been resolved by the Polish courts. It focuses in particular on the case law of the Supreme Court, whose position has a significant impact on the jurisprudence practice of lower courts. It was pointed out that the Supreme Court presents a view according to which the right to claim is linked to the right to dispose of the goods. In some cases, however, such a solution leads to unfair settlements. This is particularly the case when the right to claim would formally be vested in the consignee, whereas the loss was actually suffered by the sender. Sometimes lower courts then deviate from the formalistic view of the Supreme Court and accept that the right to claim against the carrier is vested in the entity that actually suffered the loss.

Keywords: CMR Convention, right to claim, right of action, contract for carriage of goods by road, damage to the goods in transit, successive carriage.

SUMMARY: I. INTRODUCTION.—II. GENERAL COMMENTS ON THE RIGHT TO CLAIM UNDER THE CMR CONVENTION.—III. THE LINK BETWEEN THE RIGHT TO CLAIM AND THE RIGHT TO DISPOSE OF GOODS IN THE POLISH SUPREME COURT CASE LAW: 1. Determining the entity entitled to claim by reference to national law. 2. Determining the entity entitled to claim by autonomous interpretation of the CMR Convention. 3. Consequences of linking the right of action to the right to dispose of goods.—IV. RIGHT TO CLAIM IN THE EVENT OF CARRIAGE BY SEVERAL CARRIERS.—V. CONCLUDING REMARKS.—VI. BIBLIOGRAPHY.

* Fecha de recepción del trabajo: 16/5/2023. Fecha de aceptación del trabajo: 13/6/2023.