Revista de Științe Politice. Revue des Sciences Politiques • No. 63 • 2019: 45 - 60

ORIGINAL PAPER

# Critical Analysis of the General Regulation of the Transport of Persons and Baggage

**Cristina Stanciu***

**Abstract**
In the matter of the carriage contracts, the rules of the Romanian Civil Code are grouped into three sections: a first set of rules is composed of the provisions of art. 1955-1960 - *Section 1. General provisions*, the second set of rules which gives the content of the second section – *Section 2. The contract of carriage of goods* are the provisions of art. 1961-2001; and the third set consists of the provisions of art. 2002-2008 - *Section 3. Contract of carriage of persons and baggage*.
The first section provides general rules for all transport contracts, irrespective of the mode of transport and whether it is the carriage of goods or persons, and section two cover the transport contract of goods.
The final section, *Section 3. The contract for the carriage of persons and baggage*, as a whole, is a set of rules with a novelty status at the general rule level for this matter. This regulation is considered by the doctrine, however, a summary, which is not enough for all the legal aspects raised by this type of transport. Although it is appreciated that the current Romanian Civil Code provides, in contrast to the previous legislation, norms establishing, even at the principle level, a minimum of rules for this matter, thus making the contract for the carriage of persons and baggage a named contract; we must admit that this regulation is a improvable one. Therefore, there are a series of legal problems raised by this matter which still requires specific legal norm.

**Keywords:** *carriage of persons; baggage; legal characters; effects.*

*Associate Professor, PhD, University of Craiova, Law Faculty, Department of Private Law; Phone: 0040744211959; Email: cristina.stanciu1@gmail.com.

**General Considerations**

Until the entry into force of the current Romanian Civil Code, that is, until 2011, the contract for the transport of persons did not have a general regulation, but there were only special rules governing the different types of transport. In other words, in the Romanian regulation, there were no general rules to be constituted in what is called a general theory of the contract for the transport of persons. This is the reason why, before 2011, since there was no general rule in this matter to provide legal coverage for situations where the special rule was deficient, for certain legal situations, the rules of the Commercial Code, then in force were applied, within the scope of the freight contract. Of course, the application of rules in the matter of the contract of transport of goods only took place for those situations where it was possible, that is, only if there was compatibility with the passenger transport contract.

Currently, the regulation in the Civil Code ensures a general rule in the matter of the passenger transport contract by the provisions, the contract thus becoming a nominate contract.

In the matter of the transport contract, the rules of the Civil Code (Romanian Civil Code, art. 1955-2008) are grouped into three sections: a first set of rules is made up of the provisions of art. 1955- 1960 - *Section 1. General provisions*, a second set of rules making up the second section – *Section 2. The contract for the transport of goods* are the provisions of art. 1961-2001; and the third set consists of the provisions of art. 2002-2008 - *Section 3. Contract for the transport of persons and baggage*.

The first section provides a general rule for all transport contracts, regardless of the mode of transport and whether it is the transport of goods or persons and the regulations concerning general issues: definition of the transport contract, proof of contract, transport modalities, scope of the rules to which we refer to, general aspects regarding carrier liability and substitution.

The second section regulates the contract for the transport of goods and, taken as a whole, resumes the issues of the previous regulation, that of the Commercial Code.

The final section, *Section 3. Contract for the transport of persons and baggage,* represents, as a whole, a set of norms with a novelty status at the general norm level for this matter. Although there are opinions in the doctrine that the regulation is a summary, not sufficient for all the legal aspects raised by this type of transport, it should be appreciated that the current Code provides rules that establish, even at the level of principles, a minimum of rules for this matter.

However, we must admit that, if we look at this regulation as a whole, we cannot ignore the fact that it is reserved for a very small number of articles and that from the viewpoint of content, only two aspects of the contract of transport of persons and baggage are regulated: the obligations of the parties and the liability of the transport operator for the passenger and for baggage and other goods (Cotuţiu, 2015: 203).

In fact, and with regard to the obligations of the parties, one of the criticisms of the doctrine refers precisely to the fact that these obligations are not fully regulated and that one of the main obligations of the passenger, namely to pay the fare for the transport, is missing from the regulation.

So, just as an overview, it is noticeable that the regulation we are referring to is a perfectible one, both in terms of the issues it has to deal with, but also on their content.

For this reason, in this article, we propose to analyze this general regulation, on the one hand, in relation to the elements to which it should refer: definition of the

contract, legal characters, substance and form conditions, legal effects and liability; and, on the other hand, to try to find out how to regulate the same legal problems in the special regulations, such as the regulations in air, rail, road transport, etc., which could have been a real source for a complete general regulation.

**Definition and Legal Characters**

As mentioned above, the general regulation in the area of the transport contract comprises three sections, and the first section provides a general rule for all transport contracts, regardless of the means of transport and whether it is the transport of goods or of persons. The definition of the contract for the transport of persons is ensured by the provisions of art. 1955 of the Civil Code that concerns both the transport of goods and that of persons: the transport contract is, according to the legal regulation, the contract by which a party, called a carrier, undertakes, with the main title, to transport a person or a good from one place to another, in exchange for a fare that the passenger, the sender or the consignee undertakes to pay, at the agreed time and place.

As it is a definition of both contracts, it undoubtedly has a high degree of generality and the article we refer to only considers the essential elements in defining the transport contract. As a result, in order to render as true as possible the actual legal appearance of the contract for the transport of persons, it is necessary to corroborate this article with the regulation in the third section, which expressly deals with the contract for the transport of persons and baggage. Also, it is necessary to approach all the elements that, at the level of theory, lead to a complete definition of the transport contract.

A first element in the definition is the identification of the parts of the contract. From the definition of the transport contract offered by art. 1955 of the Civil Code it can be seent that the parts of this transport contract are: the carrier and the passenger. Although the concept of *passenger* is used in this area of regulation, it is not found at all in the regulation in the third section, namely in art. 2002-2008. Another concept is used in the regulation regarding the contract for the transport of persons and baggage, namely, *traveller*. It is obvious that the person travelling on the basis of a transport contract is considered to be the same - the individual, both in the general section where the contract is defined and in the third section. However, at a terminological level, the Code option is different: *passenger* and *traveller*. If we are to analyze the terminology of the special laws in this matter, we also have different options: in the railway transport, the traveller term is chosen, in the legislation of the air transport the notion of passenger is used, in the road and naval transport there is no specific terminology, the legislative references being made to the transported person. Therefore, the option of the Code for terminology regarding one of the parts of the contract for the transport of persons is not a sharp one and as it does not make a distinction, we understand that both options can be used: the traveller or the passenger are party to the contract.

If we are to offer a critical opinion on this subject, we can notice that in terms of terminology in the regulation of the transport contract, in general, there are a number of problems. Thus, in the specialized literature (Dănișor, 2015: 157-158) attention has been drawn to the fact that polysemy in the language of law can sometimes be a source of ambiguity. And, unfortunately, in the matter of transport law we encounter such situations. In fact, we are dealing with the legal language with two types of polysemy: external and internal. External polysemy refers to the situation in which the terms used in law get a meaning, and when used in the language outside the law or in the usual one

they have other connotations; therefore, there are terms with dual status and valence: technical-legal and usual. The internal polysemy is the one that is qualified as a factor of ambiguity because the same term has several distinct meanings within the legal language. Here we can include, for example, terms such as *consignor, consignment* or *combined transport*.

What we want to emphasize is that the terminological aspects have their role and that, although they seem minor in relation to the content of the regulations, they can create confusion and thus affect the substance, the content of the regulations.

In the matter of passenger transport, a unique option for the person travelling on the basis of a transport contract was preferable. Updating the language in this area and the option for clear formulas for naming these contracts, the transport documents, the parties, should be considered a priority issue and not secondary to the legal issues that need to be regulated.

Another important element in defining the contract for the transport of persons are the obligations of the parties related to the characteristic performance, namely the obligation of the carrier to transport a person or a good and the obligation of the passenger to pay the transport fare. As an exception, the obligation to pay the fare may be missing in a situation, expressly provided by law: if the transport is performed by a carrier that offers its services to the public, within its professional activity, the transport may also be free of charge.

Other elements that must be part of the definition of the contract are: a deadline for the execution of the transport, the carrier being liable for the damages caused by delay; the existence of a suitable means of transport, as defined by art. 9 paragraph 2 of the Government Ordinance no. 19/1997: "the means of transport are movable means, with or without propulsion, fit for the transport of passengers or goods, specially intended to move by a road, rail, naval or air route" and the completion of an itinerary on a transport infrastructure are other important elements.

Also, in defining this contract, two other aspects that the Code insists on, ensuring regulation, must be considered. It is about the content of the obligation to transport persons and the legal nature of this obligation.

The obligation to transport persons includes, besides the travelling operations, the operations of embarkation and disembarkation. As a result of this obligation, the carrier's liability will cover both the damages suffered by the passengers and their baggage during the transport, as well as during the operations of embarkation and disembarkation. In other words, the failure to perform or the improper performance of the embarkation and disembarkation operations will generate a contractual liability, the same as the travelling operation. The doctrine warns of the correct interpretation of this situation, in the sense that the carrier has the obligation to arrange and use the infrastructure specific to each mode of transport and to ensure the safe access in the means of transport and the landing of the passenger under the same safety conditions. However, these operations should not be confused with the actions of the passenger of getting on and off the means of transport, carried out by their own actions and for which there is a personal responsibility (Cotuţiu, 2015: 204-205).

This obligation is stipulated in art. 2002, para. 1 of the Civil Code, so it has a consecration at the level of general rule, but in the special laws there are express regulations that specifically stipulate which the obligations of the carrier are in relation to these operations and which his responsibility is in case of failure to comply with them.

Regarding the legal nature of the obligation to transport persons, different legal

options offered by the Code are observed in the transport of persons compared to the transport of goods. Thus, according to art. 1958 para. 2 of the Civil Code, except when it is done by a carrier that offers its services to the public in its professional activity, free transportation is not subject to the provisions contained in the regulation concerning the transport contract, as the carrier is only bound by an obligation of prudence and diligence. In the case of transport for a fare we have to deal with an obligation of result.

Regarding the type of obligation, in the case of the transport of persons and baggage, we deal with different solutions: regarding the baggage transport, the solution is the one offered by art. 1958 para. 2 of the Civil Code, and regarding the transport of persons, art. 2002 para. 2 provides that the carrier is bound to bring the passenger on time, unharmed and safe, to the place of destination. Therefore, we deal with an obligation of result whether it is a transport for a fare or free of charge, and this obligation contains not only the travel of passengers, but also an obligation considered in the specialized literature (Pop, Popa, Vidu, 2012: 33-34) as a *security obligation*, to transport the passengers unharmed and safe.

The security obligations do not have an express legislative obligation, they are considered to be a type of the obligations to do, contractual in nature in most cases and sometimes legal. It is a contractual or legal duty that one party has to guarantee the other party and even third parties against the risks that threaten their bodily security (Pop, Popa, Vidu, 2012: 33).

If we look at the legislation as a whole, we notice that the security obligations are met, in particular, in consumer law and in transport law, when it comes to the transport of persons.

Therefore, the transport contract is the contract whereby a party, called the carrier, undertakes, with the main title, to transport the passenger / traveller on time, unharmed and safely, from one place to another agreed with him/her, with an appropriate means of transport, in exchange for a fare that the passenger / traveller commits to pay and to ensure for him/her the appropriate conditions for the operations of embarkation and disembarkation to be carried out safely.

From the perspective of the legal characters, the contract for the transport of persons is a *reciprocal* contract, an *onerous* contract, a *consensual* contract. It is also a *commutative* contract.

Some authors characterize the contract of transport as, in general, one of *adhesion*. The justification for this qualification lies in the fact that, as a rule, the contracts of the modern era tend towards a simplification of the execution procedure and they are characterized by a rapidity motivated by the need of the time economy. This category includes a wide range of contracts, such as radio and television contracts, water supply, electricity, telephone services, insurance contracts, etc.. From this perspective, the transport contract can fulfil the conditions required by art. 1175 of the Civil Code for such a contract: "the contract is of adhesion when its essential clauses are imposed or are drafted by one of the parties for its account or following its instructions, with the other party having only to accept them as such."

It should also be noted that the regulation of the adhesion contract itself, namely the provisions of art. 1175 of the Civil Code, creates confusion considering the valid conclusion of the contract when the parties have established its essential clauses, that is, when it fulfils what the doctrine calls a sufficient agreement (Pop, Popa, Vidu, 2012: 123). The secondary elements of the contract, those the doctrine calls open clauses, are subsequently established and have no impact on the validity of the contract. If the parties

do not reach an agreement on the secondary elements or the person to whom they assigned the task of determining them does not make a decision, the court will order, upon the request of either party, the completion of the contract, taking into account, depending on the circumstances, its nature and the intention of the parties (Romanian Civil Code, art. 1182).

In this legislative context, the question arises on which the essential elements for the valid formation of the transport contract are. The doctrinal references regarding the essential elements of a contract are to the characteristic benefits of the respective contract. By the conclusion of the transport contract, an obligatory report arises. The subject matter of the transport contract is the transport, and the object of the obligation report is given by the benefits to which the parties are bound: the transport of the person to the destination by the carrier and the payment of the fare by the passenger. As a result, the agreement on these essential elements, translates into the valid conclusion of this contract and as in practice the routes are established by the carrier, and the customer only chooses from the practicable routes offered, and the price is most often a formed one, given the offer of the carrier that calculates it according to standard methods that take into account the number of kilometres travelled, the fuel consumption and its price, etc., it can be concluded that this contract can be considered as an adhesion one for most types of transport.

However, we must admit that in some of the situations and with the observance of the limits imposed by law, the contract of transport also has a *negotiated* character. The complex structure of this contract, which contains negotiable and non-negotiable elements in the conclusion process, made the doctrinaires (Stănescu, 2017: 30) admit the possibility that this contract, the transport one, can fall into the category of *contracts concluded with consumers*.

The contract concluded with the consumers is regulated by the current Romanian Civil Code in art. 1177, according to which such a contract is subject to special laws and, in addition, to its provisions. The special legislation in this matter, the law of consumer protection, regulates the legal relations between professionals and consumers.

The doctrine (Dogaru, Drăghici, 2014: 65-70) notes that contemporary law has achieved a new classification of contracts, starting from the content of the terms "professional" and "profane", in the sense of amateur. Contracts concluded between them are still subject to the traditional regime, but contracts concluded between a professional and a private individual are called consumer contracts and are subject to a consumer protection regime, an increasingly extended regime. This legal regime is based on the idea of protecting the individual in his/her relationship with the professional who, in comparison with the other, has the skill and ability. A consumer is any individual or group of individuals constituted in associations, which, under a contract, acts for purposes outside its commercial, industrial or production, artisanal or liberal activity. The professional is any authorized natural or legal person, who, under a contract, acts within is/her/its commercial, industrial or production, artisan or liberal activity, as well as any person acting for the same purpose on his/her/its behalf or account.

Our legislation and, implicitly the legal practice (Pap, 2016: 194-196), have a clear tendency to consider the passenger a consumer. An example in this regard is Decision no. 1912/2006 regarding the establishment of measures to ensure the application of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance

to passengers in the event of denied boarding and of cancellation or long delay of flights. Thus, in order to ensure the application in Romania, from the date of Romania's accession to the European Union, of the provisions of Regulation (EC) no. 261/2004, the National Authority for Consumer Protection has been designated as the body responsible to supervise the observance of the rights of passengers provided by Regulation (EC) no. 261/2004. The designation of the National Authority for Consumer Protection as a responsible body represents a tacit recognition of the consumer status.

**Substance and Form Conditions**

Regarding the substance conditions, essential conditions for the validity of the transport contract, it is necessary to specify that they are common with those of any convention: the ability to contract, the valid consent of the obliging party, a given object and a legitimate cause. Also, in the situation where the law expressly provides it, the form of the contract is an essential condition.

In the matter of transport law, the regulations and rules of the common law operate, but with particularities regarding the content of the transport activity.

Thus, regarding the consent, as a particularity, it is necessary to specify the situation of the professional carrier who is in a state of permanent offer of services to the public and the fact that he/she does not have the right, except in the cases expressly provided by law, to refuse to carry out the transport. Thus, according to art. 1958 para. 3 of the Civil Code, the carrier who offers its services to the public must carry any person who requests its services and any goods the transport of which is requested, if there is no good reason for refusal.

The law does not specify what can be, from the carrier's point of view, a *well-founded reason for refusal*, but in the special laws we find reasons for refusal considered as grounded. Thus, according to art. 9 of Government Ordinance no. 7/2005 regarding the approval of the Romanian Rail Regulation, passengers who do not comply with the regulations and the provisions of the railway operator, made public, are excluded from the transport. Also, the following are not allowed or can be evacuated from the train or the station: persons who, by their conduct, disturb other travellers or who cause injury to the rolling stock belonging to the railway operator or who do not comply with the regulations; persons who, due to illness, cause inconvenience to other travellers, unless they have booked and paid for the whole compartment; persons who insult or abuse the personnel of the railway operator or the infrastructure manager / administrators during the service.

From the perspective of the other party, namely the passenger’s, it is worth mentioning the case of line transport, where the transport conditions are conditions pre-determined by the carrier and brought to the public's knowledge and where the acceptance by the passenger consists, practically, in an adhesion.

The object of the contract, according to art. 1225 of the Civil Code, is represented by the legal operation, that is the transport. The subject of the obligation is, according to art. 1226 of the Civil Code, the benefit to which the debtor undertakes, namely *to give, to do* or *not to do* something concrete as an effect of the legal operation that he/she concluded.

The definition refers to the benefits to which the parties are bound, but it also refers to the persons to whom the conduct of the parties refers, viewed as a derivative object of the civil legal report and, therefore, of the contract. Thus, the carrier may refuse a transport if it does not have the appropriate means of transport to carry out the

transport and must be lawful because, at times, issues related to public safety or conditions of operation of the means of transport justify the refusal of the carrier to carry certain persons. The impossibility to transport must exist at the time the contract is executed and must be objective. At the same time, the object of the transport contract must have a legal character, that is to say it should not contravene the imperative norms and the social rules.

Regarding the carrier, we can talk about particular elements regarding the capacity of use. Thus, according to the rules of the Government Ordinance no. 19/1997 only the persons who carry out transport activities *in the public interest* and according to the norms of the Civil Code can carry out transport activity and can conclude transport contracts, only the transporters who *offer their services to the public in their professional activity*.

Regarding the passenger, the rule is also the capacity to exercise, that is, the person's ability to conclude legal documents on their own (Romanian Civil Code, art. 37). Given the regulations regarding the exercise capacity of the individual, whose content is transposed in the special regulations regarding the transport of persons in different ways, depending on the type of transport, the minor with limited exercise capacity can enter into conservation deeds alone, administration documents that does not prejudice him/her, as well as disposition documents of small value, current in nature which are executed on the date of their conclusion. The current disposition documents of low value, include, for example, the purchase of a subway ticket, which represents, in fact, the conclusion of a transport contract (Baias, Chelaru, Constantinovici, Macovei, 2012: 47).

The case does not have particularities with regard to the rules of civil law, in the sense that the provisions of the Civil Code in this matter are applicable, as follows: for the carrier, the purpose for which the transport contract was concluded is to obtain the price of the transport in which his/her profit is introduced, and for the traveller the purpose is to move his/her person in space.

At the level of general rule, the law does not provide for certain form conditions for the contract for the transport of persons, as, it does not provide for the goods contract either. Two articles refer to questions regarding form: art. 1956 of the Civil Code that covers both the contract for the transport of goods and the contract for the transport of persons and which provides that these contracts are evidenced by transport documents, such as a consignment note, a baggage receipt, a roadmap, a bill of lading, a travel ticket or the like, as the case may be and art. 2007 of the Civil Code regulating the transfer of rights from the contract for the transport of persons. Thus, according to the legal regulation, in the absence of a stipulation to the contrary or unless otherwise provided by law, the passenger may assign his/her rights arising from the transport contract before commencing the transport, without being bound to notify the carrier. This last article provides information on the legal nature of the transport document. Thus, the professionals in their activity use some documents that lend the characteristics of the credit securities, without, however, being credit securities. They are the titles of legitimation, named by the doctrine as improper securities (Stanciu D. Cărpenaru, 2012: 605) and prove the existence of legal relationships that serve to legitimize the right of the holder. The holder of such a title is considered legitimate to receive the payment.

Art. 2007 of the Civil Code regulates the transfer of rights in the transport contract. According to it, if there is no stipulation to the contrary or unless otherwise provided by law, the passenger may assign his/her rights arising out of the transport

contract before the commencement of transport, without being bound to notify the carrier.

**Effects of the Contract**

The main obligations of the carrier, as they result from the general regulations, are: the obligation of the professional carrier to be in a state of permanent offer to the public in its transport conditions; the obligation of the carrier to take the passenger to the place of destination, unharmed and safe; the obligation of the carrier to carry out the transport within the established term; the obligation of the passenger carrier to have a civil liability insurance; the obligation of the carrier to make available to the passenger a place corresponding to his/her travel ID; the obligation of the carrier to carry the children travelling with the passenger, without payment or at a discounted rate, under the conditions of the special law; the obligation of the carrier to carry the baggage of the passenger without further payment, in the quantity and conditions stipulated by the provisions of the special law.

*The obligation of the professional carrier to remain in a state of permanent offer to the public in its transport conditions.* The professional carrier is in a permanent state of supply of services to the public and it is bound to accept any transport request, except in the situations provided by law.

Moreover, this obligation benefits from legal regulation in the Civil Code. Thus, art. 1958 para. 3 of the Civil Code provides that the carrier who offers its services to the public must transport any person who requests its services and any goods for which transport is requested, if it does not have a good reason for refusal.

The Romanian Civil Code refers to the special law in this matter, which applies with priority over the general one, in art. 2002 para. 3 and which contains different provisions regarding the refusal to accept a transport or a conditional acceptance. For example, the taxi driver may, according to art. 52 (i) of Law no. 38 of January 20, 2003 regarding taxi and rental transport, with subsequent amendments not to involve the transport of a client in an advanced state of intoxication, so he has the right to refuse to transport him/her. The commander of a civil aircraft may, according to art. 40 paragraph 3 of the Government Ordinance no. 29 of August 22, 1997 on the Air Code, disembark any crew member and any passenger at an intermediate stop, for reasons determined by flight safety and keeping order in the civil aircraft. EC Regulation no. 261/2004, art. 2 (j) defines "refusal to board" as refusing to carry passengers on a particular flight, although they have appeared for boarding under the conditions set, unless there are good reasons for refusing to board, such as health, inadequate safety or security requirements or inadequate travel documents. Therefore, the substantive reasons why the air carrier may refuse to transport a person are listed on this occasion.

*The obligation of the carrier to take the passenger to the place of destination, unharmed and safe.* The carrier's obligation to do the transport can be analyzed by reference to the classification made of the obligations in general. Thus, starting from the classification of the obligations according to their source, we note that the carrier's obligation to carry out the transport of persons falls into the category of contractual obligations, arisen from legal documents, the classification of the source according to the source consisting in: contractual, quasi-contractual, criminal and quasi-delictual obligations.

Depending on their purpose, obligations are traditionally classified into: obligations *to give*, obligations *to do* and obligations *not to do* (Ploscă, 2015: 173-174).

Viewed from this perspective, the obligation of the carrier to carry out the transport of goods is an obligation *to do*.

In the specialized literature, the classification of obligations according to their object, involves discussions, in the sense that, in light of the new regulations and starting from the fact that our legislation is largely French-inspired, another classification of obligations has been proposed in the report according to this criterion, in: obligations to pay an amount of money or to deliver an amount of other generic goods, obligations to deliver a certain, individually determined good, obligations to provide services and obligations not to do. Part of the doctrine considers that this classification is closer to the practical realities, compared to the obligation to give, challenged in this vision, because it is considered that the transfer of the right of property and other real rights operates fully on the basis of the will agreement.

In such a classification, the obligation of the carrier to do the transport is an obligation to provide services, that is an obligation that has as its object the activity of the debtor, except for the delivery of a good or goods.

Depending on the purpose pursued, the obligations are classified into the obligations of means and the obligations of results. The obligation of the carrier to carry out the transport of goods is an obligation *of results*, whether the carrier performs, within its professional activity, a paid or a free transport.

Also within this classification another type of obligation was identified - the security obligation. Security obligations are considered to be a kind of obligation *to do* in which one party has a contractual or legal obligation to guarantee the other party against the risks that threaten their bodily safety. We find this type of obligation in the case of the transport of persons: art. 2002 para. (2) provides that the carrier is bound to bring the passenger in time, unharmed and safe, to the place of destination. Therefore, we deal with an obligation of result whether it is a transport for a fare or free of charge, and this obligation contains not only the travel of passengers, but also an obligation considered in the specialized literature as a *security obligation,* that of bringing the passengers safe and unharmed. The doctrine (Pop, Popa, Vidu, 2012: 139) notes that this obligation exceeded its initial condition, when it was considered as an implicit obligation in the transport contracts and now, by its consecration in art. 2002 para. 2 has become an explicit contractual obligation, expressly provided in the general theory of the contract for the transport of persons, as the clearest expression of the modernization of our private law.

From the contents viewpoint, the obligation to transport persons includes, besides the travelling operations, the operations of embarkation and disembarkation. This aspect is provided in art. 2002, paragraph 1 of the Civil Code and its effect is that the carrier's liability will cover both the damages suffered by the passengers and their baggage during the transport, as well as during the operations of embarkation and disembarkation.

*The obligation of the carrier to carry out the transport within the established term.* According to art. 2002, para. 2 of the Romanian Civil Code, the carrier is bound to bring the passenger, unharmed and safe, to the place of destination on time. The carrier's responsibility to carry out the transport within the established term also results from art. 2004 para. 2 of the Civil Code where the carrier's liability for direct and immediate damages is established, resulting from the non-execution of the transport, from its execution under conditions other than those established or from the delay of its execution. The liability is a contractual one.

Depending on the type of transport, some of the carriers have transport deadlines set by the legislature or the law authorities, others set them unilaterally and make them known to the public, and others establish them by conventional means.

*The obligation of the passenger carrier to have a civil liability insurance.* The carrier is bound to have a civil liability insurance, concluded under the terms of the law. This obligation of the carrier is generally established solely for the purpose of the carrier of persons and baggage. By special laws, civil liability insurance can also be established for the transport of goods.

The importance of the transport of persons has determined that, regardless of the mode of transport or whether it is remunerated or free of charge, the carrier has the obligation to contract a civil liability insurance (Pop, Popa, Vidu, 2012: 83).

*The obligation of the carrier to make available to the passenger a place corresponding to his/her travel ID.* The means of transport of persons are diverse, they have different classes, comfort levels, degrees of speed; they are means of transport where you can travel standing. For example, in rail passenger transport, according to art. 12 of the Governmental Ordinance no. 7/2005, the passenger can occupy a seat on the train, observing the right to class and the services provided by his/her travel card. For trains with reservation of seats, the passenger can occupy only the places registered in the travel card. The traveller who cannot obtain a seat and does not consent to travel standing is entitled to request the return of fare for the unused part of the journey, to postpone the trip or to pay the difference for the trip in a higher class, according to the provisions of the Uniform Rules or to the railway transport operators' own regulations, and in case the traveller cannot occupy the seat reserved according to his/her travel card, the train staff is bound to provide another seat, within the available seats of the train, according to the provisions of the Uniform Rules or to the railway transport operators' own regulations.

*The carrier's obligation to transport children travelling with the passenger, without payment or at a reduced rate, under the terms of the special law.* Special laws detail this obligation differently. Thus, for railway transport, according to art. 13 of the Governmental Ordinance no. 7/2005, children up to the age of 5 years, for whom no separate seat is required, are transported free of charge, without a travel ID, and children up to the age of 10 years pay 50% of the fare and of the train supplement and they have a separate seat. For trains with reserved seats they also pay the full fare. In the national paid road transport, according to art. 41 paragraph 4, the transport of children under 5 years is free of charge, if they do not occupy separate seats.

*The obligation of the carrier to carry the baggage of the passenger without further payment, in the quantity and conditions stipulated by the provisions of the special law.* Although the Civil Code regulates the baggage as a general rule, as a concept, it does not define or make a clear distinction between what is represented by hand baggage and the checked baggage, referring to the special laws.

Thus, a broader regulation of the baggage rules and, possibly, a definition thereof results from the special regulations regarding the railway transport of persons and baggage. According to art. 17 of the Government Ordinance no. 7/2005, the traveller can take with him/her in the passenger cars the hand baggage, free of charge. Hand baggage should, as a rule, be easy to handle, be well packaged, so that it is not possible to leak the contents, damage or mess the wagons or cause inconvenience to the other passengers. The passenger has, for his/her hand baggage, only the space above the seat he/she occupies or an equivalent space in the baggage storage of the wagons. For

railway transport, the total weight of hand baggage allowed for each occupied palce is 30 kg. The supervision of the objects that the traveller takes with him/her in the wagon rests with them and, in principle, the traveller is responsible for any damage caused by the objects he/she takes along in the wagon. The carrier remains liable if it is found that the baggage has been lost out of its fault.

For the air transport of persons and baggage, the provisions of Government Ordinance no. 107/2000 regarding the ratification of the Convention for the unification of certain rules regarding international air transport, adopted in Montreal on May 28, 1999, and the provisions of art. 3, respectively, stipulate that the carrier is bound to issue to the passenger a baggage identification tag for each item of checked baggage. Also, the passenger will be informed that a written notification will be issued indicating that in the case of applying this convention, it will regulate and may limit the liability of the carriers in case of death or injury, in case of destruction, loss or damage to the baggage, as well as in case of delay. In the regulation of airway transport, the term baggage means both checked and unchecked baggage.

At the same time, in art. 17 regarding the liability of the air carrier for the death or injury of the passengers and for damage caused to the baggage, it is stipulated that the carrier is liable for the damages arising due to the destruction, loss or damage of the checked baggage, provided that the event that caused the destruction, loss or damage has taken place on board the aircraft or during the time when the carrier was in charge of the checked baggage. The carrier is not responsible if the damage occurred due to a baggage defect, the quality of a vice thereof. In the case of unchecked baggage, including personal items, the carrier is liable if the damage arises from its fault, its agents or proxies.

In the legislation in the field of road transport, there are also, for different types of means of transport, references to baggage. Thus, Law no. 38/2003 regarding the transport in taxi and rental regime, as subsequently amended and supplemented, art. 52 paragraph 3 (m) stipulates the obligation for the carrier to carry the baggage of the clients, in the case of the transport of persons, within the space meant for them, without collecting additional fees; and art. 49 paragraph 1 (c) that the price of the transport is not conditioned by the number of persons or the quantity of goods transported, as long as they do not exceed the authorized transport capacity of the taxi.

In this context, a review can be formulated: The Romanian Civil Code, although it stipulates the obligation of the carrier to carry the baggage of the passenger without further payment and establishes the carrier's liability for non-compliance with this provision, it does not define the concept of baggage, it does not establish a legal regime at the principle level for liability in respect of hand baggage and the checked one and does not make a clear distinction between what constitutes the transport of goods and that of baggage. It limits itself to making references to the special laws which, although they regulate the baggage regime in their own means of transport, they do not have complete references covering the whole spectrum of legal issues raised by baggage, which is why, where possible, it leaves it to the carrier, by its own regulations, to manage these aspects (Piperea, 2005: 63).

Regarding the spectrum of the carrier’s obligations, although its legal regime benefits from a much broader regulation than that of the passenger with regard to his/her obligations, we must note that, as a general rule, the legislator had the possibility to regulate other obligations of the carrier. For example, the obligation to go on the established route and the legal consequences of its non-compliance. At the same time,

the legal regime of the carrier's rights, at the level of principle, is ignored by the legislator.

The legal regime of the traveller's obligations from the general regulation is a reduced one, in the sense that, according to the provisions of art. 2003 para. 2 of the Civil Code, during the transport, the passenger has the obligation to submit to the measures taken according to the legal provisions by the carrier's agents. Of course, this obligation must be supplemented by the obligations resulting from the special laws. However, we cannot fail to notice that one of the main obligations of the passenger, namely the payment of the fare, which could have benefited from regulation, at a general rule level, is missing from the regulation.

With regard to the passenger's rights, the Code establishes the passenger's right to unilaterally terminate the transport contract if, according to the circumstances, due to the delay in carrying out the transport, the contract is no longer of interest to the passenger. In this situation, the traveller may denounce it, requesting the refund of the fare.

Therefore, in order to be able to exercise the passenger's right to unilaterally terminate the transport contract, the following conditions must be cumulatively fulfilled: there must be an inadequate fulfilment of the transport contract, in order to delay the transport execution and the delayed transport execution is no longer of interest to the traveller.

The unilateral denunciation is a cause of termination of the contract regulated by art. 1276 of the Civil Code, according to which the right to unilaterally terminate the contract can be exercised only by the party in favour of whom it is established and only if the execution of the contract has not begun.

**The Carrier's Liability**

Regarding the legal regime of the carrier's liability, the Civil Code stipulates that it is responsible for: the passenger's death, injury to bodily integrity or damage to the traveller's health, the non-execution of the transport, its execution under conditions other than those established, the delay of the transport.

The carrier's liability is, as a legal nature, a contractual one and, according to the legal regulation, any clause by which the carrier's liability for the damages stipulated in the general law is removed or restricted is considered unwritten.

Clauses considered unwritten are null and void clauses. In the doctrine (*Nicolae,* 2012: 27-29), it was emphasized that they were enshrined in our national law under the influence and impulse of the Community regulations, and they are found in the domestic law of several European Union states, such as the French, Belgian law and those clauses inserted in a legal act, which the legislator considers as non-existent, because they contradict the nature and the normal legal effects of that act and which are fully replaced by the mandatory legal provisions.

The carrier is also responsible for the damage caused by the means of transport used, his/her health and the health of his/her employees.

The transport contract is unique and indivisible (Cristoforeanu, 1925: 215 - 218) and the period for which the contractual liability is committed is that between the time of the passenger's embarkation and the moment of his/her disembarkation, the embarkation and disembarkation being part of the transport activity and attracting the contractual liability as well. Therefore, for actions or inactions attributable to the carrier prior to the

embarkation or disembarkation, its liability can only be engaged on a criminal basis (Cotuţiu, 2015: 210).

Art. 2004 para. 4 stipulates the situations in which the carrier's exemption of liability operates. Thus, the causes of non-liability are listed as follows: if it proves that the damage was caused by the traveller, intentionally or by serious fault; if it proves that the damage was caused by the traveller's health; if it proves that the damage was caused by the act of a third party for which it is not liable; if it proves that the damage was caused by force majeure (Atanasiu, Dimitriu, Dobre, 2011: 737).

The passenger's health and the deed of a third party for which the carrier is not held liable have the legal nature of a fortuitous case for the carrier. In the matter of the contract for the transport of persons, the fortuitous case does not exonerate of liability and the reason why the Civil Code expressly lists these two situations is because they, as an exception from the situation of the fortuitous case in general, exonerate the carrier from liability.

The analysis regarding the carrier's liability for baggage and other goods cannot be made without specifying, as I have mentioned, that the notion of baggage, as well as that of other goods of the passenger, does not receive a definition in the general law. As most of the doctrine points out, the definition is important because for the damages brought to goods other than those mentioned, the carrier's liability will be based on the provisions of art. 1984 et seq. in the matter of the contract for the transport of goods and not on art. 2005 which regulates liability for baggage and other goods.

The carrier is liable for the loss or damage to the passenger's baggage or other goods, unless it is proved that the damage was caused by their vice, the passenger's fault or by force majeure.

It can be seen that art. 2005 of the Civil Code regulates the loss and damage, but not the delay of baggage. This does not mean that in case of delay the carrier is not liable, but that the liability for the delay of the baggage will be based on the provisions of art. 1959 para. 2 of the Civil Code stipulating that: for the damages caused by the delay in reaching the destination, except for the fortuitous case and the force majeure, the carrier is liable. This regulation may be incidental in this matter also because art. 2005 in par. 4 allows the application of the regulations in the matter of the contract for the transport of goods, if there is no stipulation contrary to them, in the matter of the contract for the transport of persons and baggage.

For hand baggage or other goods that the traveller carries with him/her, the carrier is liable only if the latter's intention or fault for the loss or damage is proved.

Regarding the amount of damages, the carrier is liable for the loss or damage of the passenger's baggage or other goods within the declared value or, if the value has not been declared, in relation to the nature, their usual content and other such elements, as the circumstances may be.

The Civil Code regulates in this matter, in art. 2006, the responsibility in the successive or combined transport. Thus, in the successive or combined transport, the carrier on the transport of which the death occurred, the injury of the bodily integrity or the health of the passenger, the loss or damage of the passenger's baggage or other goods is responsible for the damage thus caused. We observe the promotion at the legislative level of a different solution to the transport of goods, where regarding the liability of this type of transport, the responsible action can be exercised against the carrier who has concluded the contract of transport or against the last carrier and in

respect of damages, In their relations, each carrier contributes to compensation in proportion to the appropriate portion of the fare.

An exception is also allowed in this matter: the carrier is not liable if the transport contract expressly stipulates that one of the carriers is fully responsible.

For the loss or damage of baggage or other goods of the traveller that have been delivered, each of the carriers is required to contribute to compensation.

The responsibility for the delay or interruption of the transport comes only if, at the end of the whole journey, the delay remains. Article 2006 para. 3 of the Civil Code establishes the rule according to which, in the case of successive or combined transport, the delay of the transport must be appreciated globally, at the end of the entire journey. Therefore, the delay of the transport on one of the segments of the route does not constitute a breach of the obligations deriving from the transport contract, likely to establish the liability of the one who carried out the transport in the segment concerned, as long as there is no delay of the transport for the entire route.

Regarding the baggage, the Code refers to the provisions of art. 2000 of the Civil Code that becomes applicable in the matter, that is to say the solution in the matter of the contract of transport of goods. It should be noted that the solution is valid, according to the Code, for the loss or damage of baggage or other goods of the passenger that have been handed over to the carrier. On the contrary, this solution does not apply to baggage and goods held by the traveller, but to the transport of persons.

**Conclusions**

The general regulation in the matter of the contract for the transport of persons is, without doubt, a necessary and welcome one in the matter of the legislation in transport law, deficient in this segment until the entry into force of the current Civil Code. However, it is a perfectible one and there are new legal issues that need to be regulated and others that need more extensive or clearer development:

- regarding the terminology, in the regulation of the contract for the transport of persons, a unique option at the level of general rule for the name of the person travelling on the basis of a transport contract would be preferable, with the Code currently using both the notion of passenger and that of traveller;

- regarding the legal nature of the obligation to transport persons, we deal with an obligation *of results* whether it is a transport for a fare or free of charge, but this obligation is also a *obligation of security*, that of transporting passengers unharmed and safe The security obligations do not have an express legislative obligation, they are considered to be a type of the obligations *to do*, contractual in nature in most cases and sometimes legal. A consecration at the legislative level of these types of obligations is preferable, and the contract for the transport of persons is a classic example of this type of obligation;

- regarding the legal character, a regulation that does not leave room for interpretations and which establishes whether this contract is an *adhesion* one and if it can be included in the category of *contracts concluded with consumers*;

- regarding the spectrum of the obligations of the carrier, at the level of general rule, the legislator can regulate its other obligations. For example, the obligation to go on the established route and the legal consequences of its non-compliance. At the same time, the legal regime of the carrier's rights, at the level of principle, is currently ignored, it can get regulation;

- the legal regime of the traveller's obligations in the Civil Code is a reduced

one, in the sense that, according to the provisions of art. 2003 para. 2 of the Civil Code, during the transport, the passenger has only the obligation to comply with the measures taken by the carrier's agents. We note that one of the traveller's main obligations is missing, namely the payment of the fare, which could have benefited from regulation;

- The Romanian Civil Code, although it stipulates the obligation of the carrier to carry the baggage of the passenger without further payment and establishes the carrier's liability for non-compliance with this provision, it does not define the concept of baggage, it does not establish a legal regime at the principle level for liability in respect of hand baggage and the checked one and does not make a clear distinction between what constitutes the transport of goods and that of baggage. We also note that art. 2005 of the Civil Code regulates the loss and damage, but not the delay of baggage.

**References:**


Atanasiu, A.G., Dimitriu, A.P., Dobre, A.F., (2011). *Noul Cod civil, Note. Corelaţii. Explicaţii*, Bucharest: C.H. Beck Publisher.

Baias, Fl. A., Chelaru, E., Constantinovici, R., Macovei, I. (coordinators), (2012). *Noul cod civil, Comentariu pe articole,* art. 1-2664, Bucharest: C.H. Beck Publisher.

Cotuțiu, A. (2015). *Contractul de transport,* Bucharest: C.H. Beck Publisher.

Cristoforeanu, E. (1925). *Despre contractul de transport*, Cartea I, Bucharest: „Curierul judiciar" Publisher.

Dănișor, D. (2015). *Interpretarea Codului civil. Perspectivă jurilingvistică*, Bucharest: C.H. Beck Publisher.

Dogaru, I., Drăghici, P. (2014). *Drept civil. Teoria generală a obligațiilor* Bucharest: C.H. Beck Publisher.

Nicolae, M. (2012). *Nulitatea parțială și clauzele considerate nescrise în lumina noului Cod civil. Aspecte de drept material și drept tranzitoriu*, Revista Dreptul,11, 27-29.

Pap, A. (2015). *Transportul aerian și drepturile pasagerilor în legislația Uniunii Europene. Sinteze de jurisprudență*, Bucharest: Universul Juridic Publisher.

Piperea, G. (2005). *Dreptul transporturilor,* 2rd Edition, Bucharest: All Beck Publisher.

Ploscă, R. (2015). *Teoria generală a dreptului*, 4rd Edition, Bucharest: C.H. Beck Publisher.

Pop, L., Popa, I. F., Vidu, S. I. (2012). *Tratat elementar de drept civil, Obligațiile*, Bucharest: Universul Juridic Publisher.

Stanciu D. Cărpenaru (2012). *Tratat de drept comercial român*, Bucharest: Universul Juridic Publisher.

Stănescu, A. T. (2017). *Dreptul transporturilor. Contracte specifice activității de transport,* Bucharest: Hamangiu Publisher.

Codul civil român (2011), art. 1955-2008.

Legea nr. 38/2003 privind transportul în regim de taxi şi în regim de închiriere.

Legea nr. 265/2007 pentru modificarea şi completarea Legii nr. 38/2003 privind transportul în regim de taxi şi în regim de închiriere.

OUG nr. 21/2019 pentru modificarea și completarea Legii nr. 38/2003 privind transportul în regim de taxi și în regim de închiriere.

OG nr. 7/2005 pentru aprobarea Regulamentului de transport pe căile ferate din România.

OG nr. 29 din 22 august 1997 privind Codul aerian.



**Article Info**

***Received:*** August 24 2019
***Accepted:*** September 18 2019

Revista de Științe Politice. Revue des Sciences Politiques • No. 63 • 2019: 61 - 71

ORIGINAL PAPER

# Establishment of the Employment Relationship: Conditions for Employment in EU Member States

**Roxana Cristina Radu***
**Marina Loredana Belu****

**Abstract:**
The most important document that sets out the conditions of work, the individual rights and obligations of the parties to an employment relationship is the individual employment contract. This is also the most important contract in the profesional life for the majority of people. Under current national labor laws, the individual employment contract is concluded between an employer and a worker. The individual employment contract stands at the foundation of labor relations, being common across most of the European Union's Member States, with the aim of establishing working and employment conditions, regulating relationships between employer and worker. The present study illustrates the employer's obligation to inform the employee about the future content of the individual contract and the mandatory provisions of the employment contract, the form of the individual employment contract, European Union's regulations for non-compliance with the written form of the contract, the probationary period, the working age in different EU Member States, prohibition of children's work, protection of young people at work in EU space.

**Keywords:** *employer; individual employment contract; labor law; employment conditions; worker/ employee.*

* Associate Professor PhD., University of Craiova, Faculty of Law; Phone: 0040721400359; Email: roxanacristina.radu@yahoo.com.
** Lecturer PhD., University of Craiova, Faculty of Law; Phone: 0040740300355; Email: loribelu@yahoo.com.