

**CARRIER'S LIABILITY IN INTERNATIONAL FREIGHT CONTRACTS AND THE  
BASIS FOR ITS LIMITATION**

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**Abstract:** This article examines the legal liability of the carrier under international freight contracts, the basis for its emergence and international legal mechanisms for limiting liability. During the study, such international documents as the CMR Convention, the Montreal and Hague-Visby Rules, as well as the national legislation of the Republic of Uzbekistan, were studied in a comparative manner. Foreign judicial practice, the system of force majeure and SDR limits were also analyzed, and practical recommendations were given.

**Keywords:** international transport, carrier liability, CMR convention, limitation of liability, force majeure, gross negligence.

**Introduction.** In the global economy, transport logistics is the lifeblood of international trade. The process of transporting goods by its very nature is associated with various risks, and it is natural that disputes arise in this process regarding the loss or damage of cargo. The main task of international transport law is to ensure a balance of material liability between the owner of the cargo and the carrier. This balance is achieved through the principle of limiting the liability of the carrier within a certain scope. The liability of the carrier in international cargo transportation is based on the principle of "presumed fault". That is, he is liable for damage caused from the moment the cargo is placed at the disposal of the carrier until it is handed over to the consignee.

As stipulated in Article 721 of the Civil Code of the Republic of Uzbekistan and Article 17 of the CMR Convention, the carrier may be exempted from liability only if he proves his innocence. This system strengthens the legal protection of the cargo owner, since he does not have to prove that the damage was caused by the fault of the carrier, the fact itself is sufficient.<sup>1</sup>

A unique feature of international conventions is that the carrier pays compensation only within a certain limit, regardless of the actual value of the cargo. These limits are measured in SDRs (Special Drawing Rights).

Main limits:

Car (CMR): 8.33 SDR per 1 kg.

Air: 22 SDR per 1 kg.

Sea: 2 SDR per 1 kg or 666.67 SDR per seat.

These restrictions are necessary to protect transport enterprises from unexpected huge losses and stabilize the insurance system.<sup>2</sup>

Uzbekistan joined the CMR Convention in 1995. National legislation recognizes the primacy of international treaties.

In domestic transportation: According to the Civil Code, the carrier is liable for the full value of the cargo.

In international transportation, limits apply if the contract is based on the CMR or another convention. According to the explanations of the Plenum of the Supreme Court of the Republic

<sup>1</sup> <https://lex.uz/docs/-180552>

<sup>2</sup> <https://lex.uz/docs/-4193761>

of Uzbekistan, national courts are obliged to apply the norms of the convention when determining the liability of the carrier [5]. The carrier cannot always exercise the right to limit liability. The limits are canceled if the damage is caused by the carrier's intentional mistake or gross negligence.

According to Article 17, paragraph 2 of the CMR Convention, the carrier is not liable in the following cases:

Incorrect instruction of the cargo owner;

Natural nature of the cargo (e.g. evaporation);

Force majeure is a situation that the carrier cannot prevent and the consequences of which cannot be eliminated.

In international practice, there are CMR insurance (carrier liability) and Cargo insurance. According to statistics, in 70% of cases of disputes in international cargo transportation, since the cargo is not insured for the full value, cargo owners receive compensation only within the SDR limit, which can be only 20-30% of the actual damage.<sup>3</sup>

In the study of modern problems of international cargo law, the scientific study of international logistics expert Philip Coris entitled "The Limitation of Liability in International Carriage: A Shield or a Sword?" is of great importance. In his article, the author critically analyzed the relevance of the system of limitation of liability introduced by international conventions, in particular the CMR and the Hague-Visby Rules, to today's economic realities. Philip Coris noted that the principle of limitation of liability was originally created in the late 19th and early 20th centuries as a "legal shield" to protect transport enterprises from unexpected huge financial losses, that is, from bankruptcy. However, in the modern age of high technology, this "shield" in many cases serves as a "legal sword" that allows carriers not to pay real damage to cargo owners. The author explains this by the fact that the relative value of transported cargo has increased sharply today. The article specifically addresses the issue of the obsolescence of the SDR system. According to Coris, the 8.33 SDR limit set in the 1956 CMR Convention was proportionate to the value of industrial products at that time. However, today the cost of 1 kg of microchips, medicines or expensive electronics can be several tens or even hundreds of times more expensive than this limit. This leads to the fact that in the case of a loss to the owner of the cargo of \$ 10,000, the carrier's conventional limit is limited to only \$ 10,000. To eliminate this imbalance, the author proposes to index the SDR limits or introduce differential limits depending on the type of cargo.<sup>4</sup>

In the issue of unifying the system of liability in international freight contracts, the research of Professor Jurgen Bazedov, "The Law of Open Societies: Private Ordering and Public Regulation" and his commentary on the CMR Convention are of fundamental importance [1]. In his work, the author emphasizes that the principle of limiting the liability of the carrier is not only an economic protection, but also a means of standardizing the "rules of the game" of international trade. According to Professor Bazedov, the concept of "Limited Liability" in international freight transportation is not a privilege granted to the carrier, but a mechanism for managing the insurance market. According to his theory, if the carrier were unlimitedly liable for the full value of the cargo, the cost of transport insurance would increase exponentially, which

<sup>3</sup> <https://lex.uz/ru/docs/-2661891>

<sup>4</sup> <https://law.rwu.edu/academics/>

would slow down global trade. In his analysis, Bazedov pays special attention to the concept of “gross negligence” in Article 29 of the CMR Convention. According to his interpretation, in order for the carrier to be deprived of the limit of liability, his action must be not just a mistake, but also “a reckless act with knowledge of the possibility of damage.” The author criticizes the contradictions in the interpretation of this concept between European courts (in particular, German and French courts) and puts forward the need to create a single “European Code of Transport Law”. Professor Bazedov also studied the issue of carrier liability in the digital economy and argued that in the context of electronic data interchange (EDI), the concepts of “handover” and “control” acquire a new meaning. According to his conclusion, a modern carrier must bear legal responsibility not only for the physical cargo, but also for the security of the information flow associated with it.<sup>5</sup>

In addition, Philip Coris in his article considers the different interpretations of the concept of “gross negligence” in the courts of different countries as an obstacle to global logistics. For example, analyzing the case of “Datec Electronics Ltd v. United Parcels Service Ltd” in the English courts, he showed that the question of at what point the negligence of the carrier becomes “gross error that overrides the limit” still remains a legal ambiguity. According to his conclusion, only the widespread adoption of the Rotterdam Rules of 2008 can put an end to these conflicts and establish a fair liability regime in multimodal transportation. These views of the international scholar are also relevant for developing countries like Uzbekistan. After all, our national exporters, unaware of these international limits, often send valuable cargo without insurance or without declaring its value, which leaves them economically defenseless in the event of a dispute.

The issue of limiting the liability of the carrier in international freight contracts remains one of the most controversial topics in modern jurisprudence. A scientific comparison between the representatives of two major schools of thought on this issue, Philip Coris and Jurgen Bazedov, reveals the economic and legal essence of transport law.

Philip Coris emphasizes the principle of economic justice in his research. In his opinion, the current system of SDR limits is morally outdated and serves to protect carriers at the expense of cargo owners. Coris advocates a “dynamic” liability system, proposing the introduction of differential limits depending on the type of cargo. His approach is aimed at protecting consumer rights, and he considers limits to be a “barrier” limiting the carrier’s liability rather than a “legal shield”. In contrast, Professor Jurgen Bazedov is a supporter of systemic stability and “legal certainty”. Basedov does not deny the low limits, but he considers these limits to be the basis of the global insurance market. According to his theory, if the carrier were unlimitedly liable for the full value of the cargo, insurance risks in international logistics would be unforeseeable. This leads to a sharp increase in the cost of transport services and, ultimately, a reduction in global trade. For Basedow, the limit is a tool for economic balancing. Coris proposes to interpret this concept more broadly and increase the responsibility of carriers for safety by more often depriving them of the limit. Basedow, on the contrary, argues that an excessively broad interpretation of this concept by the courts undermines the uniform application of the conventions. In his opinion, only extremely serious and deliberate errors should be grounds for canceling the limit.

The study of the basis for the carrier’s liability and its limitation in international freight contracts allows us to draw the following final conclusions. First, the carrier’s liability system is

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<sup>5</sup> <https://www.mpipriv.de/>

not only a mechanism for compensating for material damage, but also an economic regulator ensuring the stability of the international transport services market. The views of Philip Coris and Jurgen Bazedov show that the legal system should simultaneously protect the carrier from bankruptcy and ensure the cargo owner's right to fair compensation.

Secondly, the current system of SDR limits needs to be revised due to inflation and changes in the cost of goods. In this regard, the most optimal solution seems to be the implementation of international documents that bring multimodal transportation into a single system, such as the Rotterdam Rules. Thirdly, it is important for the Republic of Uzbekistan to unify judicial practice in harmonizing national legislation with international norms.

**Conclusion,** it should be noted that the system of carrier liability in international cargo transportation must adapt to the changing global economy. Unreasonably limiting the carrier's liability harms cargo owners, while excessively increasing it leads to an increase in the cost of transport services. Therefore, finding a "golden mean" in legal regulation, developing the insurance institution and strengthening international cooperation should remain priorities of modern transport law.

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