

Shipping & Transport - Netherlands

Autonomous application of CMR to international multimodal carriage

Contributed by [AKD](#)

July 14 2010

[Claim](#)
[Appeal court ruling](#)
[Comment](#)

The Court of Appeal of The Hague recently ruled that an Icelandic shipping company could invoke a choice of forum provision under a multimodal transport contract involving both sea and road transportation in a dispute involving the theft of cargo during transit. In its ruling the appeal court took a clear stance in the international debate concerning the autonomous application of the Convention on Contracts for the International Carriage of Goods by Road (CMR) conditions to the international carriage of goods as part of multimodal transport.

Claim

The SIF Group, an Icelandic company that specializes in the international sale and marketing of seafood, entered into a non-negotiable sea waybill for combined transport (or port-to-port shipment) with Icelandic shipping company Eimskip in respect of the carriage on board the Eimskip vessel Godafoss of a containerload of salted fish from Reykjavik to Rotterdam, for final delivery by road to Naples, Italy.

The contract contained a jurisdiction and law clause stating that Icelandic law applied and that any dispute should be determined by the Icelandic courts in accordance with Icelandic law. Following the theft of the cargo during the road transportation from Rotterdam to Naples, SIF instituted proceedings before the Rotterdam District Court seeking compensation. However, Eimskip disputed the international jurisdiction of the Rotterdam District Court.

Appeal court ruling

When the dispute came before the appeal court, the court noted that the Icelandic courts were a valid choice for resolution of the dispute in line with the 1988 Lugano Convention on Jurisdiction and Judgments. The Netherlands would have jurisdiction only if, apart from the Lugano Convention, the CMR were applicable, with the relevant section of Article 31 thereof pointing to the Dutch courts as a possible forum.

The applicability of the CMR was not envisaged in the contract of carriage, with the possible exception of the liability regime governing localized loss or damage. Furthermore, Iceland is not a party to the CMR. Therefore, the appeal court had to determine whether the CMR was directly applicable to the international carriage of goods by road as part of the contract in question.

It noted that while Article 1 of the CMR does not explicitly exclude multimodal contracts from the scope of application, it does not explicitly include such contracts. Multimodal transport involves contracts of carriage encompassing more than one mode of transportation, including road transport. Furthermore, Article 2 of the CMR explicitly mentions mode-on-mode (usually roll-on/roll-off) transportation as an extension to the scope of application of multimodal transport as set out in Article 1. In addition, the CMR Protocol of Signature argues against autonomous application of the convention because, despite acknowledging at the time of drafting that regulation by convention was desirable, the CMR was seemingly not regarded as a well-balanced regulation in this regard.

In the past, these and other arguments have led the highest German court to reject the autonomous application of the CMR to multimodal contracts of carriage.⁽¹⁾ The Dutch appeal court considered the German court's decision to have been in line with the rules of interpretation of the 1969 Vienna Convention on the Law of Treaties and, more particularly, with the intention of the CMR to unify the unimodal international carriage of

Author

[Taco van der Valk](#)



goods by road, including roll-on/roll-off transport.

The Dutch court found that there is no prevailing doctrine in the Netherlands or in other states which advocates the autonomous application of the CMR to the international carriage of goods as part of multimodal transport. The March 2002 judgment of the English Court of Appeal in *Quantum Corp v Plane Trucking* seemed to go the other way; however, the Dutch court noted that the UK judgment referred to other judgments from which the autonomous application of the CMR to multimodal transport did not automatically follow, so it decided that there were no pressing grounds to reject the reasoning of the German courts. The Dutch court felt that the interests of international trade were best served by adopting the German view and thereby uniformly interpreting the CMR.

The court also pointed to practical drawbacks in adopting the alternative view (ie, accepting the autonomous application of the CMR to multimodal contracts, particularly in connection with the CMR rules of jurisdiction. The latter are linked to the place where the goods are taken over and the place designated for delivery, and such places are not always at the beginning or the end of the road leg in the case of multimodal transport. Awkward jurisdictional problems may arise, particularly in the event of losses which are spread out over several legs or which ultimately cannot be localized, thus leading to legal uncertainty.

The court found that this spoke in favour of allowing for the possibility of an exclusive choice of forum in multimodal contracts. It noted that this would also be in line with Article 26 of the Rotterdam Rules, which sets up a so-called 'limited network system' comparable to that provided for in the terms and conditions in *Eimskip v SIF*.

The appeal court concluded that there were insufficient grounds to deny Eimskip the right to invoke the choice of forum.

Comment

The judgment is important in itself as the appeal court clearly rejected the view consistently held by the Rotterdam District Court after the latter's decision in *Resolution Bay* in 1999. Furthermore, the Court of Appeal of The Hague, the Netherlands' most prominent appeal court for shipping and transport cases, now joins the Den Bosch Court of Appeal in its interpretation of the autonomous application of the CMR in the area of multimodal transport. Therefore, in the Netherlands, subject to the possibility of a further appeal to the Supreme Court, the die seems to be clearly cast in favour of rejecting the application of the CMR in such cases. In that respect, the judgment also sends a clear Dutch message as part of the international controversy concerning the uniform interpretation of the CMR in multimodal transport cases.

For further information on this topic please contact [Taco van der Valk](mailto:tvandervalk@akd.nl) at AKD by telephone (+31 10 272 53 00), fax (+31 10 272 54 00) or email (tvandervalk@akd.nl).

Endnotes

(1) BGH, July 17 2008, *TransportR* 2008, 365.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.



Official Online Media Partner to the International Bar Association
An International Online Media Partner to the Association of Corporate Counsel
European Online Media Partner to the European Company Lawyers Association

© Copyright 1997-2010 Globe Business Publishing Ltd