THE TRANSPORTATION LAW – INTERFERENCES AND PARTICULAR FEATURES IN REGARD TO OTHER LAW BRANCHES

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Abstract : *The forming of transportation law as a distinct law branch took time, as it followed the economical essor and, implicitly, the one of the transportation means. Though it is, among juridical branches, a ranch of its own, the transportation law presents a lot of correlations with other law branches. When its juridical norms happen to have lacunae, common law comes to fill in these gaps.*

Key words :*The transportation law, law branches*

Preliminaries. The forming of transportation law as a distinct law branch took time, as it followed the economical essor and, implicitly, the one of the transportation means. Though it is, among juridical branches, a ranch of its own, the transportation law presents a lot of correlations with other law branches. When its juridical norms happen to have lacunae, common law comes to fill in these gaps.

On the place held by transportation law into the law' system, the doctrine mentions two opinions: a theory which considers transportation law as a subordinated branch of trading law; another one which sees transportation law as a distinct law branch[1]. As far as we are concerned, we do join the second opinion, viewing transportation law as a distinct branch, while trading law has upon it the function of common law.

A first step in sustaining the autonomy of this branch of law is to precise what object does it rule. For transportation law, this is necessary because, generally when the constitution of a law branch is foreseen, its would-be ruled object is seen as the fundamental criterion able to separate it from other existing law branches and to establish into the law system the sphere of the juridical relationships ruled by the respective law branch. For a branch of law, in the process of delimiting it from the others, and implicitly of forming it, a series of criteria are taken into account: the method of ruling, the subjects' quality, the norms' character, the specific sanctions, the principles[2]; but most of the doctrine simultaneously admits that the fundamental element of separation, in regard to the above mentioned criteria, which are thought as auxiliaries to the formation of law branches, is the object that the respective branch rules[3]. "The essential problem which has to be analysed is the one of the criteria upon which relies the distinction to be made among branches and their distinct evolution as separate rule' systems which sprung from the global juridical system"[4].

The specialized literature[5] defined the branch of law as the aggregate of the juridical norms which rule the social relationships from a domain of social life, relying upon a specific method of ruling and upon some common principles. For a law branch, its juridical ruled object is constituted by the social relationships that are ruled through a norm of law, and which own features that are specific to the respective law branch.

The juridical object ruled by the transportation law is, so, constituted by the social relationships which are ruled by it: the ones which generate the transportation activities or the transportation itself; in other words, the social relationships which express themselves" which

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[1] Gh. Piperea, *Dreptul transporturilor*, Editura All Beck, Bucureşti, 2003, p. 9.

[2] Gh. Beleiu, *Drept civil român. Introducere în dreptul civil român. Subiectele dreptului civil*, Casa de Editură şi Presă Şansa, Bucureşti, 1992, p. 33.

[3] I. Dogaru, *Drept civil român*, Editura Europa, Craiova, 1996, p. 29-30.

[4] I. Dogaru, D. C. Dănişor, Gh. Dănişor, *Teoria generală a dreptului*, Editura C. H. Beck, Bucureşti, 2006, p. 231.

[5] N. Popa, *Teoria generală a dreptului*, T.U.B., 1992, p. 154; see also J. Renauld, *Cours d'encyclopedie du droit*, litography, Louvain, 1966, p. 108; "a frame of law rules meant to rule a specific domain of social relations".

materialize, through the transportation activity[6]. As the object of transportation law, the activity of transportation could defined as: the activity supposing the displacement into space of some persons or be goods, with the help of a transportation mean and through the use of a transportation way. So, transportation supposes a series of elements: displacement into space; persons or goods that constitute the object of this displacement, the use of a vehicle (transportation mean, the realisation of this displacement upon a transportation way[7].

The transportation law represents the aggregate of regulations concerning the professional activity organized by carters, with adequate vehicles, in order to displace, on the ground of contracts and under legal conditions, persons and/or goods[8].

Transportation law is an autonomous, distinct law branch, with a special legal frame but, for certain aspects of its juridical institutions, as it lacks norms of its own, it does complete its possible lacunae from the common law simultaneously interacting with disciplines which, through their contents, are kindred to it. So, the doctrine has stated that transportation law does interact with[9]: trading law, civil law, administrative law and penal law, with the civil procedure's law and with the penal procedure's law, with the international privacy's law with the international public law and even with constitutional law.

Transportation law and trading law. Trading law does constitute the common law in regard to transportation law[10]. The trading Code contains a detailed regulation of the terrestrial objects' transportation contract, namely arts. 413-441 of Title XII. It tackles, in this respect, with a vast network of themes: the appropriate contents of the transportation document, the carter's liability, the guaranty required by the carter for the payment of the transportation's price, the destinatary's rights, the cumulative transportations. The Trading Code has also regulated the maritime contract for goods and voyagers, under the name of hiring contract, in arts. 557-600. Art. 3 item 13 of the Trading Code also justifies the qualification of the transportation activity as an objective trading act. The article counts among the facts considered as "trading" by the law *the transportation enterprises, for persons or things, on water or on dry ground.*

The Romanian Trading Code does not define the concept of *trading act*. Yet, the doctrine of trading law does provide a general definition for it. The Trading Code only enumerates the juridical acts and operations which it states as trading acts, from a perspective which is rather pertaining to economy than juridical. Suiting the doctrine[11], *the trading acts or, more largely speaking, the trading deeds, are the juridical acts, the juridical facts and the economical operations through which are realized the production of merchandise, the execution of works or the carrying out*

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[6] Not all displacements into space do constitute the object of the transportation activity. So, the transportation for personal interests, the transportation of oil, water or gases through pipelines, the transportation of electrical power supply could not form the object of a trading transportation contract. In these situations, the transportation contract. In these situations, the transportation is realized through devices of one's own, and, as the specific operations of transportation are not realized, the transportation activity is not justified. Are not seen as transportation activities, as well, the new technologies of displacing some merchandises through pipelines, due to a flux of water or air. The mail's transportation, the transmissions of phone, flex, radio and T.V. broad casts, telegraphy, are not included to the object of transportation law. The post transportation submitted to some special conditions (special regulations, issued from special conventions) is in the same situations, since these regulations state that we are not in the presence of a transportation activity.

[7] Ghe. Piperea, *Dreptul transporturilor*, Editura All Beck, Bucureşti, 2003, p. 3.

[8] O. Căpăţână, Gh. Stancu, *Dreptul transporturilor. Partea generală*, Editura Lumina Lex, Bucureşti, p. 10.

[9] Transportation law also presents connections with environment's law. So, in the domain of transportation there are arguments about an insufficient attention paid to the environment. Yet, at the E.U. level, a series of actions have been taken, related to transportation and environment: the Directive of December, 19-th, 1984, which limits the weight of trucks, the Directive of February 17-th, 1975, which supports the emergence of a multi-modes system of transportation, etc.. See, to this purpose: A. Duşcă, P. Drăghici, *Dreptul intern şi comunitar al mediului*, Editura Universitaria, Craiova, 2003, p. 297.

[10] The common law is the branch of law which provides the adequate norm, when a branch of law should not contain norms of its own, able to rule a certain aspect of a juridical relationship. See, to this purpose: I. Dogaru, S. Cercel, *Drept civil. Partea generală*, Editura C. H. Beck, Bucureşti, 2007, p. 15-16.

[11] S. D. Cărpenaru, *Drept comercial român*, Editura All Beck, Bucureşti, 2002, p. 31.

services or an interposition within the merchandises' circulation, with the purpose of obtaining profit.

Art. 3 of the Trading Code presents as trading deeds: item 5 - any supplies' providing enterprise, item 6 - enterprises of public shows; item 7 - commission enterprises, business agencies and offices; item 8 - building enterprises; item 9 - factories, manufactures, printing houses; item 10 - publishing houses, bookselling, artefacts; *item 13 - transportation enterprises, for persons or things, on water or on dry ground*; item 20 - insurance enterprises and storage enterprises, into docks and storehouses.

Due to the fact that trading law only states an enumeration of the enterprises which are seen to be trading deeds, but yet does not expressed define the concept of enterprise, it belongs to the doctrine to formulate a general definition of the enterprise. Still, the expressed points of view highly diverge one from another.

So, following one opinion, the enterprise is a complex activity which consists in the repeated, organized and systematically exercising of the operations which are expressed stated by the Trading Code[12]. Another perspective defines the as an economical organism, headed by a person named entrepreneur, who combines the forces of nature, capital and work, in order to produce goods and services[13]. A third opinion outlines the enterprise as an organized structure for which the essential element is the speculated work of other persons, for the purpose of obtaining products and services meant to be exchanged[14]. Contemporary doctrine tries to elaborate a new definition of the enterprise, focusing not only upon the material side, around which the traditional approach was focusing its definition, but also upon the subjective and social elements, meaning the human collective which accomplishes this kind of activity. The economical aspect of the notion of enterprise and the elements which are specific to trading facts should neither be ignored.

In this respect, the enterprise is defined[15] as an economical and social organism - an autonomous organisation of an activity, by the entrepreneur who assumes his own risks, with the help of production factors[16], for the purpose of producing goods, of executing works and carrying out services, viewing to obtain a profit. This definition refers only to the activities stated by the art. 3 of the Trading Code, that is to say only to the operations that are registered as trading deeds. So, the concept of *enterprise* was submitted, like many other concepts existing into our law system[17], to a process of modification of the concept' sense, of evolution of its contents. This process is natural and suits the social and economical evolution of our society. So, according to the Romanian Trading Code, the concept of enterprise designates an activity organized under certain conditions and bearing a clear finality, yet without being recognized as a subject of law. According to the trading law, it is the entrepreneur who owns the quality of subject of law, as the one who organizes the activity. This one may be organized by one or more persons, in the frame of a trading society, so it results that, in the case of the individual enterprise. it is the individual person who is herself the subject of law. For the case of the trading company, which owns a moral personality[18], itself becomes a subject of law. According to the trading law, are trading deeds *the transportation enterprises, for persons or for things, on water or on dry ground*. Suiting the Trading Code, the transportations' asset of being a trading operation aims to the transportation of persons as well as to the one of goods, but only on water and on dry ground. Yet from the spirit of its regulations, it results that the airway transportation of persons and goods also constitute some trading deeds.

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[12] It is a definition grounded upon the professional criterion, to which is brought the objection of being not precise enough.

[13] I. N. Finţescu, *Curs de drept comercial*, vol. I, Bucureşti, 1929, p. 44-45

[14] It is a definition considered as restrictive for certain types of enterprises, such as business offices and trade agencies, but yet permissive towards other types of activities which are not enterprises, such as the activity of a freelance professional having a clerk of his own.

[15] M. de Juglart, B. Ippolito, *Cours de droit commercial*, Editura Montchrestien, vol. I, 1978, p. 134.

[16] The forces of nature, the capital and the work.

[17] For instance, the concepts of public order, of sovereignty, etc.

[18] S. D. Cărpenaru, *op. cit*., p. 41.

Anyway, suiting the Trading Code, transportation operations should be trading deeds only if they would be exerted within a systematically organization of the specific parameters, meaning under the conditions of an enterprise. *Per a contrario*, occasional operations, random transportations are not considered as objective trading deeds from the category of enterprises. Still, under legal conditions, they may be qualified as connex objective trading deeds accessory ones[19] or subjective trading deeds[20].

Transportation law and Civil law

The prescriptions of Civil Code regarding the transportation law are applied only in the situation when trading legislation should suffer from lacunae. This rule is instituted by art. 1 paragraph (1) of the Trading Code: "The present law is to be applied for trading. The Civil Code will be applied where the former does not dispose".

The regulations from the Civil Code that are applicable to transportation law are the following: art. 1470 item 2, through which the transportation contract is taxonomised art. 1473-1475, through which the carter's liability is ruled; art. 1476, which precises that: "the entrepreneurs of public transportations, on dry ground and on water must keep an account of their money, of the effects and packages they are taking the charge of"; art. 1477, which sends to the specific regulations of the various transportation branches, precising that those are, respectively, applicable[21].

So the Civil Code and the Trading Code do constitute the common law for trading transportations and they are applied, in the situation when these categories of transportation might not obey to a special juridical regulation, for the road transportation, stream transportation, railway, maritime and airway transportation.

Still, *lato sensu*, the transportation contract may be analysed as one which presents peculiarities, exceptions from the classical "structure and rules “of a civil contract. This analysis points to the idea that, in its ensemble, the contract of transportation too relies on the juridical ground, and makes use of as a starting point of the civil contract, the structure of which it takes as a "basis", a juridical "skeleton". Upon this former, with its respective peculiarities and specific assets, comes to develop itself the autonomous transportation contract. The doctrine considers civil law as the true "core" of the juridical system[22] so it constitutes for transportation, as well as for the other branches of private law, the common law to be applied.

We might start the analysis even from the discussions concerning *the birth of the transportation contract*, usually considered as being generated by the existence of another contract or by an obligation assumed through another contract. Economically speaking, the merchandises' circulation, as a category is generated by the conclusion of contracts such as the ones of sale-purchase, hiring, deposit etc. - so, they are civil contracts. The transportation contract, therefore, is a consequence of the execution of some obligations assumed through these contracts. Yet, as a juridical figure, the transportation contract is an independent one, with a juridical structure of its own, a result of the complexity of the civil and trading obligations created through the sides; economical relationships.

Thus, into this context, we have to analyse two kinds of relationships: one fundamental juridical relationship, the initial one which creates the first juridical connections, able, later to lead to the assuming of some obligations that will require, to be honoured, the conclusion of another contract, the one of transportation, another, derived, juridical relationship, which is represented by

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[19] The connex trading deeds are juridical acts or operations which acquire the trading feature due to the tight connection they have with acts or operations considered by the law as trading facts.

[20] The subjective trading facts are the ones which acquire the trading feature due to the person who does them, due to his quality of being a trader. In this respect, here is the art. 4, Trading Code: "Apart from these, are thought as trading facts the other contracts and obligations of a trader unless they would be of civil nature or unless the contrary would result from the act itself".

[21] The entrepreneurs of public transportations and coaches, as well as the ships' owners, are also due to respect the particular regulations, which have law power, between, themselves and the other citizens.

[22] I. Dogaru, S. Cercel, *Drept civil. Partea generală*, Editura C. H. Beck, Bucureşti, 2007, p. 15-16.

the transportation contract itself. Through they are connected one to another, the two relationships, practically the two contracts, are, each of them, independent.

About *the sphere of the persons to whom the contract in our case, the transportation one, is opposable*, let us precise that, for the transportation contract, the sides are: the forwarder and the carter. Yet, the beneficiary of the contract is the recipient, who, though he takes no part into the conclusion of the contract is (if he would join the respective contract) an acquirer of rights and obligations which originate from the transportation contract. Therefore, this contract is considered an exception from the relativity principle of the juridical act's effects (*res inter alios acta aliis nequere nocere, neque prodesse potest*) and is analysed by certain authors from specialized literature as a stipulation for another with certain particular features[23].

Thus the transportation contract appears as concluded for the benefit of a third side, that is to say a contract concluded between the forwarder, with the quality of stipulator and carter with the quality of the promiser, for the benefit of the transportation's recipient - the third side as beneficiary - who, this way, acquires a right of his own in regard to the carter. But, from the stipulation for another, there are differences, too. They aim to the fact that, in the case of the stipulation for another, the third side as beneficiary could become only a rights' owner, while, in the case of the transportation contract, the beneficiary bears obligations as well, (the recipient). Our conclusion is that there is no identity but only similarities between the position of the third side beneficiary in the stipulation for another and the one of the recipient in the transportation contract.

According to some other opinions to which we are joining[24], the recipient is the owner of some autonomous right, born straightly from the transportation contract. So, even if the transportation contract should not be totally reducible to a previous juridical construction like the stipulation for another, still the juridical nature of the recipient's rights could be explained through the analogy with the former. Therefore, the stipulation for another may be considered as a juridical ground upon which to properly define the juridical position of the recipient in the transportation contract.

About *the essential conditions*, the ones required for the validity of the transportation contract, they are the same as the ones for any convention, namely: the capacity of contracting, the valid consent of the side who obliges itself, a determined object and a licit cause. The form of the contract may also be an essential condition, if the law should stipulate this expressed. If one side would be a moral person, an essential condition should be, for validity, the respect of the speciality principle for the use capacity, according to which a moral person could enter juridical relationships only insofar those would be appropriate for the purpose of its foundation.

For the transportation contract, peculiarities concern only some aspects of the consent. So according to the legal stipulations of the matter, the carter is in a permanent offer status in regard to the public, and he does not have the right to refuse the performing of transportation, unless in cases expressed stipulated by the law. More, in the case of line transportation[25], where it is the carter who establishes conditions and brings them to the knowledge of the public, the acceptance given by the forwarder or by the traveller consists practically, in an adhesion. About the carter's capacity, he is required to own the capacity of being a trader[26] and, about the object, the carter could refuse a transportation only if he would not own the appropriate transportation means required by the respective types of goods. In principle, the transportation ought to be possible with the means owned by the carter.

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[23] The stipulation for another is the contract through which a side obliges itself to dispose that the other side, (the stipulator), should give, do or not do something for the use of a third person (the beneficiary) who does not participate in the conclusion of the respective contract nor is represented in it.

[24] Şt. Scurtu, *Contracte de transport de mărfuri în trafic intern şi internaţional*, Editura Themis, Craiova, 2001, p. 26-30.

[25] Transportations performed following a preestablished itinerary, with a regular and permanent frequency, with an unchanged schedule known by the public.

[26] Art. 7 Trading Code stipulates: "are traders those who do trading deeds, having the trading as their ordinary profession, and the trading societies".

This cause presents no peculiarities that would part it from the above mentioned rules of civil law. To it are applicable the arts. 966-968 Civ. Code, the following way: for the carter, the purpose for which the transportation contract was concluded is to obtain the transportation's price into which his own profit is included; for the forwarder and the traveller, the purpose is represented by the displacement of goods or of their own person. Following the Civil law rules in the matter of contracts, art. 969 Civil Code stipulates: "the conventions legally concluded have law power between the contracting sides". Thus the compulsory force of the contract derives from "the law power" which is recognized by the law itself to the contract in the relationships between sides. From this value, recognized to the contract, do result two important rules for the contracts' domain: the contracts' irrevocability and the relativity principle for the contract's effects[27].

A contract is concluded through the sides' agreement - *mutuus consensus* - and might be cancelled the same way, through the sides' common opinion - *mutuus dissensus*. This is the rule of the contracts' irrevocability.

Yet, legal stipulations on the transportation contract do depart from the principle enforced by the art. 969 paragraph (2) Civil Code and do grant to the forwarder the right to desist from the contract or to unilaterally modify it, with the obligation of paying to the carter the expenses done and the damages, direct and immediate, that would result from the execution of his disposition. So, according to the stipulations of art. 421 par. (1) Civil Code "the forwarder has the right to suspend the transportation and to demand the restitution of the transported objects or their handling to another person than the one indicated in the way bill, or to dispose how he might find suitable for himself, but he is due to pay to the carter the expenses done and the damages, direct and immediate, resulting from the execution of this counter-order".

Therefore, to the forwarder are granted: the right of renunciation about the contract[28], exerted unilaterally, and the right to modify certain clauses of the transportation contract[29] through a counter-order, meaning the juridical act through which the forwarder unilaterally modifies the transportation contract. More, to the forwarder is granted, in the case of the transportation's hindering or delay, due to overwhelming forces or to a fortuitous case, the right to cancel the contract itself. Art. 420, Trading Code, precises, in this regard: "If, due to a u case or to an overwhelming force, the transportation would be hindered or excessively delayed, the carter ought to immediately notify this to the forwarder, who owns the faculty of cancelling the contract, paying only the expenses made by the carter, and if the hindering should happen during the effective transportation, the carter would still be entitled to the payment of his performed service, in proportion with the accomplished route. In both cases the copy of the way bill that he had undersigned, either as promissory note or as payable to the bearer, should be returned to the carter". The difference between the two articles resides in the question of the damages that the forwarder should have to pay to the carter: according to art. 421 T. Code, the forwarder is obliged, if he should unilaterally modify the transportation contract, to pay to the carter all the direct and immediate damages resulting from the execution of the counter-order. Yet the art. 420 T. Code limits the forwarder's pecuniary obligations in regard to the carter. So, the forwarder who cancels the contract due to hindered transportation or to its delay issued from overwhelming force or fortuitous case is obliged to pay only the expenses made by the carter in order to duly execute the contract, when the delay occurs before the transportation's start; when the hindering occurs during transportation, the forwarder pays for the expenses made for the partial execution of the contract, meaning a part of the price, proportional with the route accomplished until that moment. Thus, the respective articles differ about the obligations they create for the forwarder.

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[27] According to art. 973 Civ. Code: "conventions have no effect, unless between the respective contracting sides". So, contract produces its effects only inside the contract's circle, only among the sides which concluded it. The compulsory power of the contract concerns as well other persons, such as the sides' causes holders, the contract being opposable to the latter's.

[28] The revoking may intervene before the contract's execution had started, but also during transportation, that is to say after a partial execution of it.

[29] For example, the forwarder's right to designate another recipient.

The disrespect of the obligations assumed through the transportation contract do generate civil liability, for the carter and forwarder as well.

About the liability of the forwarder and the one of the recipient, the applied rules are the ones from common law; but, as the carter is concerned, we have to tackle with aspects that differ from common law's rules. We have to analyse two aspects: the carter's liability grounded upon the contract and the carter's liability for misdemeanours.

The juridical regime of the carter's liability is given by the stipulations of the Civil Code: arts 1073-1090 do rule the contracted liability while art. 998-1000 rule the carter's misdemeanour liability. For merchandises' transportation, the carter's liability is also ruled by the Trading Code. The regulations stated by the Civil and Trading Codes are applicable only insofar certain aspects of the transportation contract should not obey to special regulations[30].

Civil liability for misdemeanours is a specific sanction of civil law applied for the perpetration of the illicit deed causing prejudices, and owning a reparatory function[31].

Through the execution of the transportation contract, the carter involves his liability, as well to his contractor, but perhaps also towards third sides; when, there are deeds perpetrated by the carter outside of the occasion of the transportation contract the carter's liability would be civil for misdemeanours. The legal frame of this situation is given by art. 998 Civil Code, which makes the precision: "any human deed causing prejudice to whoever obliges the one due wham's error it was occasioned to redress it", and by the art. 999 Civ. Code which stipulated: "a man is liable not only for the prejudice he has caused through his deed, but also for the one caused due to his negligence or his imprudence".

The professional carter is a trader, which provides, for the extra-contract action too, - when it was perpetrated during profession's exercising - a mercantile feature[32], therefore operating the mercantile presumption, as stated by art. 4 Trading Code[33]. The essential condition for the involvement of the carter's contractual liability, is the existence of the transportation contract. In order to involve the transporters contractual liability, the transportation contract has to cumulate the following requirements to be a juridical valid contract, direct juridical relationships to be established between the carter and the for - warder/recipient, - between the damaged side and the prejudice's author; the prejudice to be resulted from the total or partial non-execution of an obligation born from the transportation contract itself, meaning from the contract itself which binds the damaged side to the author of the prejudice[34]. But if we are speaking of a "transportation enterprise", this would be a moral person and the liability should be no more direct, but a contractual liability for another side. The general conditions of the carter's contractual liability are the ones from common law: the illicit deed causing prejudice, the author's guilt, the existence of the prejudice and the causal bond existing between the prejudice and the illicit deed.

The doctrine considers the carter's juridical regime as worsened than the one of the contract liability from common law. This fact is due to the obligation assumed by the carter to handle the transported wares to the recipient. Therefore, the carter's *obligation* is a compulsory result one, so any deficiency in its execution might be assimilated to an illicit deed. In transportation law, compared to common law, the carter's contract liability presents specific elements. About its juridical regulation, it is applied as follows: in priority the stipulations of special laws[35] and, only in the case the formers should not exist, the rules of common law would be applied[36]. In regard to the rules of common law, the specific elements of the carter's contract liability are, in priority,

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[30] Gh. Filip, *Dreptul transporturilor*, Casa de Editură şi Presă "Şansa" SRL, Bucureşti, 1998, p. 44-45.
[31] V. I. Niţă, *Drept civil. Teoria generală a obligaţiilor*, Editura Universitaria, Craiova, 2004, p. 112-115.
[32] O. Căpăţână, *op. cit.*, p. 169.
[33] Art. 3 Trading Code: "The law considers as trading facts (...) transportation enterprises for persons or things on water or on dry ground" and art. 4 Trading Code: "Apart from these, are thought as trading facts the other contracts and obligations of a trader unless they would be of civil nature or unless the contrary would result from the act itself".
[34] O. Căpăţână, *op. cit.*, p. 171.
[35] Laws that are specific to some types of transportation, Trading Code's regulations, transportation rules
[36] Şt. Scurtu, *Contracte de transport de mărfuri în trafic intern şi internaţional*, Ed. Universitaria, Craiova, 2003, p. 81-83.

concerning the charge of the evidence's admission and the extent of the indemnifications[37]. According to the Trading Code[38], the carter is liable for the loss or deterioration of the things that were entrusted to him for all the duration of the transportation contract, unless he is able to prove that the damaging respectively the deterioration of things came from a fortuitous case or an overwhelming force, or either from the things' inner vice or nature, or again from the deed of the forwarder or the one of the recipient. Therefore art. 425 Trading Code institutes a relative presumption of guilt if the carter should not fulfil his contract obligations. This legal relative presumption, however, does not harden the regime of the carter's liability; it simply obliges him to display the evidence required. About the extent of the carter's liability, according to art. 430 par. (1) Tr. C., in case of loss or deterioration of the merchandise entrusted for transportation, the compensation is established the effective damage only (*damnum emergens*), but not in regard to the unrealized benefit (*lucrum cessans*). This means that the carter's liability, as established by the Trading Code, is reduced compared to its statement by common law (art. 1084-1086). There, the total prejudice contains as well the effective one and the unrealized gain.

The Civil Code and the Trading Code consider the liability of the carter guilty of humbug or some grave deed as being still contractual, and they aggravate it at the damages' calculation; so, the humbug and the grave deed do not become assimilated to the fraud case into which they should attract a misdemeanour liability[39]. Our analysis proves that the civil contract, as it does for other contracts from the sphere of private law, does ensure a starting point and juridical ground for the transportation contract, but yet this latter remains a distinct, autonomous contract.

Hence, the transportation contract is a convention between the professional carter and the forwarder, through which the carter obliges himself, in exchange of a remuneration, to transport, with an adequate transportation mean, and in a certain period of time, wares or persons. In case of merchandise transportation, the carter obliges himself to handle the goods to the recipient.

The unity of the Romanian law system is assured, among others, through correlations and interferences between its components (branches) firstly, and secondly, through the juridical institution of a law branch as *common law* for one or many other branches. In the case of transportation law it is the Trading Code and the Civil Code that are taken as *common law* for it.

Transportation law and international private law

The international private law is, in the internal law of each state, the branch representing the corpus of rules, applicable to individual and moral persons, as subjects of private law, in the frame of international relationships. The object it juridical rules is, for the international private law, the private law relationships with an extraneous element, largely speaking the civil law relationships with an extraneous element, containing all juridical relationships mentioned by the frame law namely the Law nr. 105/1992 on the regulation of international private law relationships.

Art. 1 par. (2) of the law stipulates: "*In the sense of the present law, the international private law relations are the civil, trading, work, civil, procedure ones, and other private law relations with an extraneous element*. Therefore , may constitute the object of international private law only the juridical relationships that own the specific features of this branch of law, namely: the relations are established between persons (individual and/or moral) as subjects of private law; they contain an extraneous element; they pertain, largely speaking, to civil law, meaning that they come from: civil law, family's law, procedure civil law, work law, trading law, transportation's law, real estate's law, environment's law, intellectual property law, competition's law etc.[40] Transportation's law is connected to international private law mostly about the laws' conflict in space. It comes to birth due to the extra-territorial feature of transportation activity. The Law, nr. 105/1992 itself establishes this connection. This law rules a series of aspects directly related to transportation law: the conflict norms from the matter of contracts, which indirectly create connections with the transportation contract, may this latter be of civil or trading natures; directly, through the special regulation

[37] Ibidem, p. 84.
[38] Trading Code, art. 425.
[39] Şt. Scurtu, *op. cit.*, p. 84.
[40] B. Predescu, *Drept internaţional privat*, Ed. Universitaria, Craiova, 2002, p. 42-47.

regarding the conflict norms ruling the contracts of transportation and forwarding; the conflict norms regarding the goods during their transportation; the conflict norms regarding the means of transportation; the conflict norms regarding civil navigation - on sea on streams, on air; the juridical acts and facts happened aboard the ship or airship the illicit deeds perpetrated by ships or airships or aboard them which may cause prejudices to their outside the collision of ships or airships; the assistance to and rescue of ships; the incidence for the Romanian law, of the immediately applicable norms[41]. Transportation law and international private law are also connected through conventions of international public law, but bearing effects for the international private law; they concern, within international private law, the liability for the prejudices caused by the objects launched in the space outside the atmosphere. In the matter of contracts, in order to establish which law should be applied to one precise contract, the Romanian international private law follows the principle that the sides are entitled to choose which law should be applied to the contract with an extraneous element[42]. So, art. 73 of the Law nr. 105/1992 stipulates: "The contract is submitted to the law chosen by consensus by the sides" and art. 74 dispose: "The choice of the law applicable to the contract must be expressed or should undoubtedly result from its contents or from the respective circumstances". The contract's law - *lex contractus*[43] - may be *lex voluntatis*, meaning the law chosen by the sides on behalf of their will's agreement - autonomy of will. If the sides' manifestation of will, regarding the law applicable to the respective, contract, should lack, this latter would be located into the sphere of a law system, following objective criteria, stated by the law. The *lex voluntatis* rule operates not only in the field of civil contracts, but for trading ones, being imposed, appropriately, by the needs of economic development and goods' exchange, as a rule mostly promoted by economically developed states[44].

Art. 103 of the Law nr. 105/1992 stipulates that, if the sides' agreement on the law should lack, in the contracts of transportation, forwarding and others kindred would be applied *the law of the transporter or of the forwarder's siege*. Thus, the law of the carter's siege should be applied as ruling law of the transportation contract only if the sides, through their own will, would not have established a law applicable to the respective contract. This law rules upon the contracts' essential conditions and effects, while the regimes of the goods during transportation and of the transportation means are submitted to other confliction solutions, those stated by arts. 53-56 of the Law nr. 105/1992[45]. This regulation is applicable to all kinds of transportation, and it could be substituted only by the existence of an international convention which should establish uniform norms for a certain type of transportation or about a certain problem of law. The good, during its transportation, is submitted to the law of the state wherefrom it was forwarded[46]. To the law of forwarding place, the law stipulates from 3 exceptions:

(a) when interested parts have chosen, by their own agreement, under the conditions stated by arts. 73 and 74, another law which, therefore, becomes applicable;

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[41] D. A. Sitaru, *Drept internaţional privat. Tratat*, Editura Lumina Lex, 2001, p. 477-501.
[42] I. Filipescu, *Drept internaţional privat*, Editura Actami, Bucureşti, 1999, p. 349.
[43] The competent law for governing the essential conditions and the effects of the contract.
[44] B. Predescu, *op. cit.*, p. 417.
[45] To this purpose, art. 53 of the Law nr. 105/1992 stipulates that the good being in course of transportation is submitted to the law of the state wherefrom it was forwarded, unless if: the interested sides might have chosen, through their agreement, another law, which, therefore, becomes applicable; the good comes to be stored into a warehouse or placed under distraint on the ground of some insurance measures or due to an unwilling sale- purchase: in these cases, during the time of deposit or restraint being applicable the law of the place where it was temporarily relocated; if the good should figure among the personal effects of a passenger, it would be submitted to his own national law. The law also stipulates that the effects and conditions issued from the reserve of the ownership right concerning a good meant for exportation, if the sides should happen not to convene otherwise, would be ruled by the exporting state's law. The constitution, transmission or extinction of real rights upon a transportation mean are submitted to:
a) the law of the pavilion displayed by the ship or the airship;
b) the law applicable to the organic statute of the transportation enterprise, for the railway means and road vehicles from its patrimony
[46] Art. 53 of the Law nr. 105/1992.

(b) if the respective goods should be stored into a warehouse or placed under distrait due to some insurance measures or due to a forced sale-purchase. In such case, for the period of the deposit or of the restraint, is to be applied the law of the place where the goods have been temporarily located;

(c) if the respective goods should be part of the personal belongings of a passenger, they would, into this situation, be submitted to the passenger's national law.

The juridical regime of transportation means is submitted to different laws, as a function of the fact if there is a flag colour or not. So:

- ships and airships are ruled by the law of the flag they are raising, namely the *lex pavilionis*[47];
- for transportation means which own no pavilion, the law of the organic statute[48] of the transportation enterprise to the patrimony of which they belong should be applied. This kind of law rules the questions that follow as a synthesis:

a) constitution, transmission or extinction of real rights upon a transportation mean[49];

b) the regime of goods staying long-time aboard this transportation mean, as forming its technical endowment;

c) the claims having as object the expenses made for the transportation mean's technical assistance, maintenance, repairing or renovation[50].

The conflict norms regarding civil navigation benefit from a special regulation, in the Law nr. 105/1992, in its Chapter V, focused on goods, but also in its Chapter X, entitled: "Civil, stream, maritime and air navigation"[51]. So, art. 55 of the Law 105/1992 stipulates: "the constitution, transmission or extinction of real rights over a transportation mean are submitted: a) to the law of the pavilion raised by the ship or airship". Art. 56 shows that pavilion's law is applied as well to the goods staying long time aboard, as forming its technical endowment, as to the claims having as objects the expenses made for the technical assistance, maintenance, repairing or the renovation of the transportation mean.

The juridical acts and facts pertaining to civil navigation usually are submitted to the *lex pavilionis*[52].

About the application domain of this law, its art. 139 shows that: "The law of the ship's pavilion or the law of the ship's registration state are applied to the juridical acts and facts occurring on board, if according to their own nature, these would be submitted to the law of the place where they occurred". Art. 140 precises that: " the ship pavilion's law or the law of the registration state for aircrafts rules particularly:

a) the powers, competencies and obligations of the ship or airship's commander;

b) the employment contract of the navigating personnel, if the sides have not chosen another law;

c) the ship owner's liability in regard to the deeds and acts of the ship' commander and of the crew, and the liability of the transportation enterprise for airships;

d) the rights, real and the ones of guarantee, on the ship or airship, as well as the publicity forms concerning the acts through which such rights are constituted, are transmitted or cease". Arts. 141 and 142 of the law focus on the regulation of the maritime and stream boarding and on the collision into air. Arts. 143 and 144 of the Law 105/1992, treat of other situations which attract civil liability. The pavilion's law has very extended competencies, due to the fact that the inside space of ships and airships is considered to be an extension of the national territory of their registration

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[47] Ships and airships own a nationality expressed through their pavilion. This nationality is given by the country where they have been recorded or registered, therefore displaying the pavilion of this country. The pavilion's law represents the juridical connection, grounded upon registration, between ships or airships and the territory of a state, respectively this state's law system. A ship or airship can have only one pavilion.

[48] The organic statute's law represents the law of the social siege; it plays the same role as the pavilion's law for ships and airships: it confers a nationality to the respective transportation mean.

[49] Art. 55 of the Law nr. 105/1992.

[50] Art. 56 letters a) and b) of the Law nr. 105/1992.

[51] Arts. 139-144 of the Law nr. 105/1992.

[52] D. A. Sitaru, *Drept internaţional privat*, Ed. Lumina Lex, Bucureşti, 200*1*, p. 484-487.

states. This is the reason why the pavilion's law rules a very large category of juridical problems related to ships and airships. So, the regime of ships and airships, seen as goods, is ruled by the *lex pavilionis*. Therefore, it owns competencies over: the ways of acquiring real rights over ships and airships, the ways of transmission and extinction of these rights, on the real pledges constituted over ships and airships, on their juridical regime, on the claims constituted over ships and airships.

The *lex pavilionis* also rules over the regime of the goods being aboard ships and airships which are tightly related to their normal exploitation[53] and over the forms of publicity requested, in most of law systems, for the rights constituted over ships. The pavilion law is applied whenever an act should be elaborated aboard the respective ships or airships, in regard to the exterior form of the act, if, for the validation of the respective act, the intervention of a public authority would be necessary[54]. Pavilion's law averagely rules the regime of juridical facts which happen aboard ships and airships, but also the misdemeanour produced at large into the sea and into the air space beyond. If ships or airships would be in the internal maritime space, distinction should be made upon the applicable law following the criterion of application exerted upon the outside environment or not. If the external environment should be afflicted, the law of the prejudiced territory would be applied as the *lex loci delicti commissi*. If there would be no application, the *lex pavilion* is should be the one applied[55]. The immediate application norms, or material norms, are the ones which express a special interest, either social economical or political. They are imperative and they are applied on the territory of the state which enforced them. So is avoided the possibility of application of a foreign law and the appearance of the laws' conflict. In this respect, art. 143 of the Law nr. 105/1992 is an immediate application norm stipulating: "the dispositions of Romanian law regarding the flight routes and security within the Romanian air space are applied to whatever airship, no matter of its registration state, as well as to its crew and passengers from aboard". The art. 11 of the Air Code states also that: "regulations in the domain of airships circulation within the national air space are compulsory for all civil airships, no matter of their category and nationality". The stipulations of the Gov'. O. nr. 42/1997 on naval transportation follow the same idea, insisting that, for all ships within our territorial waters, either maritime or streams, it is compulsory to respect the imperative navigation rules stated by our law.

Transportation law and public international law

The connection between transportation law and international public law is especially pointed out about questions pertaining to the juridical regime of the territory. Its statute is defined by international public law, but its connections to transportation law reside insofar transportations are performed within these spaces. There are matters like: the juridical regime of the sea at large, or the one of the air space beyond the sea at large, the juridical regime of territorial sea, of straits, maritime channels, other problems related to the territory's definition and delimiting. The state's territory represents, for public international law, the geographical space within the limits of which the state exerts its full and exclusive sovereignty; it represents, joining the population and the structure of the power's organs, one of the premises of the state's existence. The components of the states' territory are: the terrestrial space[56], the aquatic space[57] and the air space[58]. As components of the territory the frontiers are also classified as: terrestrial, stream, maritime and air frontiers[59].

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[53] This is not about the regime of the personal effects of the travelers, since they are ruled by the personal law of the traveller.

[54] The commander of the respective ship or airship represents the public authority; he has the prerogatives of a legal status delegate, and according to the Romanian law, facts of legal status may be registered aboard ships, respectively births and deaths, but also acts of civil status, like a marriage. In any case, the powers, competencies and obligations of the ship or airship's commander are stipulated by the pavilion's law.

[55] B. Predescu, *op. cit.*, p. 477-481.

[56] The terrestrial space is the one containing the soil and the underground within the limits of the state frontiers, no matter if this one would be made of an one and only surface or should be split by maritime waters.

[57] The aquatic space contains the inside waters (rivers, streams, channels, lakes and inside seas). For the states owning a littoral, it contains the inside maritime waters and the territorial sea.

[58] The air space represents the air column situated beyond the terrestrial territory and aquatic space of the state.

[59] R. Miga-Beşteliu, *Drept internaţional. Introducere în dreptul internaţional public*, Editura All, Bucureşti, 1998, p. 212.

International sea law is a part of international public law and it is formed of the frame of international law norms - either customs or conventions - which rule the maritime space's juridical regime and the cooperation regime among states regarding the use made of these spaces and of their resources[60]. The law questions it tackles with are a lot: inside maritime waters, territorial sea, contiguous zone, continental plate, islands' regime, exclusive economical zone, sea at large, maritime straits used for international navigation, maritime channels with an international regime, submarine space's international zone, contained and semi-contained sea.

Are regarded as maritime inside waters, for the states with a littoral, the waters of harbours and road stead's[61], of bays and fjords, situated between the littoral and the base line of the territorial sea. The harbour waters are the ones sited between the shore and the line which reunites the harbour equipments the most outstanding towards the large, under the condition that the structures of these equipments should be integrated to the one and only respective harbour' system. The bays waters are delimited towards the sea at large by the line which reunites the most advanced points of a notch in the shore, this distance having not to be larger than 24 sea miles[62]. For inside maritime water the juridical regime is dominated by the principle of the full exercise of the riverside states' sovereignty[63]. This principle operates a clear separation between trading ships and state ships used for other purposes than trading (especially military ones) concerning the access and standing of foreign ships. In this regard, access conditions for trading ships into maritime inside waters are exclusively decided by the respective riverside state, while, for state ships, access to the inside maritime zones is submitted to much more restrictive requirements, such as: the term of previous notification, the limiting of the allowed time or allowed manoeuvres, sometime even the refusal of granting entrance. The only admitted exception to this rule is the case of an overwhelming force, when the harbour's access is admitted for whatever category of ships, even for military ones.

The territorial sea represents the part of the sea or ocean's waters, along the territory of a state, which lies between the base line and the outside line[64] and which is under the authority of the riverside state[65]. The territorial sea, as for its juridical regime, is submitted to the sovereignty of the riverside state, which exerts exclusive competencies upon this space. The riverside state's rights briefly synthesized, are: economical rights[66] the right of ruling navigation in its territorial sea, the right to ensure the security of this respective zone and the right of exerting jurisdictional, penal and civil competencies within its respective territorial sea. The juridical regime of territorial sea presents some particular assets, issued from the combination of this - border - space's physical and geographical features and - with - the connection of this space with the sea at large. One of the outstanding questions concerning the juridical regime of territorial sea is how to ensure *the right to a harmless transition through this zone* to foreign ships. So, to be considered harmless the transition of a ship has to fulfil the following requirements: to be a continuous and fast transition; not to cause prejudices to the juridical order in place, to peace and to the security of the riverside state: to respect the rules of international law. The riverside state may forbid to foreign ships the access to certain security zones, but yet it is obliged to ensure their right to transit through maritime routes.

The contiguous zone represents the sea strip joined to the territorial sea. It lays beyond this formers' external line till an upmost distance of 24 sea miles at large, measured from the base lines of the territorial sea. The riverside state exerts prerogatives similar to the ones upon its territorial

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[60] M. Mihăilă, *Elemente de drept internaţional public şi privat*, Editura All Beck, Bucureşti, 2001, p. 66-67.

[61] These are water areas joining to the ports, partly confined through jetties, who serve for ship' sheltering or as anchors' casting places, before entering harbours or getting out at large.

[62] The historical bays, which may exceed this largeness limit, are excepted from this rule.

[63] This principle was validated through the habit's way and by the Convention and the Statute from Geneva, in 1923, concerning the harbours' international regime.

[64] The external line of the territorial sea is an imaginary line, parallel to the territorial sea's base line and sited at a distance equal to the territorial sea's width.

[65] M. Mihăilă, *op. cit.*, p. 67.

[66] The exclusive right of fishing, the exploration right and the right to exploit the soil's and underground assets of the territorial sea.

sea and they consist in preventing the trespassing of its laws, of its regulations on customs, tax imposing, sanitary, security ones, on navigation, immigration or fishing.

The continental plate or platform represents geologically, the natural extension of the shore, which descends, by a soft slope, under the sea waters till the continent's reaching a depth of, usually, not more than 150-200 m. Next follows the abrupt continental batter going down to the seas and oceans' great pits[67].

About the continental plate's juridical regime, the riverside state is the one which exerts upon this space: "sovereign rights of exportation of its natural resources". The riverside state has also the right of building upon and implanting on the continental plate artificial islands and other devices meant to explore or exploit its resources; such rights have to be exerted in such a way that the regime of sea at large of the waters beyond should not be infringed, as well as the freedom of the air space. The riverside state cannot prevent other states from implanting and using of submarine pipelines and cables within the perimeter of its continental plate.

The islands are natural land surfaces, surrounded by water, which remain beyond water during the high tide. If they would be inhabited, the islands should have a territorial sea, a contiguous zone, a continental plate and an exclusive economical zone. The islands, usually are parts of the territories of the various states. The exclusive economical zone represents a new institution of maritime law, which appeared due to reasons related to the necessity of exploring, exploiting and preserving resources. It is an area joining the territorial sea, submitted to specific regulations, which could not exceed beyond 200 sea miles from the base lines from which the territorial sea was measured. Into this space, the riverside state owns sovereign rights only concerning the exploration, exploitation and preserving of natural resources, either biological or non-biological. The riverside state also owns the right to implant and use of, into this zone, artificial islands, devices and equipments, to perform scientific research upon the sea and to preserve the marine environment. All the other states have there the full rights of navigating and air transit beyond it, as well as the right of settling submarine cables and pipelines. The Convention of 1984[68] greatly developed maritime law by the regulation it offered to this marine space, which is of high importance. But the precise juridical nature of this regulation is difficult to establish, since it reunites elements from the regimes of territorial sea with elements from the one of the sea at large. The sea at large is the part of the sea which is not contained by any exclusive economical zone, any states' territory, any states' maritime inside waters nor in the archipelago waters of an archipelago state. This zone is not submitted to the sovereignty of any state or group of states.

The basic rule which governs this space is the one of freedom, that is to say a space open to all states, no matter if they would be riverside states or they would own no littoral. The juridical regime of the sea at large is founded upon some principles: the principle of freedom for the sea at large (for navigation, for air transition in the air space beyond the free sea at large, freedom for fishing, etc.), the principle of preventing and repressing some infractions within the free sea at large, the right to visit and pursuit of ships within the sea at large and the right, for the states with no littoral, to access the sea at large. For this kind of sea, one of the most important aspects of its juridical regime is represented by the straits' situation. These straits are the water areas, situated between terrestrial areas, which form tight passages useful for navigation. These straits have an international juridical regime, due to the fact that they allow the connection between parts of the sea at large or of exclusive economical zones and another parts of them. The riverside states of maritime straits do own the right of adopting laws and regulations concerning the assurance of navigation security through the straits, the prevention and reducing of pollution for sea waters, for the forbidding of fishing into the straits, for the embankment or landing of persons or merchandise that would be contrary to the laws of the coast' states, either in customs, internal revenue, heath or immigration.

The channels of this category represent navigation paths artificially created, in order to facilitate a quick communication between certain seas and oceans. They are valuable for

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[67] R. Miga-Beşteliu, *Introducere în dreptul internaţional public.* Ed. All, Bucureşti, 1998., p. 232-234

[68] The United Nations' Convention on the sea's law.

international navigation. A channel is a water inside flow, which belongs to the state that owns the two shores of the sea or the ocean; this until the granting of the international statute, that is to say until the channel becomes open, without discrimination, to the navigation of all states, through an international agreement or through an unilateral statement of the riverside state. This type of zone owns a specific juridical regime, regarding the surface and underground of seas and oceans, beyond the limits of the national jurisdiction of riverside states. It is yet different from the juridical regime of the sea at large. This other zone and its resources are considered as the common patrimony of humanity. Unlike for the other international spaces, where the states' access is free, in the International Zone of Submarine Spaces any activity may take place only due to an authorization issued from the International Authority of Submarine Territories-a specialized inter-governmental international organization, with its headquarters in Kingston, Jamaica, founded upon the principle of the states' sovereign equality. The confined or semi-confined sea represents a bay, a basin or a sea surrounded by many states and connected through a strait or either mostly or entirely constituted of the territorial seas the exclusive economical zones of many states. The juridical regime of semi-confined seas is influenced by the regime of their straits.

The streams' international law consists in the ensemble of juridical norms which rule the relationships among states concerning the use of non-maritime waters, especially for navigation. The dominant principle of this matter is the freedom of navigation on these streams.

The national air space of a state represents the air column situated beyond its terrestrial territory and its territorial sea. The international air space is the one beyond the sea at large and beyond the exclusive economical zone and the continental plate of some states. It is open to the air navigation for all states. The juridical regime of air navigation, bringing no prejudice to the states' sovereignty over their own air space sustains a series of rights which were adopted through international practice and are called: "air liberties". They may be classified in two categories: transit rights and traffic rights. The transit rights are: the right to pass through the territory without landing and the right of landing for non-trading reasons. The traffic rights are: the right to disembark passengers and to unload mail and merchandise, that have been embarked on the territory of the state wherefrom is the ship's nationality; the right to embark passengers, mail and merchandise destined to the territory of any other contracting state; the right to disembark passengers, mail and merchandise coming from the territory of any other contracting state; the right to embark mail and merchandise towards the territory of the state wherefrom is the ship's nationality.

So, transportation law presents connections with international public law, on the fields of territory questions and of international regimes for some spaces, in actual international law. They exist insofar transportation law makes use of the specific denominations enforced for these spaces, which are defined and precised by public international law. It also makes use of a set of rules and principles that are valid within the geographical analyzed zones. The juridical regime of these zones is established and governed by the norms of international public law. As these two law branches belong to different law spheres - public and private - the connection of them is possible especially due the feature of extra-territoriality owned by some transportation categories.

Transportation law and constitutional law

The principles governing transportation law are issued from its specific norms; yet, we may find among them some which are assumed from the Constitution, such as: the assurance of free circulation for persons and merchandises[69] or the application of the stipulations of conventions and agreements into which Romania is a side[70]. The right to a free circulation, stated by the Constitution, is the one which ensures the citizen's freedom of movement, under both its aspects: the free circulation on the Romanian territory and the free circulation outside of it. This principle should not be understood as providing an absolute freedom of circulation; it is governed by rules, and some conditions, established by the law, have to be fulfilled and respected. These conditions, regarding the exercising of the right to a free circulation aim, in fact, to protect some economical and social values, the fundamental rights and liberties, the normal course of our relations with other

[69] Art. 20 of the Romanian Constitution.
[70] Art. 148 paragraph (2) of the Romanian Revised Constitution.

states[71]. The Romanian Constitution also sustains an actual principle: the priority of international regulations versus the internal ones. The purpose of it is, firstly, to state our modern vision on the relationship between internal law and international law and, secondly, to point out the receptiveness and adhesion of the Romanian law system to international regulations[72]. The constitutional rules issued from this principle are: the stipulations on the citizens' rights and liberties are interpreted and applied in accordance with the statements of international treaties of which Romania is a side; priority is granted to international regulations from the treaties ratified by our country versus our internal regulations, in case of misfittings between them[73].

Transportation law and administrative law

The sanctioning aspect of transportation law supposes compulsory completion references to administrative law, in the matter of contraventions.

In a transportation contract, the sides' claims might be satisfied through two possible ways: the administrative denunciation and/or the lawsuit in front of competent courts. The administrative denunciation represents an efficient way of avoiding litigations and of solving the claims raised versus the carter by the other side of the transportation contract. This phase, prior to standing into a judicial court, is particular for transportation law. Its purpose is to try for an amicable resolution of differends, a higher celerity in revaluating the claims towards the carter and, last but not least, the necessity of avoiding, for judicial courts the large number of litigations issued from claims expressed due to transportation contracts. Another particular asset, if compared to common law, is that the right to decide belongs to the carter, and that negotiations, not like in common law, do not have equal positions for the sides[74]. For some transportation contracts, like railway transportation, the administrative denunciation in order to repair the damages caused by the unfulfilled carter's obligations is even compulsory. The main effect of the administrative denunciation is to disturb the course of extinctive prescription, suspending it until the denunciation would be solved by the competent organ.

Transportation law and penal law

The sanctioning part of transportation law also supposes references to penal law regarding the infractions perpetrated by the carter the passengers and the third sides[75]. Penal sanctions are also stipulated for those who do not respect the instituted requirements for transportation's organizing and execution, as well as for the protection of its infrastructures, as a function of the deed's gravity[76]. For example, in the case of railway transportation, the services of which are increasingly requested, in accordance with economical development and social progress, the beneficiaries of this type of transportation become increasingly exigent about transportation capacity, about efficiency, comfort, quickness, safety of it. In order to realize these requirements a rigorous organization is necessary for transportation, accomplished by a personal that is compared by juridical literature[77], in terms of discipline and rigorousness, to the military force. The economical and social importance of this type of transportation, the increase of the demand for it, the exigencies imposed in order to offer above all safety, request the incrimination of facts which infringe the duties regarding the transportation' safety on railway. The generic juridical object of this type of infractions is constituted by the social relationships which are formed, developed and accomplished through the existence and increase of the safety for railway transportation. It is, as well, tightly related to the adequate fulfilling of their duties by the personnel in the railways' exploitation and maintenance[78].

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[71] I. Muraru, S. Tănăsescu, *Drept constituţional şi instituţii politice*, Editura Lumina Lex, Bucureşti, 2001, p. 209.
[72] D. C. Dănişor, *Drept constitutional si institutii politice, Vol. I, Teoria* generala, Tratat, Ed. C.H. Beck, Bucuresti, 2007, p. 554
[73] Anyway, this priority aims exclusively to the regulations from the domain of human rights, but not from other domains.
[74] O. Căpăţână, Gh. Stancu, *op. cit*., p. 233.
[75] Ibidem, p. 12.
[76] A. Călin, *Dreptul transporturilor*, Ed. Evrika, Brăila, p. 31.
[77] See, to this, purpose H. Diaconescu, *Drept penal. Partea specială*, vol. II, ed. a 2-a, Editura All Beck, Bucureşti, 2005: "The railway, its workers, were sometimes seen as representing a second army".
[78] Ibidem, p. 249-265.

Therefore the necessity of a normal exploitation of the railways' infra-structure and of the full safety of transportation claims for the protection given by the penal law. It is due to these reasons that, in the sphere of penal law, all reunited under the denomination: "crimes and misdemeanours versus the circulation' safety on railroads", we will meet infractions such as: the failure to the duty requirements or their inadequate fulfilment, due to guilt, the departure from one's post unauthorized, the presence on duty in a state of ebriety, false signalisations and destructions, etc.
Transportation law interferes with penal law, and this fact can be noticed for other kinds of transportation too, not only for the railway one. It expresses this interference through the protection offered by the penal law's sanctions, given to those who do not respect the stipulations instituted in order to ensure the transportations' organization and execution in safety and under normal conditions.

Transportation law and procedural civil and penal law

The steps of contentious nature which are inherent to transportation activity are ruled, at the common law level, by civil or penal procedure law, suiting cases. Averagely, litigations in the transportation domain are ruled by norms of the Civil Procedure Code. Lawsuits issued from the transportation contract are procedural means through which the sides do realize their claims concerning the execution of the obligations generated by the transportation contract or regarding the restoration of the prejudices caused to the sides by the disrespect brought to the contract's clauses. These lawsuits may be contractual[79] or to be issued from misdemeanours[80]. So, in the matter of transportation law, we may speak of the application of the common law regime of the civil or trading lawsuits, following the case, when it comes to the trial's phases, to the evidence providing, to the participation of third sides, etc.

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[79] The lawsuits issued from the transportation contract grounded, for instance, upon the loss or damage suffered by the transported object or the delaying of the respective transportation.

[80] The lawsuits issued from the infringement of the law, for instance the unjustified refusal of the carter to agree upon a transportation contract, the primacy granted by the carter to another forwarder for transportation, even if this latter had concluded the transportation contract after the claimant had done it.

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