

## **The Convention on the Contract for the International Carriage of Goods by Road (CMR): Survey, Analysis and Trends of Recent German Case Law**

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### **I. INTRODUCTION**

Although the Convention on the Contract for the International Carriage of Goods by Road (CMR) is largely considered to be the work of a United Nations Committee, the primary initiative came from Unidroit.<sup>1</sup> As early as in March, 1948, Unidroit suggested a unified law of contract for the international carriage of goods by road – a unification which had already taken place for all other modes of transportation many years before. Unidroit's initiative was willingly accepted by a subcommittee of the Inland Transport Committee of the United Nations Economic Commission for Europe (ECE). The ECE prepared a draft convention which was submitted to some fifteen national delegations as a basis for negotiations and was finally adopted in Geneva on May 19, 1956 by nine States.<sup>2</sup>

The CMR was definitely a late-comer in the evolution of international transport law. Similar bodies of rules unifying the law of contracts concerning the cross-border carriage of goods had been established first in 1890 for rail transport,<sup>3</sup> in 1924 for carriage of goods by sea<sup>4</sup> and in 1929 for the international carriage of goods and persons by air.<sup>5</sup> That development in creating uniform law closely reflected the underlying economic forces, since the industrial revolution started in the late 19th Century not with ships, aeroplanes or trucks, but with the

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<sup>1</sup> For a comprehensive outline of the Convention's history see *Roland Loewe*, Erläuterungen zum Übereinkommen vom 19. Mai 1956 über den Beförderungsvertrag im internationalen Strassengüterverkehr, ETR 1976, 503, 504 *et seq.*

<sup>2</sup> Federal Republic of Germany, France, Yugoslavia, Luxembourg, the Netherlands, Austria, Poland, Sweden and Switzerland; cf. Harald de la Motte in: Karl-Heinz Thume, Kommentar zur CMR, Heidelberg 1994, before Art. 1 No. 3.

<sup>3</sup> Convention internationale sur le transport des marchandises par chemins de fer du 14 octobre 1890, Reichsgesetzblatt 1892, 793. Cf. *Béla von Nánassy*, Das internationale Eisenbahnfrachtrecht, Leipzig 1943, Einführung, pp. III and IV.

<sup>4</sup> Convention internationale pour l'unification de certaines règles en matière de connaissance du 25 août 1924 (so called "Hague Rules"), Reichsgesetzblatt 1939 II, p. 1049.

<sup>5</sup> Convention pour l'unification de certaines règles relatives au transport aérien international du 12 octobre 1929 (so-called "Warsaw Convention"), Reichsgesetzblatt 1933 II, p. 1039.

invention of railways. For Europe's industrial society in its early stages, road transport was almost of no importance. It took a rapid upturn, however, after World War II, and in consequence the necessity for an internationally unified contract law in that field of business arose.

The result of such striving for legal unification in the international carriage of goods by road, the CMR, came into force in Germany on February 5, 1962, after ratification by France, Italy, Yugoslavia, the Netherlands and Austria.<sup>6</sup> Almost all other European States acceded thereafter, and today the CMR is binding law in 36 countries, from Portugal to Russia, including Morocco and Tunisia.<sup>7</sup>

German courts have since 1962 developed an extensive body of jurisprudence and shaped the details of the Convention's application from a German point of view. From July, 1966 to 1995 some 415 decisions by German courts concerning the CMR have been reported.<sup>8</sup> The table of cases in *Clarke's "International Carriage of Goods by Road"*<sup>9</sup> comprises roughly 1,000 court judgments from 1961 to 1990, among these 110 German cases. In fact, during those 29 years, German courts have handed down at least 308 decisions on the Convention.<sup>10</sup> These statistics may reveal the importance of German jurisprudence in the application and construction of CMR's provisions and if Clarke's figures are representative, it may be cautiously estimated that 30% of all case law has been contributed by German courts. Although a court's reasoning is usually dominated by the forum state's national law, some appellate courts in Germany and, most of all the Supreme Court, have demonstrated a remarkable tendency to find some independent interpretation of the CMR, taking account of its character as an international treaty and to harmonise their decisions with those of other member States' courts, particularly Austria.<sup>11</sup>

The following survey of recent German jurisprudence on CMR covers the period from 1994 through to the end of 1995, provided that such decisions were published before November 1996. 1994 and 1995 were not a distinctive period for opening new jurisdictional perspectives on the CMR. The opinions handed down by German courts over that period rather show a focus on consolidating the law and affirming existing lines of authority.

## II. SCOPE OF APPLICATION AND JURISDICTION

Although one might think of the Convention's scope of application as being well defined in Article 1, there has traditionally been some dispute, especially in Germany and Austria, as to the correct understanding of the term "... carriage of goods ... in vehicles ...".

Under the regime of the German Commercial Code which was also adopted by Austria in 1939, it has always been an issue as to whether and, if so, under which circumstances forwarders may be qualified as carriers for purposes of the Convention. The rule is that forwarding contracts are not "... contract(s) for the carriage of goods ..." within the meaning of Article 1(1) CMR, except for forwarders performing the carriage themselves, forwarders working for a fixed remuneration or consolidated cargo forwarders, if – in all these cases – German law

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<sup>6</sup> Bundesgesetzblatt 1962 II, p. 12.

<sup>7</sup> Bundesgesetzblatt Teil II, Fundstellennachweis B, Bonn 23.1.1996.

<sup>8</sup> References in JURIS online; search on October 18, 1996.

<sup>9</sup> *Malcolm A. Clarke*, *International Carriage of Goods by Road: CMR*, 2nd ed. 1991.

<sup>10</sup> Cases reported in JURIS online from July 22, 1966 through December 31, 1990; earlier cases not available in that database.

<sup>11</sup> Cf. Oberlandesgericht Nürnberg, 22.3.1995 – (12 U 4139/94), RIW 1995, 684; Bundesgerichtshof, 23.3.1995 – (III ZR 177/93), VersR 1995, 940.

applies to the respective contract.<sup>12</sup> The reason lies in Sections 412 and 413 of the German Commercial Code whose provisions subject these types of forwarders to exactly the same legal rules as carriers. The German Federal Supreme Court has now reaffirmed that rule,<sup>13</sup> stating that the applicability of the Commercial Code section referring to consolidated cargo forwarders<sup>14</sup> must be determined by looking to the terms of the specific contract only.<sup>15</sup> If a party has accepted the duties of a consolidated cargo forwarder in its contract, CMR will remain applicable up to the final delivery as stipulated, and it is of no relevance if that party, at some point in time, factually ceased to act as a consolidated cargo forwarder by subcontracting the remaining part of the transport or delivery.

Further, Article 1(1) of the Convention requires as a condition of its applicability a transport "... in vehicles ...". The qualification of the method of transport was at issue in a tricky case before the Düsseldorf Court of Appeals.<sup>16</sup> The carrier had contracted for taking six small trucks from Germany to Syria and effected the road transport to the port of Antwerp by piggy-back system. One pair of the trucks was stolen on its way to Antwerp. The court held Article 17 of the Convention applicable only with respect to the truck which was carried on top of the other's loading space, thereby affirming a previous opinion holding that the Convention also applies to cases where the carrier transports not only the sender's goods, but at the same time the sender's truck. The loss of the other truck, however, which was being driven under its own motor power, was a pure question of German national law. Since Article 1(1) of the Convention refers to "carriage of goods ... in vehicles", the Convention was held not to apply to motor-vehicles operated under their own power.

Apart from the courts' striving for a proper determination of the Convention's application, some interesting decisions were delivered concerning a jurisdictional issue which is a particular feature of the administration of the CMR in Germany. While Article 31(1) contains the rules for the international jurisdiction of German courts, venue within the German judicial system is governed by Article 4 of a specific German Act implementing the Convention.<sup>17</sup> The provision in question was inserted, for reasons of convenience, into the German text of the Convention as 'Article 1 a'<sup>18</sup> and is not part of the CMR at all, but strictly national law. It has been drafted in a wording almost identical to Article 31(1) of the Convention in order to provide a proper place of venue whenever German courts have international jurisdiction.<sup>19</sup> According to that statute, the venue will be at the place of taking over the goods or the designated place of delivery. There has been some uncertainty at lower court level about the interpretation of the term "... place designated for delivery ..." in Article 1 a of the German Act. That conflict among the courts of first instance has recently been resolved by the Karlsruhe

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<sup>12</sup> Ingo Koller, *Transportrecht*, 3rd ed. 1995, CMR Art. 1 No. 3; Oberlandesgericht Düsseldorf, 15.12.1994 – (18 U 72/94), *TranspR* 1995, 244.

<sup>13</sup> Cf. already Bundesgerichtshof, 10.2.1982 – (I ZR 80/80), BGHZ 83, 96.

<sup>14</sup> Section 413 Para. 2 of the German Commercial Code.

<sup>15</sup> Bundesgerichtshof, 25.10.1995 – (I ZR 230/93), *TranspR* 1996, 118.

<sup>16</sup> Oberlandesgericht Düsseldorf, 26.10.1995 – (18 U 27/95), *TranspR* 1996, 152.

<sup>17</sup> Gesetz zu dem Übereinkommen der Vereinten Nationen vom 11. April 1980 über Verträge über den internationalen Warenkauf sowie zur Änderung des Gesetzes zu dem Übereinkommen vom 19. Mai 1956 über den Beförderungsvertrag im internationalen Straßengüterverkehr (CMR), *Bundesgesetzblatt* 1989 II, p. 586.

<sup>18</sup> As a matter of simplification and in order to avoid confusion, the venue provision in question shall hereinafter be referred to as "Article 1 a of the German Act".

<sup>19</sup> Koller, *Transportrecht*, *op. cit.*, CMR Art. 1 a.

Court of Appeals which determined as "... place designated for delivery ..." not the place where the goods actually arrive, but rather the destination stipulated before delivery is effected.<sup>20</sup> Normally, the parties agree on a particular place for delivery in the contract of carriage. However, the place for delivery may be left open in the original contract and be determined later either by both parties or by the sender unilaterally. Courts in Hamburg<sup>21</sup> and Munich<sup>22</sup> were called upon to decide on such a case and both considered the subsequent order by the sender to have the goods carried to some other consignee than that provisionally indicated in the consignment note as a valid stipulation of a place for delivery. It was clear from the evidence that the parties wished the definite place for delivery to be determined by the sender, after crossing the border, on an *ad hoc* basis, the indication in the consignment note having been of a provisional, non-binding nature only. As long as the parties validly agree, or one of them validly determines, a place for delivery before the goods are actually unloaded, no matter if the carriage contract is thereby supplemented or changed, such place of delivery will serve as the basis for venue and process may be commenced there.

### III. CONSIGNMENT NOTE – VALIDITY AND EFFECTS

Since the true facts of a case are often unclear for lack of evidence, a certain number of opinions always centre around the few rules of evidence included in the CMR, especially the evidentiary value of consignment notes.

Pursuant to Article 9 of the Convention, consignment notes establish, as a matter of law, the rebuttable presumption of the carriage contract having been concluded and transport having taken place exactly as indicated in that document. In the German understanding of Article 9, a consignment note provides full evidence of its contents, thus shifting the burden of proof to the party wishing to contest it.<sup>23</sup> However, it has been constantly emphasised, and reaffirmed in 1994 by the Nürnberg Court of Appeals that such evidentiary value can only lie in consignment notes drawn up in the proper way, *i.e.* according to Articles 5 and 6 of the Convention.<sup>24</sup> Particularly, a valid consignment note must be duly signed by the carrier (Article 5(1)). Such a signature could not be found in the case before the Nürnberg Court, since the consignment note had been signed only by the driver and there was no evidence of his having been authorised to sign on behalf of his employer. The court left open the disputed question of whether employed truck drivers generally can be deemed to be authorised to sign a consignment note. While leading German scholars have suggested such an implied power for drivers employed by the carrier,<sup>25</sup> the idea has never been accepted by the courts. The actual case could not solve the problem either, as any presumption of authorisation for the driver to represent the defendant as the carrier in executing the terms of the consignment note was excluded on the facts. Since the truck and the driver had been left for use by the alleged carrier to some third party it was obvious to all parties involved that the driver, when signing the note,

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<sup>20</sup> Oberlandesgericht Karlsruhe, 20.12.1995 – (9 U 281/94), *TranspR* 1996, 203.

<sup>21</sup> Oberlandesgericht Hamburg, 7.4.1994 – (6 U 68/94), *TranspR* 1995, 115, affirming Landgericht Hamburg, 20.10.1993 – (417 O 223/92), *TranspR* 1995, 114.

<sup>22</sup> Landgericht München I, 19.7.1994 (13 HKO 19895/92), *TranspR* 1995, 116.

<sup>23</sup> *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 9 No. 1; precisely distinguishing *Christian Teutsch* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 9 No. 1.

<sup>24</sup> Oberlandesgericht Nürnberg, 23.2.1994 – (12 U 2937/93), *TranspR* 1994, 288.

<sup>25</sup> *Koller*, *Transportrecht*, *op. cit.*, HGB § 425 No. 12; dissenting opinion *Schmidt* in *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 3 No. 42.

was acting for a third party hirer, and not for his employer. So, for lack of a valid signature the consignment note could not prove that the driver's employer, although its name was indicated in the document, was really the carrier and thus responsible for the transported and ultimately stolen goods.

Where however a consignment note has been duly executed and validly signed, its evidentiary presumption, determined in Article 9 of the Convention, is highly respected by German courts and is hard to overcome by the production of evidence to the contrary. Thus, the Düsseldorf Court of Appeals considered the parties to a carriage contract to be proven as stated in the consignment note, although the carrier had sent its invoice for charges not to the person indicated as sender, but to somebody not mentioned in that document.<sup>26</sup> The court acknowledged only the party appearing from the consignment note to be the true sender. The presumption stated in Article 9(1) could not be rebutted by the argument that the invoice had been sent to a different addressee, because, as the court put it, in the daily carriage business charges are often not directly billed between the parties. Statements on an invoice alone, therefore, cannot refute the evidentiary value of a consignment note.

The most interesting decision concerning Article 9 of the Convention comes from the appellate division of the District Court in Bochum.<sup>27</sup> The parties were in dispute as to whether an inconsistency between the quantity of goods indicated in the consignment note and that actually delivered was due to a mistake in drawing up the consignment note or rather to a loss during transit, taking into account the fact that the truck had been secured with a lead seal and that seal was unbroken at the time of delivery. Even in these circumstances, the court upheld the evidentiary presumption furnished by the consignment note. The evidentiary value of the consignment note could not be rebutted by invoking the unbroken seal, the court expressly pointing out in its analysis that unbroken seals have almost no evidentiary value at all, because criminal gangs are able perfectly to restore a broken seal after a theft. In order to refute the evidence arising from a consignment note, the carrier would have had to submit and to prove considerably more facts as to the transport's security, especially how the seal had been applied and how thoroughly the driver had guarded his truck during the carriage.

That opinion is consistent with a line of recent German court decisions lowering more and more the evidentiary or indicative value of lead seals. The Frankfurt Court of Appeals held in a judgment of February 1994 that a lead seal by itself did not furnish sufficient security against criminal interference, because it could easily have been broken during transport and replaced by another one.<sup>28</sup> The court therefore required, in addition, the number of the seal and the time when the seal was fixed to be recorded so that the sender could verify an uninterrupted locking of the goods under the same seal. In the context of a purely national forwarding contract, the Nürnberg Court of Appeals has also held that an apparently untouched seal does not exclude previous manipulations or unauthorised breaking of a container.<sup>29</sup> If other appellate courts or even the Federal Supreme Court follow that reasoning, significant consequences will probably result for the method of transportation to be observed in the future.

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<sup>26</sup> Oberlandesgericht Düsseldorf, 14.12.1995 – (18 U 211/93), TranspR 1996, 155.

<sup>27</sup> Landgericht Bochum, 28.6.1995 – (13 S 4/95), TranspR 1996, 336.

<sup>28</sup> Oberlandesgericht Frankfurt, 11.2.1994 – (10 U 68/93), OLG-Rp. Frankfurt 1994, 76.

<sup>29</sup> Oberlandesgericht Nürnberg, 29.3.1995 – (12 U 3829/94), TranspR 1996, 252.

IV. IMPOSSIBILITY OF PERFORMANCE OR DELIVERY

Many cases have been concerned with various sorts of impediments to the performance by carriers of their services. In 1994 and 1995, two appellate court decisions shed some light on the consequences of prevention of delivery and impossibility of performance.

The principal holding of an opinion of the Hamburg Court of Appeals determined the rights and duties stated in Articles 15 and 16 of the Convention to be the carrier's exclusive remedies in the event of prevention of delivery.<sup>30</sup> A carrier who does not act according to those remedies will remain liable under the strict liability provision of Article 17(1), the impairment of delivery being no defence under Article 17(2). In the case in question, the consignee had refused a truckload of bananas. The carrier – contrary to Article 15 of the Convention – neither asked for the sender's instructions nor did it protect the bananas from further damage. Four days later they perished. The court decided that in any event, when invoking the consignee's refusal of acceptance, the carrier is bound exclusively by the remedies and duties set out in Articles 15 and 16 of the Convention. If a carrier does not abide by those provisions, it will remain fully responsible under Article 17(1) for any damage occurring up to the time of delivery. The Hamburg Court of Appeals, affirming the generally held view of scholars<sup>31</sup> that the sender's duties do not include arranging for the possibility of due delivery, held that the sender has no obligation to manage the actual delivery of its goods. Consequently, it is not the sender's responsibility if the consignee refuses acceptance, and such refusal cannot be a valid reason for relieving the carrier of its liability under Article 17(2). In such a situation, the carrier only has the alternative of exhausting the specific remedies provided for prevention of delivery (Articles 15, 16 CMR) or of remaining liable for any damage or loss until the goods are actually handed over to the consignee.

On the other hand, if a carrier respects its duties under Articles 14 and 15 of the Convention and requests instructions from the sender, the question will arise as to who will bear the cost of carrying out those instructions. Article 16(1) states that the sender is liable, but leaves open the exact items of expenses recoverable. Until 1994 it was undisputed in Germany, and so decided by the Munich Court of Appeals,<sup>32</sup> that a carrier, when implementing the sender's instructions by its own means, may recover the actual cost of such services, but not the usual profit it would have made when performing the same service for a third party.<sup>33</sup> That rule has been put seriously into question by a decision of the Cologne Court of Appeals in August 1994 – unfortunately without any reasoning – that a carrier, under the circumstances described in Article 16(1) CMR, may recover the full price of its services, including the usual profit.<sup>34</sup>

However that decision may be interpreted, it is difficult to agree with the ruling. The traditional majority opinion seems preferable since Article 16(1), both in the English version and in the German translation, expressly uses the term "expenses". Generally, in German civil and commercial law "expenses" are to be distinguished from "prices" in the sense that "expenses" do not include a profit mark-up. Further, Article 16(1) was enacted for the purpose of compensating the carrier for any financial loss arising out of its duty to ask for and carry out

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<sup>30</sup> Oberlandesgericht Hamburg, 31.3.1994 – (6 U 168/93), *TranspR* 1995, 245.

<sup>31</sup> Cf. *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 31; *Don J. Hill/A.D. Messent*, *CMR: Contracts for the International Carriage of Goods by Road*, London 1984, p. 72.

<sup>32</sup> Oberlandesgericht München, 12.4.1991 – (23 U 1606/91), *VersR* 1992, 724.

<sup>33</sup> *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 16 No. 2; *Temme* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 16 No. 7, undecided No. 8.

<sup>34</sup> Oberlandesgericht Köln, 26.8.1994 – (19 U 190/93), *TranspR* 1995, 68.

the sender's instructions. It was not the aim of the provision to force a bargain, as a matter of law, between the carrier and the sender. Finally, the traditional rule excluding the usual profit does not unduly prejudice the carrier's interests since unreasonable instructions will not bind the carrier (cf. Article 12(5)(b) of the Convention) and, according to the majority opinion, the carrier may in all circumstances elect not to seek instructions and decide to unload the goods pursuant to Article 16(2).<sup>35</sup>

#### V. CARRIER'S LIABILITY

Carrier's liability and the construction of Article 17 of the Convention have presented, as usual, the vast majority of questions to the courts in 1994 and 1995. The German decisions delivered on this article may be combined in three groups: those regarding the requirements of carrier's liability (Article 17(1)), a line of decisions concerning the general defence of unavoidable circumstances (Article 17(2)) and those relating to one of the special defences listed in Article 17(4).

The first group has yielded few significant decisions in the period under review. Among the court rulings dealing in detail with Article 17(1), that most worthy of mention is the judgment of the Düsseldorf Court of Appeals of March 9, 1995.<sup>36</sup> As far as reported in the commentaries, this is the first appellate court decision to resolve the disputed question of whether a carriage contract may be concluded as a so called fixed-date agreement in Germany. "Fixed-date agreement" is the common name for all kinds of contracts under German law where time is such a crucial element that upon delay in delivery the other party immediately has the right to rescind the contract. Whether these legal consequences would be compatible with CMR has been a controversial issue among German scholars.<sup>37</sup> The German Federal Supreme Court has not yet pronounced its position.<sup>38</sup> In 1995, the Düsseldorf Court of Appeals however delivered an opinion answering the question in the negative. The court's reasoning was based on the exclusive character of Articles 17 and 23(5) as the sender's sole remedy for delay in delivery. The Convention, in these provisions, grants the sender only the right to claim for the specific damage caused by delay.<sup>39</sup> For the rest, the contract remains unaffected, which means that the sender has no right of rescission and cannot refuse to pay the carriage charges. In the court's view, that concept of the Convention, which is geared to upholding the carriage contract, was incompatible with the German rules on fixed-date agreements and for this reason it was held that a carriage contract within the scope of CMR can never be a fixed-date agreement triggering the specific consequences provided in German law. A sender affected by delay, however crucial the delivery date may have been, cannot go beyond the remedies laid down in Articles 17(1) and 23(5).

In commenting on that decision, it should be noted that its actual wording is somewhat misleading. The decisive argument is not, as the court emphasised, that the articles of the Convention mentioned above require proof of damages which would also be necessary in German law when claiming damages for breach of a fixed-date agreement. The crucial difference lies in the right of rescission granted by German law which would be an element foreign to the Convention.

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<sup>35</sup> Cf. *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 16 No. 2, 6 with further references.

<sup>36</sup> Oberlandesgericht Düsseldorf, 9.3.1995 – (18 U 142/94), *TranspR* 1995, 288.

<sup>37</sup> Cf. *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 19 No. 3 with further references.

<sup>38</sup> Bundesgerichtshof, 20.1.1983 – (I ZR 90/81), *TranspR* 1983, 44.

<sup>39</sup> *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 23 No. 41, 43.

The general requirement for any cause of action against a carrier is proof of damage. How and up to which degree of definiteness the sender must prove its damages has been at issue before the Düsseldorf Court of Appeals.<sup>40</sup> In that case, a sender claimed damages from the carrier for delay in delivery, assessing those damages as equivalent to the consignee's lost profit, because the goods to be delivered were crucial for the consignee's chain of production and the sender anticipated being held liable in damages itself – precisely for loss of that profit. In its pleadings, however, the sender had never submitted any exact figures as a basis for calculating the consignee's alleged loss of profit. The court regarded such pleading as entirely insufficient as first, the mere fact of the consignee not paying the purchase price would not in itself constitute any damage for the sender.<sup>41</sup> Before damage could be assumed in terms of financial loss, the sender would have to assert its claim for payment in an action in debt. Second, the sender's damages might well lie in its duty to compensate the consignee for loss of profit,<sup>42</sup> but a sender must still prove the occurrence and the amount of those damages in court and, for that purpose, mere arbitrary figures would not suffice. Rather, the court required precise evidence of the consignee's actual cost of production per unit and the usual proceeds resulting from that product's sale, so that a court expert could calculate on the basis of those figures the loss of profit which could be assumed to have occurred. Since the plaintiff had not produced such facts, neither on trial nor on appeal, its claim was dismissed.

A second group of judgments dealing with carrier's liability centred around the meaning of the term "unavoidable circumstances" which is a general defence to the strict liability imposed upon carriers under Article 17(1) of the Convention. Whether that provision really does establish strict liability or only liability for presumed fault is still a matter of dispute among German legal writers and in German jurisprudence.<sup>43</sup> The question is not without importance as the general qualification of carrier's liability has a decisive influence on the construction of the defence of "unavoidable circumstances". In case of responsibility for presumed negligence a carrier could overcome that legal presumption by proof that it applied a high standard of care, whereas if Article 17(1) does impose strict liability, even where no fault is involved, only truly unforeseeable and objectively unpreventable events, bordering on *force majeure*, could be regarded as "unavoidable circumstances" within the meaning of Article 17(2).

The German Federal Supreme Court and most other German courts have followed an approach which lies in between the two alternatives. They have qualified Article 17(1) of the Convention as a strict liability clause, but from that the majority of German courts, including the Federal Supreme Court, have not drawn the conclusion that only *force majeure* may serve as a general defence to carrier's liability. The Supreme Court<sup>44</sup> rather has construed the term "unavoidable circumstances" in Article 17(2) as akin to a similar term used in the German Act on Road Traffic.<sup>45</sup> In accordance with that reasoning, German courts have held in a long chain of precedent that a carrier does not have to plead *force majeure* so as to be relieved of

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<sup>40</sup> Oberlandesgericht Düsseldorf, 15.12.1994 – (18 U 72/94), TranspR 1995, 244.

<sup>41</sup> Cf. Oberlandesgericht Düsseldorf, 17.5.1990 – (18 U 31/90), TranspR 1990, 280.

<sup>42</sup> Cf. also Oberlandesgericht Düsseldorf, 17.5.1990 – (18 U 31/90), TranspR 1990, 280.

<sup>43</sup> Thume in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 17 No. 8-13.

<sup>44</sup> Bundesgerichtshof, 28.2.1975 – (I ZR 40/74), NJW 1975, 1597; cf. also Oberlandesgericht Oldenburg, 30.5.1995 – (5 U 63/94), NJW-RR 1996, 359.

<sup>45</sup> Strassenverkehrsgesetz, Section 7 Para. 2, Bundesgesetzblatt 1952 I, p. 837.

liability.<sup>46</sup> While it may avoid application of the Convention's strict liability by showing that it exercised a high standard of care, the defence in Article 17(2), very much like the corresponding provision in the German Act on Road Traffic, must be construed very narrowly. Therefore, German courts have always required the utmost degree of care, only occurrences which could not have been avoided but by the taking of absurd precautions being truly unavoidable within the meaning of Article 17(2).<sup>47</sup> Considerations of economic reasonableness have traditionally not been an element of that standard of care. Such arguments are slowly beginning to filter into some recent appellate court decisions. As the carrier's defence under Article 17(2) is governed by an almost objective avoidability measure in German practice, even larceny and robbery have been generally deemed to be avoidable events subjecting the carrier to liability for loss of goods. However, in a series of appellate court opinions from the last two years a tendency seems to be emerging to distinguish between "normal" larceny as avoidable<sup>48</sup> and armed robbery or violent assault as unavoidable.

Accordingly, the Berlin Court of Appeals considered the theft of 51 large boxes of cigarettes from a truck on its way from Berlin to Antwerp via Trier as an occurrence which could have been avoided by the carrier, thus holding the carrier liable for the loss.<sup>49</sup> The theft occurred during a stopover on a parking lot near Hagen. Since the parties had specified Antwerp as the place of delivery in their contract, the carrier's intention to pass by Trier in order to pick up some customs papers did not qualify the transaction as purely national carriage and CMR was applicable during the entire carriage. The carrier's strict liability under Article 17(1) was evident. The court also rejected the defendant's plea of unavoidable circumstances (Article 17(2)), referring to the traditional interpretation of that term by German precedent. Unavoidability within the meaning of Article 17(2) requires the utmost standard of care, the ultimate efforts to prevent damage falling short of "absurd precautions". The Berlin court also stated in an *obiter dictum* that the required standard of care would find its limits in the criteria of ultimate economic reasonableness ("äusserste wirtschaftliche Zumutbarkeit"), in itself a new argument. As far as reported,<sup>50</sup> an absolute limit of carrier's duty of care at the threshold of economic unreasonableness is not yet generally accepted in German jurisprudence.<sup>51</sup> Nevertheless, in deciding the case the court followed the traditional reasoning and continued to qualify larceny and robbery as generally avoidable events. This was especially true upon the facts at hand, since the employment of a second driver would have allowed an all-night drive, thus rendering a criminal attack impossible.

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<sup>46</sup> Bundesgerichtshof, 28.2.1975 – (I ZR 40/74), NJW 1975, 1597; Thume in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 17 No. 10, 96.

<sup>47</sup> Bundesgerichtshof, 5.6.1981 – (I ZR 92/79), TranspR 1981, 130; Bundesgerichtshof, 28.2.1975 – (I ZR 40/74), NJW 1975, 1597; Oberlandesgericht Oldenburg, 30.5.1995 – (5 U 63/94), NJW-RR 1996, 359; Oberlandesgericht Hamm, 6.12.1993 – (18 U 101/93), TranspR 1994, 62; Oberlandesgericht Hamm, 13.5.1993 – (18a U 94/93), NJW-RR 1994, 294; Oberlandesgericht Düsseldorf, 12.1.1984 – (18 U 151/83), TranspR 1984, 102; Koller, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 23.

<sup>48</sup> For example Oberlandesgericht Oldenburg, 30.5.1995 – (5 U 63/94), NJW-RR 1996, 359.

<sup>49</sup> Kammergericht, 11.1.1995 – (23 U 377/94), TranspR 1995, 342.

<sup>50</sup> Cf. Thume in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 17 No. 11; Koller, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 21, 23; *Richard Alff*, *Fracht-, Lager- und Speditionsrecht*, 2nd ed. 1991, Anhang 4 nach § 425 HGB, Art. 17 CMR No. 3.

<sup>51</sup> For example Oberlandesgericht Hamburg, 30.11.1995 – (6 U 104/95), TranspR 1996, 280; Oberlandesgericht Hamm, 6.12.1993 – (18 U 101/93), TranspR 1994, 62.

In much the same way, the Hamburg Court of Appeals rejected the carrier's defence of unavoidable circumstances in a case where a whole truckload of videocassettes was stolen in Moscow, because the truck driver had been defrauded by means of a fake receipt and fake customs papers.<sup>52</sup> The court, again, restated the consistent interpretation of German courts that unavoidable circumstances require the utmost imaginable standard of care to be observed, without mentioning a limit of economic reasonableness. These high standards were not met in the case before it, mostly because the truck driver should have checked whether the person who contacted him in Moscow was truly an authorised agent of the recipient. On the other hand, the same division of the same court accepted the defence of unavoidability in an action for damages based on another theft which had been attempted in Moscow.<sup>53</sup> In that case, however, the truck driver had parked the vehicle inside a fenced, well-lit parking lot that was guarded by three persons by day and by four persons by night. The offenders who tried to steal the goods apparently had to act with fierce criminal determination. Under these circumstances, the court held that the carrier had taken all imaginable precautions and so reduced the risk of theft as much as possible which was necessary and sufficient to plead the defence under Article 17(2).

It seems to be easier, in general, to convince a German court of the existence of unavoidable circumstances if violence, assault or even armed robbery are involved. In the two years under review, for example, the trial division of the District Court of Munich held a carrier to be relieved of liability under Article 17(2) when its truck had been hijacked in Moscow and the driver's resistance had been overcome by force of arms.<sup>54</sup> As regards a sudden attack by an armed gang, neither the assault nor the subsequent taking away of the goods could have been prevented. In a similar robbery which occurred in Italy, the trial division of the District Court in Darmstadt has very recently decided in the same way.<sup>55</sup> In that case, a gang of hijackers broke into the cab of a truck by force, tied up the driver and subsequently stole the entire truckload. The court was persuaded that such a criminal attack could not have been avoided, not even by employing a second driver, because the offenders were highly organised, well informed and determined to face any confrontation.

Another class of cases where German courts regularly relieve the carrier of liability on the basis of unavoidable circumstances or a wrongful act of the claimant (Article 17(2)) are those where goods are seized by governmental action, usually by the customs authorities. The Munich Court of Appeals<sup>56</sup> and the trial division of the District Court in Hamburg<sup>57</sup> have each had to decide on a claim for damages against a carrier for the loss of goods which had been confiscated by foreign customs authorities. The seizure had been ordered because of incomplete declaration of the goods in the consignment note and the TIR carnet. Both courts held the actual carrier excused<sup>58</sup> on the basis of Article 17(2), because furnishing complete and

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<sup>52</sup> Oberlandesgericht Hamburg, 30.11.1995 – (6 U 104/95), *TranspR* 1996, 280.

<sup>53</sup> Oberlandesgericht Hamburg, 7.12.1995 – (6 U 164/95), *TranspR* 1996, 283.

<sup>54</sup> Landgericht München II, 10.5.1995 – (1 HK O 3746/94), *TranspR* 1995, 443.

<sup>55</sup> Landgericht Darmstadt, 28.2.1996 – (9 O 414/94), as yet unpublished (retrieved by JURIS online).

<sup>56</sup> Oberlandesgericht München, 23.6.1995 – (23 U 1713/95), *OLG-Rp. München* 1996, 18.

<sup>57</sup> Landgericht Hamburg, 10.11.1995 – (404 O 134/95), *TranspR* 1996, 338.

<sup>58</sup> The opinion of the District Court in Hamburg is misleading in this respect, because a forwarder was interposed between the sender and the actual carrier. The court held the forwarder liable to the sender without any possibility of relief under Article 17(2) because the forwarder had not performed the carriage itself. Rather, it had subcontracted a carrier for the transportation. The forwarder had furnished

correct transport and customs documents was determined to be exclusively the duty of the sender under Article 11(1). Article 11(2) explicitly states that the carrier has no obligation to check those documents and it may therefore rely on the papers filled in by the sender so that any incorrectness in those statements would constitute an unavoidable event for the carrier.

Finally, the third group of cases concerning carrier's liability under Article 17 of the Convention focused on the special defences in paragraph (4) of that article. In 1994 and 1995, three instructive judgments were reported on those issues. Article 17(4) of the Convention relieves a carrier of specific high risks of damage for the goods when such a risk is more closely connected with some other person's responsibility or where it is beyond any control so that a carrier's strict liability would seem unfair. These risks which should not be borne by the carrier comprise in particular any damages resulting from defective loading where the loading has been performed by the sender. Besides that specific defence, a carrier will remain liable, however, if and to the extent that any damage arises out of some other cause than those listed in Article 17(4) (cf. Article 17(5)).<sup>59</sup> In consequence, senders responsible for defective loading (cf. Article 17(4)(c)) have always attempted to shift some concurrent liability onto the carrier by invoking the argument that for safety reasons a carrier generally has a duty to inspect the loading effected by another person. If, and under which circumstances, such a duty does lie on a carrier, despite the sender's primary responsibility, is still highly disputed in German law.<sup>60</sup> Courts have expressed a large number of subtly-nuanced opinions on that matter.<sup>61</sup> Traditionally, the general thrust in German jurisprudence has been that a duty of inspection exists as far as the loading of goods could have an impact on the vehicle's safety or where the defective nature of the loading performed by third parties and its possible adverse effect on the goods are evident or have been realised by the carrier.<sup>62</sup>

That traditional line was followed and affirmed by the Munich Court of Appeals in a case where machines had been damaged during an emergency brake, because they had been stowed badly and poorly secured.<sup>63</sup> The loading had been effected by the sender's personnel. The carrier's truck driver had noticed apparent mistakes in the loading and had warned the sender's employees, but had not informed the sender's management. The court, upon these facts, held the sender and the carrier concurrently responsible. The carrier's liability was based on Article 17(5) and (1), because its driver had neither informed the competent personnel of the sender nor had he declined to perform the transportation, although he had been aware of the danger resulting from the defective loading. The driver's conduct, therefore, violated the carrier's general duty established in Article 17(1) to take all reasonable measures in order to avoid any damage to the goods. Since the sender's mistake had contributed more substantially to the accident than the wrongful conduct of the carrier, the court assessed the sender's liability at 2/3 and the carrier's at 1/3. The Düsseldorf Court of Appeals, on the other hand, considered in 1994 complaints by a truck driver to any of the sender's personnel who had loaded heavy goods in a dangerous way as sufficient to permit the carrier to invoke the special defence under

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to that carrier incorrect customs documents filled in by itself and was therefore responsible for its own mistake, while the actual carrier was completely exonerated from liability.

<sup>59</sup> Instructive: Oberlandesgericht Düsseldorf, 21.4.1994 – (18 U 53/93), *TranspR* 1995, 347.

<sup>60</sup> Cf. *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 42.

<sup>61</sup> References with *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 42 – 44, and *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 17 No. 168-170.

<sup>62</sup> Cf. *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 17 No. 43, 44.

<sup>63</sup> Oberlandesgericht München, 28.7.1995 – (23 U 2646/95), *TranspR* 1996, 240.

Article 17(4)(c).<sup>64</sup> For the rest, that decision of 1994 also restated the majority trend that a carrier's duty to check the loading by the sender would only exist in the case of apparent or realised deficiencies or where the safety of the transportation was affected.

Recently, however, the Düsseldorf Court of Appeals, unlike that of Munich, seems to have deviated from the majority opinion in German jurisprudence concerning the carrier's duty to check the sender's loading for a possible impact on the safety of the vehicle.<sup>65</sup> The Düsseldorf court based its reasoning on the argument that loading is not inherently a carrier's duty, so that if a sender loads the goods itself, the carrier has no duty to inspect that loading, even though the vehicle might have lost its operational safety. In the case at hand, the sender had loaded heavy goods entirely by means of its own personnel in an allegedly defective manner. The carrier's driver had in no way inspected how the goods had been stowed and secured on the loading area. Although the manner in which the goods (metal sheets) had been stowed on the truck could very well have affected the vehicle's safety, the court held the sender exclusively liable for the damage incurred, the carrier being fully exonerated by Article 17(4)(c). As far as can be seen from the legal publications, this interpretation of Article 17(4) and (5) has not yet been adopted by other German appellate courts.

Finally, in the third group of decisions concerning Article 17(4), the Hamm Court of Appeals delivered an opinion on the carrier's exoneration from liability on the ground of the specifically sensitive nature of the goods transported.<sup>66</sup> The court, in that decision, clearly indicated the standard of the burden of proof incumbent on the carrier pursuant to Article 18(2). After an international road transport, steel sheets which the carrier had taken over in impeccable condition arrived affected by rust. The sender alleged that the carrier was liable because the damage had occurred during the carriage, while the carrier pleaded the sensitive nature of the goods. The court found the carrier to be relieved of liability under Article 17(4)(d). As to the burden of proof, Article 18(2) showed a legal presumption in favour of the carrier. In order to avoid liability, a carrier only has to prove that particularly sensitive goods have been transported and that the damage may, with some probability, have been caused by their sensitive nature. The carrier need not prove the actual chain of causation. Article 18(2) shifts the burden to refute that legal presumption of causation to the sender. Any cause other than the sensitive nature of the goods must be invoked and proved by the sender. In the case at hand, the sender was not able to do so. Consequently, the court held that the carrier was not liable, stating that the provision of sufficient corrosion prevention generally is not part of the carrier's responsibility.

#### **VI. SCOPE OF LIABILITY AND QUALIFIED DEFAULT BY CARRIER**

A carrier may not rely on the specific exclusions or limitations of its liability laid down in Articles 17 to 28 of the Convention, if the damage has been caused by wilful misconduct or by a degree of default considered under the applicable national law as equivalent to wilful misconduct (Article 29(1)). As regards German law, courts have since 1983 considered, in an uninterrupted chain of precedent following a leading decision by the German Federal Supreme Court,<sup>67</sup> gross negligence as the equivalent degree of default.<sup>68</sup> Despite some dissenting

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<sup>64</sup> Oberlandesgericht Düsseldorf, 21.4.1994 – (18 U 53/93), *TranspR* 1995, 347.

<sup>65</sup> Oberlandesgericht Düsseldorf, 1.7.1995 – (18 U 207/94), *TranspR* 1996, 109.

<sup>66</sup> Oberlandesgericht Hamm, 2.11.1995 – (18 U 10/95), *TranspR* 1996, 335.

<sup>67</sup> Bundesgerichtshof, 14.7.1983 – (I ZR 128/81), *NJW* 1984, 565.

scholars who would qualify only specific forms of intent as sufficient to trigger the consequences of Article 29,<sup>69</sup> the equivalence of intent and gross negligence for the purposes of Article 29(1) represents common ground in German jurisprudence.<sup>70</sup>

This rule has been reaffirmed in the last two years by numerous court decisions. In particular, the Nürnberg Court of Appeals devoted a large part of its opinion of March 22, 1995 to the question of whether the defendant had acted with fault equivalent to wilful misconduct.<sup>71</sup> The defendant's vehicle had been broken into by armed force while parked on a non-guarded service area near Rome, directly in front of a restaurant. The plaintiff pleaded that employing only one driver for the carriage from Munich to Malta had failed to meet the appropriate standard of care and constituted a degree of default by the carrier equivalent to wilful misconduct. After considering various possible forms of default, the court finally stated that only gross negligence would structurally compare to intent. The plaintiff had argued that wilful negligence would also suffice. Wilful negligence, in terms of German law, means that the offender was prepared for damage, but negligently expected that it would not actually occur;<sup>72</sup> it does not matter how serious was the breach of the defendant's duty of care. The court saw distinct structural differences between a form of negligence as so defined and intent, because in the case of wilful negligence the breach of the offender's duty of care is of a lesser degree than in the case of intentional misconduct where the damage is foreseen and deliberately brought about.

The same reasoning was restated in a recent *obiter dictum* by the Federal Supreme Court itself.<sup>73</sup> In this case, a carrier was sued for full damages, without limitation, because it had sold the sender's goods at auction in the erroneous belief that it had acquired a valid lien and a right to do so. The Court left undecided the question of whether the carrier had acted intentionally or with gross negligence. Consistent with its line of precedent, it held that default equivalent to wilful misconduct under Article 29(1), means, under German law, gross negligence. Since the sale by the carrier at auction was considered at least grossly negligent under the particular circumstances of the case, it was held liable in damages without the benefit of the usual limitation of Article 23(3).

Gross negligence, in the context of German law, has specific objective and subjective requirements. These were developed very early by the courts in construing general German civil law.<sup>74</sup> Objectively, there must be a serious violation of a duty of care which goes considerably beyond average carelessness. Subjectively, the individual tortfeasor must have been able to foresee and avoid that breach of duty, in particular by ignoring precautionary measures which would have been evident to anybody.

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<sup>68</sup> Cf. references with *Koller*, *Transportrecht*, *op. cit.*, CMR Art. 29 No. 3; *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 29 No. 11.

<sup>69</sup> *Klaus Heuer*, *Zur Frachtführerhaftung nach der CMR: Haftungszeitraum – Ladetätigkeiten – Fahrervollmacht – Lkw- bzw. Ladungsdiebstahl*, *VersR* 1988, 312; *Horst Oeynhausen*, *Art. 29 CMR: Grobe Fahrlässigkeit – dem Vorsatz gleichstehendes Verschulden?*, *TranspR* 1984, 57; *Herbert Glöckner*, *Die Haftungsbeschränkungen und die Versicherung nach Art. 3, 23-29 CMR*, *TranspR* 1988, 327. Cf. also *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 29 No. 13.

<sup>70</sup> *Thume* in: *Karl-Heinz Thume*, *Kommentar zur CMR*, *op. cit.*, Art. 29 No. 11 (last paragraph).

<sup>71</sup> *Oberlandesgericht Nürnberg*, 23.3.1995 – (12 U 4139/94), *RIW* 1995, 684.

<sup>72</sup> *Heinrichs* in: *Palandt*, *Bürgerliches Gesetzbuch*, 55<sup>th</sup> ed. 1996, § 276 No. 13.

<sup>73</sup> *Bundesgerichtshof*, 18.5.1995 – (I ZR 151/93), *TranspR* 1995, 383.

<sup>74</sup> Cf. *Heinrichs* in: *Palandt*, *Bürgerliches Gesetzbuch*, *op. cit.*, § 277 No. 2, 3 with further references.

Judging by these standards, the Karlsruhe Court of Appeals held that a truck driver falling asleep while driving in daylight, 50 kilometres from his place of departure, after he had sufficiently slept the night before, did not constitute gross negligence.<sup>75</sup> Falling asleep behind the wheel is objectively an eminent violation of a driver's duty of care. The subjective criteria for gross negligence, however, were not met in the case at hand. As the court stated, the driver could have been held guilty only if he had been aware of feeling tired and consciously ignored clearly recognisable symptoms. The plaintiff had not pleaded such subjective carelessness on the driver's part. In requiring such specific evidence, the court did not follow a previous opinion of the Frankfurt Court of Appeals (May 26, 1992; Docket No. 8 U 184/91) which had stated that under all principles derived from experience a driver falling asleep behind the wheel must have consciously ignored the signs of his overtiredness. Instead, the Karlsruhe appellate court held that the mere fact of falling asleep while driving, without further indications in the facts, did not constitute *prima facie* evidence or an inference of the subjective requirements of gross negligence.

Such subjective requirements are in general carefully examined by German courts and it is not uncommon that an allegation of gross negligence fails because the precautions ignored by the carrier are not so that everybody would have observed them. Since, pursuant to the above-mentioned definition, the distinction between ordinary and gross negligence is in part dependent on the obvious nature of the precautions to be observed, the subjective requirements of gross negligence cannot be fixed as a universal standard for all possible situations. Rather, they vary from case to case and depend largely on the standard practice of the business in question. This element in the definition of gross negligence was particularly emphasised by the Cologne Court of Appeals.<sup>76</sup> The court explicitly held that a certain negligence which has become a standard practice throughout the trade would show that the taking of precautions that would theoretically have been necessary, but were neglected in the actual case, were simply not evident to any comparable operator. A practice falling short of the objectively possible standard of care might well be negligent, but it cannot be judged grossly negligent, if the majority in the respective business would have acted in the same way. Consequently, in the case before the Cologne appellate court, the behaviour of the carrier who had parked – like many other carriers – a semi-trailer on a well-known, but unattended service-area near the Dutch-German border, was held not to constitute gross negligence. As to the loss of that semi-trailer which was stolen during that night on the service-area, the carrier was liable only up to the limits stated in Article 23(3) of the Convention.

The vast majority of decisions under Article 29 have been concerned with the common problem of whether a loss of goods by theft or similar criminal attack was caused by the carrier's gross negligence, thus exposing it to unlimited liability. The courts' findings in this type of case have been entirely determined by the particular circumstances of each individual situation, so that it is almost impossible to work out a general rule. However, from a survey of the decisions of 1994 and 1995 it seems to be the general line of reasoning that in the absence of discernible factors of enhanced danger for the actual road transport, it cannot be considered to be gross negligence on the part of the carrier if a vehicle has been equipped with only one driver or has been parked on an unattended parking lot. Thus, the Oldenburg Court of Appeals declined to find gross negligence where a truck had been broken into during an overnight stop in the south of France.<sup>77</sup> The truck had been parked on an unattended lot of a service area. Its

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<sup>75</sup> Oberlandesgericht Karlsruhe, 17.2.1995 – (15 U 262/94), TranspR 1995, 439.

<sup>76</sup> Oberlandesgericht Köln, 4.7.1995 – (22 U 272/94), TranspR 1996, 284.

<sup>77</sup> Oberlandesgericht Oldenburg, 30.5.1995 – (5 U 63/94), NJW-RR 1996, 359.

trunk had been secured by several padlocks and the only driver employed in the transportation had spent that night in the cab of the vehicle, which had not been parked by itself, but together with other vehicles. On these facts, the court found no reason to hold the carrier liable for gross negligence. It had not neglected basic precautionary measures which would have been evident for any carrier in the same position because the actual circumstances in this part of France and the experience of other parties with road transport in that area did not convincingly show an enhanced frequency of criminal activities. Correspondingly, the carrier had no reason to provide for additional security measures; especially it was not evident, in the light of the actual local circumstances, that a second driver necessarily should have been employed.

The legal situation is different, however, where additional factors are present creating or increasing a specific threat to the carriage in question. Such a threat may result from notoriously high criminality in a particular geographic region or from the carrier's behaviour during the transport if the goods are thereby exposed to an additional danger of criminal attack. In such cases, German courts have always assumed gross negligence within the meaning of Article 29(1).

Examples of the need to take extra precautions because of regionally high criminality are offered by the decisions of the Karlsruhe Court of Appeals of June 29, 1995<sup>78</sup> and the Frankfurt Court of Appeals of December 21, 1995.<sup>79</sup> Both cases apparently concerned the same carrier, since the facts are strikingly similar. Trucks with a particularly precious load of electronic equipment destined for the NATO armed forces had been sent to Italy, staffed with only one driver. The carrier had been the victim of an armed robbery of a truck on the same itinerary shortly before and had, therefore, been warned. Nevertheless, it had neither employed a second driver nor had it ordered its driver to spend the nights only on guarded parking lots which are commonly known as safe places. During a night stop on an unattended, though well lit parking lot where several trucks were parked, the driver's cab was in each case broken into and the goods were stolen by use of force. The appellate courts in Karlsruhe and Frankfurt both assumed gross negligence, because, unlike the standard situation of a robbery in Italy, the carrier knew that its trucks carried a highly sensitive load, it was alerted to the actual danger for its vehicles because of a previous similar experience and should, therefore, have taken additional precautionary measures. In these circumstances, the courts held that the carrier should have arranged the carriage in such a way that only guarded parking lots were chosen to spend the nights or, at a minimum, that it should have employed a second driver. It should be noted, however, that the carrier's defective organisation amounted to gross negligence only because of the actual and obviously greater degree of risk for that specific transport in Italy.

A good example of the carrier's careless behaviour creating unsupportable risks for the goods and thus amounting to gross negligence is furnished by the Hamm Court of Appeals in its judgment of July 12, 1995.<sup>80</sup> The decisive facts were that the carrier's driver had parked a truck with electronic equipment at 6.30 p.m. in an industrial area. The truck had been locked only with a padlock and a lead seal. Nevertheless, the driver left his truck for about six hours and when he returned, he realised that it had been broken into and some of the goods stolen. The court considered leaving a truck full of electronic equipment for six hours during night-time under the given circumstances to be grossly negligent. Anybody in the driver's position would have realised that an industrial area, especially during the night from Saturday to Sunday, would be absolutely deserted and that it is commonly known that a padlock is totally insufficient to prevent larceny. The driver's staying away for six hours, while the truck was

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<sup>78</sup> Oberlandesgericht Karlsruhe, 29.6.1995 – (12 U 186/94), VersR 1995, 1306.

<sup>79</sup> Oberlandesgericht Frankfurt, 21.12.1995 – (5 U 86/95), OLG-Rp. Frankfurt 1996, 26.

<sup>80</sup> Oberlandesgericht Hamm, 12.7.1995 – (18 U 191/94), TranspR 1996, 237.

parked in a dark and deserted area, must even have amounted to an invitation to potential thieves, as the court put it. All these circumstances justified a finding of the carrier's gross negligence.

#### VII. CASH ON DELIVERY – METHOD OF PAYMENT

One field in which there has been a fundamental judicial development in 1994 and 1995 has been the carrier's liability for failure to collect cash on delivery.

Since it is of vital importance for the sender not to surrender possession of its goods to the consignee without receiving payment before delivery or at least at the same time, COD-clauses are not uncommon in commercial trade, and Article 21 of the Convention places a strict liability upon the carrier for failure to collect payment on delivery, if that has been signified in the carriage contract. Article 21 CMR employs the term "cash on delivery" and determines severe consequences in case of non-performance, but it does not define what "cash on delivery" actually means.<sup>81</sup> Setting forth and limiting the acceptable method of payment under a COD-agreement is a matter for national law,<sup>82</sup> and consequently the rules vary considerably from one Contracting State to another.<sup>83</sup> In France and Belgium, for example, sight checks signed by the consignee seem to be the required method of payment,<sup>84</sup> because French law, apparently, prohibits collecting cash beyond a certain amount.<sup>85</sup> In Germany, on the other hand, courts have occasionally defined that "cash on delivery" only means collecting actual money<sup>86</sup> or a check certified by a bank,<sup>87</sup> as such checks provide the same level of security as actual money.<sup>88</sup>

This rather strict interpretation of "cash on delivery" was reaffirmed in 1994 and 1995 by two court rulings, one of them a decision of fundamental importance, by the Federal Supreme Court.

In a decision of April 21, 1994, the Düsseldorf Court of Appeals held that Article 21 will establish a cause of action only for the carrier's failure to collect cash, not for its failure to collect a forwarder's certificate of receipt.<sup>89</sup> Cash and commercial documents are generally not equivalent for the purposes of Article 21. The case before the court was fairly straightforward. For a transport of metal plates from Germany to Spain, the carrier had been instructed in writing to deliver only against receipt of the original FCR (Forwarder's Certificate of Receipt). When delivering, the carrier did not collect the original FCR from the consignee. As the consignee later failed to pay the purchase price, the sender claimed damages against the carrier, based on

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<sup>81</sup> *Fremuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 21 No. 31.

<sup>82</sup> *Fremuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 21 No. 32; *Koller*, Transportrecht, *op. cit.*, CMR Art. 21 No. 3.

<sup>83</sup> *Clarke*, International Carriage of Goods by Road, *op. cit.*, p. 174-176.

<sup>84</sup> *Clarke*, International Carriage of Goods by Road, *op. cit.*, p. 175.

<sup>85</sup> Cf. Bundesgerichtshof, 25.10.1995 – (I ZR 230/93), TranspR 1996, 118.

<sup>86</sup> Bundesgerichtshof, 10.2.1982 – (I ZR 80/80), BGHZ 83, 96.

<sup>87</sup> Oberlandesgericht Hamburg, 18.4.1991 – (6 U 244/90), TranspR 1991, 297; Oberlandesgericht Hamm, 16.8.1984 – (18 U 281/83), TranspR 1985, 97.

<sup>88</sup> Cf. *Fremuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 21 No. 32; *Koller*, Transportrecht, *op. cit.*, CMR Art. 21 No. 44-47.

<sup>89</sup> Oberlandesgericht Düsseldorf, 21.4.1994 – (18 U 190/93), TranspR 1995, 67 (= TranspR 1994, 391).

an alleged violation of Article 21. The court held Article 21 not to be applicable. “Cash on delivery”, under German law, literally means delivery against payment in cash. The general question, if commercial papers might be considered equivalent to cash, may still have been left open by the court, because only the FCR was at issue. An FCR, so the court held, can never qualify as a substitute for cash. The FCR is not a commercial instrument. It provides evidence of its bearer being the rightful consignee of the goods, but it says nothing about payment. The court also denied an application of Article 21 by analogy to documents with evidentiary value, as that provision imposing a strict liability on the carrier, calls for narrow construction.

The second important decision on the German interpretation and implementation of Article 21 was delivered in 1995 by the Federal Supreme Court.<sup>90</sup> In that case the general question the Düsseldorf Court of Appeals had been able to avoid addressing was the central issue: *i.e.* whether and to what extent commercial papers may be considered as a valid method of payment under a COD-agreement in German law.

The dispute arose out of carriage of textiles from Germany to France. The sender had ordered in the carriage contract delivery only against “cash on delivery” which had to be collected in France. Pursuant to French law, the carrier received from consignee a non bank-certified check for deposit of the full amount of the sales price. When it later transpired that the check was not good and the consignee failed to pay by other means, the sender sued the carrier for damages on the basis of Article 21. The Court first determined that how payment under a COD-agreement shall be collected is entirely a matter of the applicable national law. In the case in question, the sender and the carrier had at least implicitly stipulated for the application of German law to their contract. As to the principal and substantial question, the court reaffirmed its earlier opinion of February 10, 1982<sup>91</sup> and held – once again – that “cash on delivery” in German law strictly means collecting money. Eventually, checks and other commercial papers, if confirmed by a bank, may be acceptable, since bank-certification would furnish those papers with the same amount of liquidity and security as cash. A non-confirmed check, however, would not suffice. Foreign exchange regulations forbidding the collection of large amounts of cash cannot overturn that German rule. In such a situation, the carrier, in the court’s opinion, would be obliged to seek alternative means of payment as safe as cash. If those are not available, the carrier has to assume prevention of delivery within the meaning of Article 15 of the Convention and must ask for the sender’s instructions. Since the carrier had not done so in the instant case, it was held liable under Article 21.

#### VIII. LIMITATION OF ACTIONS

Article 32(1) CMR defines a very short limitation period, one year for all claims arising out of carriage governed by the Convention. The purpose of the provision is to promote certainty for both parties involved and to protect the carrier. For reasons of security in commercial dealings, the authors of CMR felt that a carrier whose business is the transport of vast amounts of merchandise every day must be protected from being surprised by a claim brought some considerable time after the completion of the transaction.<sup>92</sup> Since the one-year-period under

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<sup>90</sup> Bundesgerichtshof, 25.10.1995 – (I ZR 230/93), TranspR 1996, 118.

<sup>91</sup> Bundesgerichtshof, 10.2.1982 – (I ZR 80/80), BGHZ 83, 96.

<sup>92</sup> *Clarke*, International Carriage of Goods by Road, *op. cit.*, p. 199.

Article 32(1) is much shorter than most limitation periods provided for in German civil law<sup>93</sup> and since it is designed to cover all claims by all parties to a carriage contract,<sup>94</sup> it serves sometimes to the carrier's advantage,<sup>95</sup> sometimes to its detriment.<sup>96</sup> In any event, the limitation period very often determines the outcome of litigation<sup>97</sup> and, because the period set by CMR is shorter than normally expected under German law, the applicability of that provision is the primary issue in many court decisions.

In 1994 and 1995, there are three instructive reported judgments on the applicability of Article 32.

The general rule that the short limitation period of CMR applies to all claims related to carriage under the Convention, no matter what the actual cause of action may be, has been affirmed by the Düsseldorf Court of Appeals.<sup>98</sup> An action was brought for the payment of carriage charges stipulated in the contract. The court dismissed the claim, finding Article 32 of the Convention applicable, and that the one year limitation period had expired. It held that the specific limitations provision in Article 32 applied to all claims substantively connected with an international carriage of goods, irrespective of whether the cause of action be based on the Convention or on national law. Therefore, an action for payment of carriage charges will in particular be governed by the Convention's limitation period, even though it has its roots only in national contract law.

That ruling is completely in line with the established rule in German jurisprudence.<sup>99</sup> The test for the application of the Convention's limitation provisions is "substantive" or "objective connection with the international carriage of goods".<sup>100</sup> The interpretation of that criterion – "substantive connection" – may be very broad. Even agreements appearing somewhat remote, at first glance, have been considered by German courts as sufficiently connected with international transportation.

The Saarbrücken Court of Appeals was called upon to decide on an action for payment of compensation based on a pooling agreement.<sup>101</sup> The parties to that agreement were both international freight forwarders, one of which was serving as subcontracting forwarder for the other. They had entered into a contract for the transportation of goods from Germany to Austria

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<sup>93</sup> The general statute of limitations in the German Civil Code runs for 30 years (*cf.* Section 195 German Civil Code). As to claims by merchants for their remuneration, the law mostly provides for a two or four year limitation period (*cf.* Sections 196, 197 German Civil Code).

<sup>94</sup> *Demuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 32 No. 1.

<sup>95</sup> Under general German law (Section 195 German Civil Code), in an action for damages against the carrier the statute of limitations would normally run for 30 years; *cf.* Bundesgerichtshof, 26.9.1980 – (I ZR 119/78), BGHZ 79, 89. In national German transport law, however, that period is as a rule also shortened to one year; *cf.* Sections 414(1), 439 German Commercial Code and Section 40 Kraftverkehrsordnung (Regulation on the long-distance carriage of goods by road); *cf.* also *Demuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 32 No. 5.

<sup>96</sup> For example, a carrier's claim for charges would be barred, under general German law, after two years (*cf.* Section 196 No. 3 German Civil Code), as against one year under Article 32(1) CMR.

<sup>97</sup> *Demuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 32 No. 1.

<sup>98</sup> Oberlandesgericht Düsseldorf, 26.1.1995 – (18 U 77/94), TranspR 1995, 288.

<sup>99</sup> *Cf.* Bundesgerichtshof, 10.5.1990 – (I ZR 234/88), VersR 1991, 238.

<sup>100</sup> *Koller*, Transportrecht, *op. cit.*, CMR Art. 32 No. 1; *Adolf Baumbach/Klaus Hopt*, Handelsgesetzbuch, 29th ed. 1995, CMR Article 32 No. 1.

<sup>101</sup> Oberlandesgericht Saarbrücken, 24.2.1995 – (4 U 277/94-44), RIW 1996, 605.

and into the above-mentioned pooling agreement. The latter required them to list all profit and losses arising out of their specific forwarding business on a common current account, and the overall resulting profit or loss was to be divided equally between both parties. An error occurred in the apportionment of the proceeds. Since more than one year had already passed before the institution of proceedings, the main question was whether the limitation provision of Article 32 would even apply to a claim for compensation whose cause of action was a separate pooling agreement. The court applied Article 32 and dismissed the claim on the ground that the CMR limitation provision applies to all claims which are objectively related to the contract of carriage, no matter whether the cause of action lies under the Convention itself, national law or under specific provisions of some different contract. Concerning the pooling agreement, the court had no doubts as to its objective connection with an international carriage of goods relationship, the carriage contract being the only basis and condition of existence for the pooling agreement. The latter had no purpose in itself, but was aimed only at summing up and dividing the profit and loss produced in the course of the forwarding/carriage relationship. In effect, the Saarbrücken Court of Appeals acknowledged in its decision economic ties as a sufficient objective connection for the purposes of Article 32.

Whether such a liberal understanding of Article 32(1) can be upheld in Germany seems very doubtful, however, especially in the light of a decision of the Federal Supreme Court<sup>102</sup> delivered shortly after the judgment of the Saarbrücken court. The Court had to decide on the issue of whether the short limitation period of CMR was applicable to a claim against a forwarder whose task was exclusively the completion of customs formalities and the disbursement of the German import turnover tax. The Court rejected the applicability of the provision in this case, adopting a considerably narrower interpretation. First, the court left unimpaired the general rule of Article 32's applicability to all claims arising in one way or another out of international carriage governed by the Convention. There must however be a substantive link between the claim and the transportation. In determining the requirements for that link, the court referred to the overall objective of CMR of establishing rules for international transport contracts. Therefore, not just any connection with international carriage contract would suffice. There must be a substantive relationship to the actual transportation, *i.e.* to the carriage itself, in order to trigger the application of Article 32. In the case at issue, the defendant had been entrusted with the customs procedures only, which was a necessary step in conveying the goods to the consignee, but it was not involved in the actual carriage operations and consequently could not rely on the one year limitation period of Article 32(1). To sum up, the court denied the privilege of a short limitation period because the customs clearance for which the forwarder had been employed was not sufficiently connected with the carriage procedure.

If these criteria are the standard to be observed, it is doubtful whether the merely economic purpose of collecting and sharing out the proceeds of a haulage business would provide a sufficient link with the carriage operations themselves. Applying this test, it would be difficult to establish a substantive connection with the contractual relationship genuinely governed by CMR, as the Saarbrücken Court of Appeals had assumed. Nevertheless, it is unclear if the standard discussed above will definitely govern in the future, as the judgment of March 23, 1995 was delivered by the 3rd civil division which is not normally competent for transport law matters, this being the 1st civil division of the Federal Supreme Court, which may follow its line of precedent and decide on a more liberal interpretation.

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<sup>102</sup> Bundesgerichtshof, 23.3.1995 – (III ZR 177/93), VersR 1995, 940.

Finally, an important German peculiarity concerning the running of the CMR limitation period has been decided by the Hamm Court of Appeals. As to the question of tolling and interruption of the period of limitations, Article 32(3) refers to the law of the respective forum. This is where national law comes exclusively into play and exerts a decisive impact on the application of the Convention.<sup>103</sup>

The court was confronted with the issue of whether Section 852(2) of the German Civil Code could be applied by analogy as a tolling provision under Article 32(3) CMR.<sup>104</sup> The above-mentioned section of the German Civil Code concerns actions for damages in tort and provides that mere negotiations between a tortfeasor and the injured person will toll the running of the statute of limitations. This is not the usual rule in German law. Normally, suspension of a limitation period would require a substantial agreement creating sufficient confidence in the claimant that the defendant will not plead the statute of limitations, thus making it inequitable for the latter to do so.<sup>105</sup> Section 852(2) is an exception established for the law of torts and the question before the court was whether by way of analogy the provision could be applied to contractual claims under CMR as well. The court denied that possibility categorically and, in an *obiter dictum*, went beyond the issue before it, explicitly stating that Section 852(2) does not apply in the whole area of transport law, either directly or by analogy, with the consequence that not only the limitation period applicable to claims arising out of a contract for the international carriage of goods, but also to those arising in a purely national transport setting can be tolled only by a substantial agreement meeting the above-mentioned criteria. Mere negotiations, in any case, will not suffice.

While the Hamm court decided only on contractual claims, it should be noted that, in the opinion of German courts, the tolling provision of Section 852(2) will not even apply to actions in tort for damages concurrently recoverable under CMR (cf. Article 28). This has already been held in an early decision by the Düsseldorf Court of Appeals in 1976.<sup>106</sup> Thus, the present state of German law is that for all claims arising out of contracts for the international carriage of goods, whether brought in contract or in tort, tolling by mere negotiations between the parties is not possible.

#### IX. CONCLUSION

Of course, no overview of two years of a nation's case law can hope to cover all matters on which the courts have been called upon to adjudicate. This article has sought to outline the principal rulings and trends in current German jurisprudence on international road transport law. While it may fill in some of the background to the legal problems underlying the cited decisions and provide some insights into the operation of international transport law from a German point of view, readers seeking more detailed legal guidance on any of these issues should turn to the cases in their original version. The table reproduced below may be of some assistance to this effect.

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<sup>103</sup> Demuth in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 32 No. 87; *Koller*, Transportrecht, *op. cit.*, CMR Art. 32 No. 16, 18.

<sup>104</sup> Oberlandesgericht Hamm, 23.1.1995 – (18 U 78/95), *TranspR* 1995, 290.

<sup>105</sup> Cf. *Palandt*, Bürgerliches Gesetzbuch, *op. cit.*, § 202 No. 8, before § 194 No. 10-12.

<sup>106</sup> Oberlandesgericht Düsseldorf, 8.3.1976 – (1 U 181/75), *NJW* 1976, 1594; cf. also *Demuth* in: *Karl-Heinz Thume*, Kommentar zur CMR, *op. cit.*, Art. 32 No. 89.

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DECISIONS CITED  
(in chronological order)

Date	Court	Reference	Relevant CMR Provisions	Source
28/02/1975	BGH	I ZR 40/74	Art. 17(2)	NJW 1975, 1597
08/03/1976	OLG Düsseldorf	1 U 181/75	Art. 28	NJW 1976, 1594
05/06/1981	BGH	I ZR 92/79	Art. 17(2)	TranspR 1981, 130
10/02/1982	BGH	I ZR 80/80	Art. 21	BGHZ 83, 96
20/01/1983	BGH	I ZR 90/81	Art. 17(1)	TranspR 1983, 44
14/07/1983	BGH	I ZR 128/81	Art. 29(1)	NJW 1984, 565
12/01/1984	OLG Düsseldorf	18 U 151/83	Art. 17(2)	TranspR 1984, 102
16/08/1984	OLG Hamm	18 U 281/83	Art. 21	TranspR 1985, 97
10/05/1990	BGH	I ZR 234/88	Art. 32	VersR 1991, 238
17/05/1990	OLG Düsseldorf	18 U 31/90	Art. 17(1)	TranspR 1990, 280
12/04/1991	OLG München	23 U 1606/91	Art. 16	VersR 1992, 724
18/04/1991	OLG Hamburg	6 U 244/90	Art. 21, 51(3)	TranspR 1991, 297
13/05/1993	OLG Hamm	18a U 94/93	Art. 17(2)	NJW-RR 1994, 294
20/10/1993	LG Hamburg	417 O 223/92	German Act Art. 1 a	TranspR 1995, 114
06/12/1993	OLG Hamm	18 U 101/93	Art. 17(2)	TranspR 1994, 62
11/02/1994	OLG Frankfurt	10 U 68/93	Art. 17, 29	OLG-Rp. Frankfurt 1994, 76
23/02/1994	OLG Nürnberg	12 U 2937/93	Art. 5, 6, 9	TranspR 1994, 288
31/03/1994	OLG Hamburg	6 U 168/93	Art. 15, 16	TranspR 1995, 245
07/04/1994	OLG Hamburg	6 U 68/94	German Act Art. 1 a	TranspR 1995, 115
21/04/1994	OLG Düsseldorf	18 U 53/93	Art. 17(4), 17(5)	TranspR 1995, 347
21/04/1994	OLG Düsseldorf	18 U 190/93	Art. 21	TranspR 1995, 67; TranspR 1994, 391
19/07/1994	LG München I	13 HKO 19895/92	German Act Art. 1 a	TranspR 1995, 116
26/08/1994	OLG Köln	19 U 190/93	Art. 16(1)	TranspR 1995, 68
15/12/1994	OLG Düsseldorf	18 U 72/94	Art. 17(1)	TranspR 1995, 244
11/01/1995	KG	23 U 377/94	Art. 17(2)	TranspR 1995, 342
23/01/1995	OLG Hamm	18 U 78/95	Art. 32(3)	TranspR 1995, 290
26/01/1995	OLG Düsseldorf	18 U 77/94	Art. 32	TranspR 1995, 288
17/02/1995	OLG Karlsruhe	15 U 262/94	Art. 29(1)	TranspR 1995, 439
24/02/1995	OLG Saarbrücken	4 U 277/94-44	Art. 32	RIW 1996, 605
09/03/1995	OLG Düsseldorf	18 U 142/94	Art. 17(1)	TranspR 1995, 288
22/03/1995	OLG Nürnberg	12 U 4139/94	Art. 29(1)	RIW 1995, 684
23/03/1995	BGH	III ZR 177/93	Art. 32(1)	VersR 1995, 940
29/03/1995	OLG Nürnberg	12 U 3829/94	Sec. 51 Lit. b) ADSp	TranspR 1996, 252
10/05/1995	LG München II	1 HK O 3746/94	Art. 17(2)	TranspR 1995, 443
18/05/1995	BGH	I ZR 151/93	Art. 17(1), 29(1) 32(1)	TranspR 1995, 383
30/05/1995	OLG Oldenburg	5 U 63/94	Art. 17, 29	NJW-RR 1996, 359
23/06/1995	OLG München	23 U 1713/95	Art. 17(2)	OLG-Rp. München 1996, 18
28/06/1995	LG Bochum	13 S 4/95	Art. 9	TranspR 1996, 336
29/06/1995	OLG Karlsruhe	12 U 186/94	Art. 29(1)	VersR 1995, 1306
01/07/1995	OLG Düsseldorf	18 U 207/94	Art. 17(4) Lit. c)	TranspR 1996, 109
04/07/1995	OLG Köln	22 U 272/94	Art. 29(1)	TranspR 1996, 284
12/07/1995	OLG Hamm	18 U 191/94	Art. 29(1)	TranspR 1996, 237
28/07/1995	OLG München	23 U 2646/95	Art. 17(4) Lit. c), 17(5)	TranspR 1996, 240
25/10/1995	BGH	I ZR 230/93	Art. 21	TranspR 1996, 118
26/10/1995	OLG Düsseldorf	18 U 27/95	Art. 1(1)	TranspR 1996, 152
02/11/1995	OLG Hamm	18 U 10/95	Art. 17(4) Lit. d)	TranspR 1996, 335
10/11/1995	LG Hamburg	404 O 134/95	Art. 17(2), 11	TranspR 1996, 338
30/11/1995	OLG Hamburg	6 U 104/95	Art. 17(2)	TranspR 1996, 280
07/12/1995	OLG Hamburg	6 U 164/95	Art. 17(2)	TranspR 1996, 283
14/12/1995	OLG Düsseldorf	18 U 211/93	Art. 9(1)	TranspR 1996, 155
20/12/1995	OLG Karlsruhe	9 U 281/94	German Act Art. 1 a	TranspR 1996, 203
21/12/1995	OLG Frankfurt	5 U 86/95	Art. 29(1)	OLG-Rp. Frankfurt 1996, 26
28/02/1996	LG Darmstadt	9 O 414/94	Art. 17(2)	Unpubl. (JURIS online)