Transport safety and security from the perspective of the French transport code

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Abstract

Given the very different forms and modalities, the modalities and conditions that may be imposed by the passenger's access to the means of transport on the one hand and the variety of procedures that allow the passenger to buy the transport price on the other hand the question is where it starts where the security obligation ends. Some time ago, the Court of Cassation made a distinction between unsubsidized transports for the advance purchase of a travel ticket and the other. For the first time, the case law considers that the transport contract is born when the traveler enters the vehicle and the transport safety obligation is born at that time.

Keywords: *different forms and modalities, the modalities and conditions that may be imposed by the passenger's access to the means of transport, French transport code, transport safety.*

JEL Classification: K23, K33

1. Introduction

Due to the absence in French law of a legal provision in the matter (specific text) on the liability of the passenger / passenger carrier, the Cassation Court has built a legal regime since the beginning of the century[2].

The requirement of safe driving of a traveler towards a safe and healthy destination was first adopted for maritime transport[3] well before the extension of its scope to land transport[4].

By imposing a security duty on the carrier, the Court of Cassation also recognized that its liability should, in principle, be sought in the area of contractual liability, thereby violating the previous case-law, which in 1884 considered the liability of the carrier for personal injury to travelers in the criminal field[5].

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[2] Issabelle Bon-Garcin, Maurice Bernadet, Yves Reinhard, Dalloz, *Droit des transports*, Dalloz, Paris, 2010, p. 17; Ch. Paulin, *Droit des transports*, Litec, 2005, p. 10.

[3] Reglement (CE) n° 2111/200, concernant l'etablissement d'une liste communautaire des transporteurs aeriens qui font J'objet d'une interdiction d'exploitation dans la Communaut e et l'information des passagers du transport aerien sur l'id entite du transporteur aerien effectif,e t abrogeant J'article *9* de la directive 2004 / 36/ CE. Sur la question , *v. infra*, n° 752.

[4] Civ, 27 janv., 1913, S 1913, concl. Sarrut; DP 1913, 1. 249.

[5] Civ. 1' C, 10 nov. 1884 , *S.* 1885. 1. 129, note C. Lyon-Caen ; *D.* 1885. 1. 433, note L. Sarrut.

2. Duration / extent of the security obligation in the case of the transport contract

Taking into account the very varied forms, conditions and conditions that can lead passengers to access the means of transport on the one hand and the variety of procedures that allow the traveler to pay the transport price, the question is: Where does it begin and where it stops the safety obligation?

For a very long time, the Court of Cassation made a distinction between transport not subject to the prior purchase of a ticket (bus, tram, taxi) and those which, on the contrary, is not subject to this rule.

Initially, the case law considered that in the case of a contract of carriage in which the passenger entered or had boarded the vehicle[6], the safety obligation appeared at the same time.

This reasoning, at the same time, led to the determination of the moment when the safety obligation was extinguished, or when the traveler was no longer in contact with the means of transport, he had descended from it.

With regard to this obligation when the purchase of a ticket, or the obtaining of a ticket through the carrier is required, the case law has extended the safety obligation also to the corridors, access ways, railway staircases.

Thus, it has been widely accepted that this security requirement arises when the traveler enters the departure point of the means of transport by crossing the entrance gate or when passing through the front of the ticket control agent.

The security obligation shall cease when the traveler leaves the premises of the means of transport passing through the exit gate.

Subsequently, as a matter of innovation, the Court of Cassation decided that the carrier's safety requirement was limited to the strict period of the transport operation and that it is the responsibility of the carrier as soon as the traveler begins to travel in the vehicle and ceases when he gets out of the car. The Court of Cassation explained a year later that the period between the passenger's entry into the vehicle and the descent from the vehicle is a simple obligation to secure the means of transport.

However, travelers, victims of accidents at the transport stations, were not favored by the system resulting from this provision.

The non-cumulative liability rule prevented it from invoking the provisions of paragraph 1 of Article 1384 of the Civil Code before the carrier, while third parties in the station could obtain compensation under this paragraph for any failure against the carrier.

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[6] Selon la formule consacree, « pour Ies autobus et tramways, sur lesguels le prix du voyagee st per u en cours de route, le contrat de transport se forme au moment ou le voyageur est admis a prendre sur la voiture" (Cass., req., 7 mai 1935, DH 1935.348; voir egal. Civ., 20 avr. 1942, DA 1942. Jur. 127).

The carrier will be totally blamed if the risk is unpredictable and appears to be the sole cause of the injury. Otherwise, if it is not unpredictable or if the carrier is guilty of misconduct, he will respond.

However, a decision of the First Civil Chamber of the Court of Cassation, made in railway matters, raises the question of the possible partial exemption from liability of the carrier.

Indeed, that decision is a peremptory one: that 'the carrier who has the security obligation towards a traveler can not be partially exonerated'[8].

Any division of responsibility thus seems to be excluded.

The authors share the future of this case-law. Will there be limited liability for national rail transport or will it be extended to any debtor of the safety obligation?

The Mixed Chamber judgment of 28 November 2008 (mentioned in the note) does not bring any further light on this point.

Regarding the existence of a third part, the question was raised about passenger aggression, especially on bus and trains. It is a matter of force majeure, which, of course, is required by the carrier.

However, in this case, the Court of Cassation is extremely severe. Thus, it did not hesitate to condemn SNCF to repair the damage suffered by a passenger attacked by the knife by an unidentified individual.

The Court of Cassation emphasizes, on the one hand, that attacks are not unpredictable and, on the other hand, that a sufficient number of controllers, who regularly check wagons, should have a deterrent effect.

The latter ones, or the preventive action of the controllers, allow the irresistible aggressive nature to be eliminated and, in the absence of any evidence of preventive measures, there could be no major force[9].

In another case, the aggressor, installed in a seating position, had unlocked the door to have access to the crate where was his next victim. Therefore, the attack would not have occurred if the SNCF had taken "sufficient measures to effectively prevent access to the cabinets crossed by the other train passengers". In this way, we are in the presence of the irresistible character of the event[10].

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[7] In France, the compensation of victims of traffic accidents is governed by the Badenter Law of 5 July 1985 which determines which victims are entitled to compensation and imposes certain obligations on the insurers of vehicles involved in the accident to speed up the compensation procedures.

[8] Civ. 1'°, 13 mars2008, pourvoi n° 05-12. 55, RDC 2008, p. 743, note D. Mazeaud; *RTDciv.* 2008. 312, note P. Jourdain; RD *transp.* 2008, comm. 96, obs. Ch. Paulin. Un arret de la chambre mixte du 28 novembre 2008 gui a rejete un pourvoi forme par la SNCF, se contente de rappeler Ies conditions de l'exoneration totale (Cass. mixte, 28 nov. 2008, *Juris-Data* n° 04 6074, *JCP* 2009. li. 10011, note P. Grosser).

[9] Civ. 1'°, 3 juill. 2002, n° 99-20. 217, *Bull.* civ. I, n° 183.

[10] Civ. l'e, 21 nov. 2006, n° 05-10783, P+B, RD *transp.*, fevr. 2007, n° 7, p. 22, note Ch. Paulin.

3. Framework - contract applicable to occasional collective road passenger transport services[11]

It is only specified in Article 5 of the standard contract that the carrier is responsible for the safety of transport, including every drop and drop of the coach passengers.

What has been said before with regard to the safety obligation will apply to the carrier even under this standard contract

The standard contract also provides for an obligation on the driver to take all necessary safety measures and, if necessary, to give instructions to passengers who, in their turn, must comply with them.

4. The Law of July 5, 1985

The security obligation normally refers only to transport contracts for persons not subject to special regulation.

Consequently, the contracts sent to the Court of 5 July 1985, which concerned the improvement of the situation of the victims of a road accident, called the Badinter Act, are excluded from its scope.

From that date, the carrier's liability is covered by two systems: in the event of a collision, the damage suffered by the passenger is offset in accordance with the law of 5 July 1981; with the exception of any traffic accident, the damage suffered by the traveler remains within the scope of contractual liability.

Consequently, if a traveler is injured inside a vehicle, for example, if he falls or is injured by a luggage without a traffic accident, the carrier is considered responsible

However, due to Badinter's "pull-out" effect, the boundary between the two regimes is not always so clear.

The Court of Cassation applied the Badinter Law for a passenger accident caused by another traveler when he was descended from a vehicle[12] or, if a passenger was injured while traveling by bus[13].

5. Scope of the Law of 5 July 1985

If the damage suffered by a victim occurs as a result of a road accident within the meaning of the Law of 5 July 1985, the provisions of this law are applicable.

It should be noted that this applies under Article 1 to victims of a road accident *"even when they are transported under a contract"* from where they are

[11] V. *supra*, n° 391.
[12] Civ. 2e, 11 oct. 1989, n° 88-15. 598, *Bull.* civ. li, n° 163, p. 84.
[13] Civ. 2e, 25 janv. 2001, n° 99-12. 506, *Bull.* civ. II, n° 14.

located, involving a motorized land vehicle and its trailers or semi-trailers, with the exception of routes railways and trams running on their own routes (Article 1).

The notion of traffic accident has not been defined by the legislator.

We believe that a vehicle is in motion when it is in motion, wherever it is or when it is in the vicinity of an open space for public traffic.

From this definition, the notion of traffic accident covers accidents, as well as climbing and falling accidents as well as those involving stopping a vehicle and, in some cases, even a parked car.

Involvement is a different notion of responsibility or guilt.

A moving or stationary vehicle is necessarily involved in the event of a collision. In the absence of contact, it may also be involved, but then it is the duty of the victims to establish that the accident would not have taken place without the intervention of the vehicle. Involving a vehicle in an accident does not necessarily mean compensation for the damage, but simply that the provisions of the Badinter law are applicable.

6. Loss of the right to compensation provided for by the Law of 5 July 1985

Traditional means of exoneration are not used under the law of 5 July 1985.

The carrier can not, therefore, rely on a majore force or a third person. Only the intentional fault of the victim and, in some cases, his unexplained guilt may be deprived of any right to compensation. In addition, the unexplained error leading to the loss of the right to compensation must be the only cause of the accident (Article 3 (1)).

Moreover, their unexplained guilt can not be denied to victims under the age of 16 or over 70 at the time of the accident, as well as to persons with a permanent disability or an invalidity of more than 80%.

Wrong will is excluded even for those with special protection. In the context of the contract of carriage, the assumptions of intentional deviations of the victim that can exonerate the carrier appear in part. One can imagine the case of "conscious" suicide or a deliberate search for a wound to receive compensation.

7. The case of the organized trip

If the passenger is on an organized trip, a conflict of rules may arise in the event of a traffic accident occurring during the journey.

It is necessary to apply the 1985 Law or the Law of 13 July 1992 laying down the conditions for the exercise of activities related to the sale and organization of excursions[14].

[14] V. *infra*, n° 750.

This text imposes on the travel organizer a legal responsibility, but the reasons for relieving his responsibility are more flexible. The doctrine is divided and one can see a decision that recognized the application of the 1992 Act, without questioning the conflict of standards. But it is true that the 1992 Law governs the entire travel contract, regardless of the quality of the service providers.

8. The foreign element

Another question is to know if the 1985 Act can apply to international road passenger transport. Contrary to French domestic law where it matters less if the victim is transported by contract or not, we are in the presence of an extraneous element, the different laws determine the liability of the author of the damage, depending on the nature of the legal relationship.

In the case of a traffic accident between two vehicles, one of which is headed by a French citizen, the driver's action against the other driver or the passenger against the driver is of a tortuous nature.

There is a Convention on the law applicable to road accidents, which refers to the Hague Convention of 4 May 1971[15], which entered into force on 3 June 1975, ratified by 18 States, including France.

The principle of attachment is that of the place where the accident occurs (Article 3). Exceptionally, the law of the State of registration of the vehicle applies if only one vehicle is involved in an accident and is registered in a State other than that in whose territory the accident occurred (Article 4).

Article 10 of the Hague Convention provides that one of the laws declared to be competent by that Convention can only be taken into account in the presence of the exception relating to public policy.

But the First House of the Court of Cassation clearly stated in its decision of 4 December 1992[16] that the imperative nature of the domestic law of 1985 should not be confused with international public order

It could have been the question of the implementation of Regulation (EC) No. 664/2007 of 11 December 2007[17] on the law applicable to non-contractual obligations (called Rome II), but Article 28 of the Regulation provides that the application of international conventions to which one or more Member States are parties can not be affected.

When a traffic accident occurs while the traveler is on a bus and is the recipient of a transport contract with the coach, reference should be made, from 17

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[15] Decr. n° 75-554 du 26 juin 1975, JO 3 juill. En principe, la !oi competente est celle du lieu du delit, mais elle apporte plusieurs exceptions, en faveur de la loi de l'Etat d'immatriculation du 'ou des vehicules impliguees. Sont soumises a la loi applicable en vertu de la convention Ies guestions relatives aux conditions et a I'etendue de la responsabilite, aux causes d' exoneration, a la limitation et au partage de responsabilite, al' existence etala nature des dommages susceptibles de reparation ainsi gu'aux modalites et a l'etendue de la reparation (art. 8).

[16] Civ. 1re, 4 dec. 1992, n° 90-18080, *Bull.* civ. I, n° 39, p. *29, Juris-Data* n 000728.

[17] *JOUE* L 199 31/07/2007, p. 49.

December 2009, to Regulation (EC) No. 593/2008 of 17 June 2008[18], known as "Rome I", which applies to all contracts concluded after that date.

Article 5 only recalls that the parties have been able to designate the applicable law according to the specific criteria laid down in the Regulation and that, otherwise, the law applicable to the contract of carriage of passengers is the law of the country where the passenger has his habitual residence, provided that the place of departure or arrival to be in that country. If these conditions are not met, the law of the country where he or she is habitually resident applies.

9. The security obligation in the light of international conventions

Obligation on CVR result. As a preliminary point, it is important to reiterate that this Convention applies to all road passenger transport services and their baggage (even on national territory) when it is intended or arriving in a Contracting State, even if it is carried out by several carriers 1).

Like the Convention on International Carriage of Goods (CMR), the notions of nationality and the place of residence of the traveler are not taken into account by the text. In the case of multimodal transport, CVR applies to road sections, even if they are not international, but provided they are not accessible for the other type of transport (CVR Article 2).

The carrier is liable for injury to the traveler (death, injury or other bodily and mental injuries) caused by an accident related to and during transportation, including entry and exit of the vehicle, transport time and baggage loading and unloading time (CVR, Article 11-1).

He is also liable for damages caused solely by a third party against whom he can lodge an appeal (CVR, Article 17-2). On the other hand, it is relieved of its responsibility in the event of force majeure or in the event of a passenger's fault.

Obligation of outcome in relation to HR-CIV. It is, in principle, RU-CIV (version 99) intended to be applied[19]. In principle, since Article 2 (1) states that "every State may at any time declare that it shall not apply to the victims of accidents in its territory all provisions relating to the liability of the carrier in the event of death and injury when they are its nationals or persons who have their habitual residence in that state During the COTIF review procedure, the possibility of abolishing this possibility was foreseen But it was finally maintained and two states invoked it (Austria and Latvia).

We recall that these rules now apply to rail transport, even if it is carried out in France[20].

In accordance with Article 26 (1), the carrier is liable for damage resulting from the death, injury or other injury to the passenger's physical or mental integrity caused by an accident related to the rail operations occurring while the passenger is

[18] V. *supra,* n° 411.
[19] V. *supra,* n° 397.
[20] V. *supra,* n° 391.

in railway vehicles, but also when the vehicle is on or off. However, the rail carrier, linked to a result obligation, may, in some cases, exclude liability.

Article 26. 2 (b) then preserves the fault of the traveler, without having to be inevitable and exclusive. On the other hand, the convention requires it when the accident is due to the behavior of a third party.

If the behavior of the third party does not assume such character, then the carrier shall then be liable for its benefit, without prejudice to its possible remedy against third parties (Article 26 (3)). In view of these exclusion clauses, there is a significant divergence from the French case-law, which requires the victim's fault to cover force majeure to exonerate the carrier while the RU-CIV contains a simple mistake. These rules, at least at this point, are therefore less protected by the rail passenger.

Obligation of the result under air agreements. The air carrier liability is governed by the VarsoVie and Montreal Conventions[21], irrespective of whether the transport is domestic, intra-Community or international[22].

Unlike the GI-CIV, the only derogation permitted here refers to the increase of the compensation limits[23].

Both conventions require the carrier to assume liability for all injuries suffered by a traveler. Applies only if the accident occurred on board the aircraft or during boarding or disembarkation is the cause of the damage for which compensation is requested. Thus, damage caused by an internal event to the victim's victim can not be attributed to the carrier[24].

In the event of an accident occurring in the vicinity of an airport, the passenger shall retain his or her freedom of movement, and shall be subject to the obligation of the carrier to perform the duties 1. With regard to the case law of the Court of Justice, it is the responsibility of the transferee to determine whether or not he has the right to exercise the right to exercise his right of access to the information contained therein and to the exposition of the passer- risques inhérents à l'ex ploitation aérienne.

If in both conventions the passenger does not have to prove the fault of the carrier, who must establish the existence of the causes of uncontrollability, they differ subsequently.

10. Conclusions

In accordance with the Warsaw Convention, the carrier does not have to prove the force or fault of a third party, it is sufficient for him to prove that he has taken all necessary measures to avoid injury or that it was impossible to take it

[21] Civ. 1°, 29 nov. 1989, *RFD aérien,* 1989, p. 539.
[22] V. *supra,* n° 391.
[23] Art. 23-1 și 32 de la Conv. din Varsovie, arta. 25, 26 et 49 de la Conv. de Montreal.
[24] Civ. 1 °, 29 nov. 1989, RFD aerien, 1989, p. 539.

out[25]. Thous, an accident of unknown origin must not give rise to compensation, as the carrier demonstrates diligence.

It should be noted, however, that French judges wishing to compensate victims have adopted a rigid interpretation and have not hesitated to condemn the carrier, even though he has demonstrated his diligence in terms of navigation[26].

Similarly, French judges are particularly strict when assessing the carrier's inability to take the necessary steps to avoid injury and considers that the impossibility of a force majeure. Since the Montreal Convention makes a distinction according to the magnitude of the damage.

If the latter is less than 113.100 SDR[27], the carrier may limit or exclude liability only in the case of the victim's defect[28].

Beyond this amount, the carrier is not liable if it proves that the damage is not due to his negligence[29] or that it results only from the fact that a third party or guilt of the victim, as in the previous hypothesis.

Bibliography

Issabelle Bon-Garcin, Maurice Bernadet, Yves Reinhard, Dalloz, *Droit des transports*, Dalloz, Paris, 2010.

Ch. Paulin, *Droit des transports*, Litec, 2005.

Reglement (CE) n° 2111/200, concernant l'etablissement d'une liste communautaire des transporteurs aeriens qui font l'objet d'une interdiction d'exploitation dans la Communaute et l'information des passagers du transport aerien sur l'id entite du transporteur aerien effectife t abrogeant J'article *9* de la directive 2004 / 36/ CE.

Decret n° 75-554 du 26 juin 1975, JO 3 juill.

[25] Art. 20.

[26] Art. 20 et 21. 2.

[27] À l'instar de la COTIF, la convention de Montréal comprend un mécanisme de révision de ces limites par l'OACI (dépositaire de la convention) tous les cinq ans lorsque l'inflation le justifie (art. 24). Une première révision a porté à compter du 30 décembre 2009 la limite de 100 000 DTS par passager en cas de mort ou de lésion corporelle à 113 000 DTS. Comme nous le verrons les limites relatives à d'autres chefs de préjudice ont également été modifiées.

[28] Art. 20 et 21.1.

[29] CA Paris, 12 December 1961, JCP 1962. El. 12596, note Juglart; D. 1962. 707.