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Abstract: The scholarly law journal –European Transport Law– was founded in Antwerp, Belgium in 1965 by Mr. Robert Wijffels (1926-2010), it marked the 51st volume in 2016. In the last edition of 2016 of European Transport Law, we can read the articles about European air passenger rights; the rules about the environment protection of aircraft (ICAO´s COSIA1); the six court decisions about: the goods were loaded in a good condition but arrived in a damaged condition, and the rules those can do the applications to the cases; the judgment about the breaking up of vessels; the cases of the Court Hamburg of the responsibility of after the end of the transport or the loss of the cargo; the decision about Maritime claim by Court of Cassation (Belgium); the judgement of the Court of Appeal (Antwerp) about the action for payment of freight charges and related costs regarding demurrage for transport orders between the United Kingdom and Belgium; and the case which can do the explication of the clauses about the International carriage by rail and the related articles.

Keywords: European Transport Law, Environment protection of aircraft, Good condition, Damaged condition, Breaking up of vessels, Loss of the cargo, Maritime claim, Payment of freight charges, International carriage by rail.

European Transport Law publishes case notes on transport law decisions of the courts throughout Europe, with articles in English, Dutch, French, German, Italian and Spanish. The first journal was published in Antwerp, Belgium by the Belgian lawyer Robert Wijffels. About the purpose of these review, we can invoke which Danielle Brasseur said in International and Comparative Law Quarterly2:

«The purpose of this last volume of 2016 is to give information in matters concerning transport, in order to harmonise existing differences of opinion, and to attempt to provide answers to certain problems arising in that field.

Every issue contains and article on a definite aspect of transport, a survey of the recent court decisions in Western Europe (including the Common Market countries and the United Kingdom), and a bibliography. The articles are published in the author's original language and in English; the court decisions are published in their original text, and preceded by a summary in the five languages of review (English, French, German, Italian and Dutch)».

In the last journal which presented two articles with regards to the regulars of aircraft transmission and six court decisions about the goods transportation and the responsibilities during the procession. The two regulars of aircraft transport are the passenger rights –from a damage/compensation point of view to analyze the air passengers’ rights–, and the influences and shortcomings of ICAO’s CORSIA in European Union. The six court decisions are–1. Court of Appeal (England and Wales), 10 November 2016, [2016] EWCA Civ 1103: Where goods were loaded in apparent good condition but arrived in a damaged condition cargo interests’ claim would have a cause of action against the goods under the Hague Rules³. 2. District Court Hamburg (Landgericht Hamburg), 8 January 2015, 409 HKO 73/14: the breaking up of the vessel and its classification. 3. District Court Hamburg (Landgericht Hmburg), 19 April 2016, 411 HKO 99/14: the shipper is no longer entitled to have the receipt of the goods by the carrier evidenced by the issuance of a bill of lading after the end of the voyage or after the loss of the cargo. 4. Court of Cassation Belgium (Hof Van Cassatie Van België), 26 September 2016, N° C.16.0107.N. the dispute about the Maritime claim. 5. Court of Appeal Antwerp (Hof Van Beroep Te Antwerpen), 19 December 2016, 2014/AR/241: the conflict of the action for payment of freight charges and related costs regarding demurrage for transport orders between the United Kingdom and Belgium. 6. Court of Cassation France (Cour De Cassation De France), 29 November 2016, n° R 14-20.172: the case of appeal to make the explication about the subject of transportation by rail, the Regulation (CE) n° 44/2001 of 22 December 2000, the Article 2 of the agreement between the European Union and the Intergovernmental organization for International carriage by rail (OTIF)⁴, the Convention with regard to international railroad transport (COTIF)⁵ and its modification in 1999.

The first research of this journal is about the European air passenger rights –the investigation of Montreal’s damage and Brussels’s compensation–, by Renzo Van der Bruggen. In this text he addresses the problems of the air passengers’ rights which are ambiguous and air carries’ liability limits are vague from a damage/compensation point of view inside European Union limits. There are two legal instruments which can protect the rights of air passengers when the flight is delayed–the Montreal Convention on international air carries liability, and the European Air Passenger Rights Regulation. As there are a lot of passengers are carried by air in the EU and all of the world, for example according to this paper in 2015 only in EU more than 900 million passengers were carried by air. In this paper, the writer try to explain and clarify the interconnection between these two instruments and solve the questions: if both legal instruments applicable, if the European Court of Justice, the passengers and the carriers can combine them, or choice about which of the two instruments, etc., with the cases examples: 1. International Air Transport Association (IATA) and European Low Fares Airline Association (ELFAA) v Department for Transport (C-344/04) EU:C:2006:10; 2. United Kingdom –The Sidhu case [1996] UKHL 5; 3. Sousa Rodríguez case: Sousa Rodríguez and others v Air France (C-83/10) EU:C:2011:652; 4. The van der Lans case: van der Lans v Koninklijke Luchtvaart Maatschappij (C-257/14) EU:C:2015:618. Moreover, the types of damage mentioned in this work are the “identical damage” –damage that is almost identical for every passenger of the (excessively) delayed flight–, and the “individual damage” –damage that is inherent in the reason for travelling–.

The other text of aircraft regular concerning the ICAO’s CORSIA, written by Ruwantissa Abeyratne –Former Senior Legal Officer, International Civil Aviation Organization–. As the

environmental problem, especially the air contamination is a global issue that needs to be addressed, in a Pacific Northwest National Laboratory study reports: by 2020, human-caused warming will move the Earth's climate system into a regime in terms of multi-decadal rates of change that are unprecedented for at least the past 1,000 years, increasingly countries and organizations attach more importance to it. In this article the author made the analysis from the point of the international organizations and the meetings the decisions to clarify if the ICAO's CORSIA is sufficient for the condition of the European Union. From 2012, the EU Emissions Trading System would be applicable to any airline and its flights that are destined to Europe from anywhere in the world and vice versa, detractors of EU Emissions Trading System claimed that this was extraterritorial application of European law. Therefore, the EU halted its 2012 application of aircraft emissions by international carriers coming into Europe, until ICAO could come up with a global market based measure. During the 39th Assembly of ICAO (27/09/2016–01/10/2016) to adopted by consensus a Resolution on a global market based measure to address and mitigate the effects of aircraft engine emissions on the environment –CORSIA, Carbon Offsetting and Reduction Scheme for International Aviation–, but the member states of the EU caused to question whether the mechanism suggested in CORSIA adequately addressed global needs to face aircraft emissions. Thus, the European Commissions would be issuing its own proposals on the scope of the Aviation EU Emissions Trading System.

About the six court decisions on the transportation of goods which are published in this journal, the purpose is to use the practice cases as example to explain the common problem in recent years, for instance: the goods were loaded in good condition but arrived in a damaged condition; the deficiencies that led to the breaking up of the vessel; after the loss of the cargo, the shipper is no longer entitled to have the receipt of the goods by the carrier evidenced by the issuance of a bill of lading; the issue of the Maritime claim, which need to be stated in the order confirmation; the action for payment of freight charges and related costs regarding demurrage for transport orders; the regulars which can apply for the jurisdiction in civil and commercial matters in European Union on the international railroad transport.

According to the case of the Court of Appeal (England and Wales) about the goods in a damaged condition when arrived, the objective of claims are for condensation damage to nine consignments of washed Columbian green coffee beans from Benaventura in Columbia to various destinations in northern Germany, there were packages in the containers founded with some degree of damage. In the decision include the judgment about the consideration of the evidential issues raised in relation to the condition of the containers, the general industry practice and the carrier's defenses etc., the issues on the appeal, the related regulations and the temporal scope of the Hague Rules, the analysis of the discussion, the inherent vice during the transportation, the details of the sound system, the inevitabilities of damage. After the analysis of these particulars come to the conclusions: to allow the carrier's appeal in respect of the judge's rejection of the defences of inherent vice and inevitability of damage; but to dismiss the appeal in relation the judge's conclusion as to the temporal scope of the Hague Rules.

With regard to the case of breaking up of the vessel, the judgment of the Court Hamburg which give us an example that the claimant O.B.M.K. GmbH. demanded compensation for

the defendant –the carrier by sea– of the goods which ordered from H.K., because of the breaking up of the vessel in Arabian Sea, and loss all the containers. After the presentation of the facts and reasons, since the deficiencies which eventually led to the breaking up of the vessel could technically have been discovered by a classification society or yard only, it cannot be held against the vessel's command to have undertaken the voyage despite the measured values of the actual draught.

The other decision of the Court Hamburg concerned the loss of the cargo after the end of the transportation, according to the clarification of the regulation of London Limitation Convention and the facts of the case –the claimant I.I.E. GmbH made an order with incoterm FOB, the defendant subcontracted K. L. Co. Ltd. as the shipper, who had the responsibility of all the damages during the transport, but the shipper is no longer entitled to have the receipt of the goods by the carrier evidenced by the issuance of the bill of lading–. If the circumstances appear that the loss is due to the vice of cargo-unseaworthiness, the carrier will not be exonerated from liability save where he also proves that the vice of cargo-unseaworthiness was not discernible with the due care and diligence of a prudent carrier at the time of commencement of the ocean carriage.

About the case of maritime claim, there is a decision of the Court of Cassation of Belgium (Hof Van Cassatie Van België), the cassation appeal is against to the judgement of the Court of Appeal in Antwerp on 26 October 2015, because they contemplated that the Court of Appeal failed to declare that OW Bunker (Rotterdam) was not considered as a contracting party by the physical supplier, as this was not stated in the order confirmation, nor in the invoice. In this case they also explained that the ship may only be arrested to secure a maritime claim; in this way, the Maritime claim includes a claim arising out of supplies to a ship for her operation or maintenance. And finally, the Court of Cassation decided to reverse the judgement of the Court of Appeal.

In the judgement of the Court of Appeal of Antwerp (Hof Van Beroep Te Antwerpen), the Belgium company –TVD BVBA– claimed the unpaid invoices of the company ECC BV (European Customs Consult) for exportation from 24 January to 13 March of 2008 between United Kingdom and Belgium. In this case, it touched upon the judicial determination of the faults of the former manager and his employees who were criminally convicted because of their involvement in theft of goods, forgery and false use of name, which are civilly accountable to the company. As a result, the Court of Appeal decided that the petition is groundless, and made the order of payment 1.500,00 EUR from TVB BVBA to ECC BV. According to this judgment, it means that the claiming freight and demurrage for these transports is manifestly without any legal interest.

The last court decision of this journal is from the Court of Cassation of France (Cour de Cassation de France) on 29 November of 2016, it aimed to the problem of the transportation by rail. The companies ÖBB Infrastruktur (Austria) and Rail Cargo Austria AG appealed against the decision of the Court of Appeal Paris on 6 March of 2014, and they invoked the grounds of the appeal annexed judgment for support the action. During the process of this case, after the analysis the related rules about the rail transportation: the Regulation n° 44/2001 of 22 December 2000 on jurisdiction and recognition and enforcement of

judgments in civil and commercial matters overrules the provisions of the Convention with regards to international railroad transport of 9 May 1980, as amended by the Vilnius Protocol, the Court of Cassation (France) decided: Dismiss the principal and incidental appeals.

In summary, in the Vol. LI, No. 6 – 2016 of the scholar law journal of European Transport Law, we can read the texts and judicial cases with the explanation, analysis and clarification for the commonly and recently problem and questions about the transport law in Europe, such as: the aircraft passenger's right, the problem of the aircraft emissions, the disputes settlement about the goods transportation by sea, by rail, the payment of the compensation, the petition of the loss of goods, the responsibility during the process of the transportation about the damage goods, etc., all these cases, examples, judgments and its explanations, analysis are significance for us, for our study, research and for our work practice.

References

1. ICAO's CORSIA: the International Civil Aviation Organization (ICAO), is a specialized agency, established by United Nations in 1944 to manage the administration and governance of the Convention on International Civil Aviation. It codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. Its headquarters are located in the Quartier International of Montreal, Quebec, Canada. CORSIA: the Carbon Offsetting and Reduction Scheme for International Aviation. On October 6th, 2016, the ICAO finalized an agreement among its 191 member nations to address the more than 1000 t of carbon dioxide emitted annually by international passenger and cargo flights. The agreement will use an offsetting scheme called OCRSIA under which forestry and other carbon-reducing activities are directly funded, amounting to about 2% of annual revenues for the sector.

2. *International and Comparative Law Quarterly: European Transport Law, Journal of Law and Economics*. Edited by Wijffels Robert H. [Antwerp, Belgium: Robert H. Wijffels. 1966; Nos. 1 to 5. 871 pp. 1750 B. Fr.] Volume 16, Issue 1, January 1967, p. 264.

3. *Hague Rules: International Convention for the Unification of Certain Rules of Law relating to Bills of Lading and Protocol of Signature, 1924*. It is an international convention to impose minimum standards upon commercial carriers of goods by sea.

4. OTIF: *Organisation intergouvernementale pour les transports internationaux ferroviaires*. The OTIF is an intergovernmental organization dedicated to international rail transport. It has been active since 1893 and is the oldest international organisation in the sector. It now has 50 member states, including one associate member. The organisation has its headquarters in Berne, Switzerland, and has legal personality under international law and in the national laws of its member states. The aim of the organisation is to promote, improve and facilitate, in all respects, international traffic by rail.

5. COTIF: *Convention concerning International Carriage by Rail, signed at Berne on 9 May*

1980, the fifth General Assembly of the Intergovernmental Organisation for International Carriage by Rail was held at Vilnius from 26 May to 3 June 1999. The entry into force in 1985 of the 1980 COTIF marked the birth of the Intergovernmental Organisation for International Carriage by Rail. [Recibida el 10 de diciembre de 2017].