Liability rules in Danube navigation

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Why the Danube?

Rhine liability rules
• long established
• unified or similar in many respects

Danube liability rules
• legal systems changed many times in the last century
• no unification (no need)
Areas of liability for inland navigation

Complex liability relationships

- Third parties
  - damage to goods
  - personal injury
  - accidents

- Passengers
  - damage to luggage
  - personal injury
  - accident at work

- Ship owner
  - delay
  - damage to goods

- Authorities
  - water pollution

- Cargo owner
  - accidents

- Employee
Types of liability discussed

Only the shipowners liability towards

• The cargo owner → Contractual liability
• Third parties → Delictual (non-contractual) liability
• The authorities → Administrative liability
Sources of liability rules

- International (e.g. CMNI, CLNI)
- Regional (e.g. The Rhine Rules on the Rhine)
- Local (that is national laws)
Contractual liability I.
Overview

- **International → CMNI → Full cover for the Danube**
  - except Austria (not signed) and Ukraine (signed but not ratified)

- **Regional → Private law instruments → Bratislava Agreement → IVTB**

- **Local laws → only in issues left open by CMNI and applicable general conditions (e.g. suspension and interruption of period of limitation)**
Contractual liability II.
CMNI vs. Austrian law

• The carrier is only liable for fault, including nautical fault
• The liability is without any limitation *except* if the freight carrier is also the ship-owner → the liability is limited to the vessel
• it is possible to contractually limit the liability of the freight carrier → jurisprudence → the liability of the carrier cannot be limited or excluded for gross negligence or intent
Contractual liability IV.
Applicable law

- CMNI
- In questions not regulated by CMNI
  - Law of the State agreed by the parties
  - No agreement → CMNI → closest connection with the contract of carriage → presumption → country of the carrier
  - Relevant clauses in general conditions
    - IVTB → law of the carrier
      → if the port of loading and the destination is in the same state → law of that state
    - Bratislava Agreement → no rule
Contractual liability IV. Jurisdiction

• **Within the EU**
  • The jurisdiction regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)
  • Main rule → Member State of the domicile of the defendant
  • Contract of carriage may provide for a specific jurisdiction → see general conditions
    o IVTB → country of the carrier
    o Bratislava Agreement → country of the defendant

• **Outside the EU**
  • Ukraine → Ukrainian courts in lack of choice by the parties
Third party (non-contractual) liability I.

- **CLNI** → not applicable
- Geneva (Collision) Convention -1960
  - Austria
  - Hungary
  - Romania
  - Serbia
- No other unification – legal systems differ
- Questions examined
  - The liability rule
  - Liability exemptions
  - Extent of liability
  - Time bar
The liability rule

- In general no special rule on inland navigation → the general rules of tort law apply (except Croatia → Inland Navigation Act and Ukraine → Merchant Shipping Code)

- Fault liability vs. strict liability
  - Fault liability → shipowner is liable if the damage
    - was caused by the ship and
    - is due to his fault
  - Strict liability → shipowner is liable if the damage was caused by the ship

- Mostly fault liability except
  - Hungary → strict liability for all damages caused
  - Croatia → strict liability for certain damages

Note: Romania has a new Civil Code since October 2011
Third party (non-contractual) liability III. Liability exemptions

- **Fault liability** → lack of fault by the carrier
- **Strict liability** → force majeure outside the sphere of activity of the carrier

- **Special exemptions**
  - **Bulgaria** → damages caused in case of an emergency
  - **Croatia** → death or personal injury caused whilst the vessel was unlawfully seized
Third party (non-contractual) liability III. Extent of liability

- **In general → Full liability →** actual damage
  - → lost profit
  - → related costs
  - → interest
- **Austria → slight negligence →** actual damage only
  - → nautical fault → the shipowner’s liability is limited to the value of the ship and the freight
- **Croatia → 1976 London Limitation Convention extended to inland navigation as well →** tonnage limitation
- **Ukraine →** tonnage limitation (different for death and personal injury and other claims)
Third party (non-contractual) liability III. Time bar

- 5 years
  - Bulgaria
  - Croatia
- 3 years
  - Hungary (5 years if liability is based on fault liability)
  - Romania
  - Ukraine
- 2 years
  - Collision Convention (for claims arising from a collision)
  - Ukraine (in cases of collisions)
- 1 year
  - Austria (for claims made on the basis of the fault of the crew)
Third party (non-contractual) liability V. Applicable law

• Within the EU
  • Main rule → the law of the country in which the damage occurs
  • The injured party and the person causing the damage have their habitual residence in the same country → the law of that country shall apply
  • The tort/delict is manifestly more closely connected with a country other than that indicated above → the law of that other country

• Outside the EU
  • Ukraine → collision with another vessel or bridge → law of Ukraine → vessels under the same (non-Ukrainian) flag → law of the country of the flag
Third party (non-contractual) liability VI.
Jurisdiction

- **Within the EU**
  - The jurisdiction regulation (see above)
  - Main rule → Member State of the domicile of the defendant.
  - Alternative for delictual liability → Member State where the harmful event occurred or may occur
  - Jurisdiction also covers claims for limitation of ship’s liability.
- **Outside the EU**
  - Ukraine → Ukrainian courts
  → collision of foreign vessels
  → foreign court or arbitration can be agreed
Administrative liability

- **Complex area including**
  - Criminal liability (e.g. In case of an accident resulting the death of persons)
  - Liability for the breach administrative regulations relating to the maintenance and operation of inland vessels
  - Liability for breach of other administrative regulations (e.g. water pollution, customs etc.)

- **Differences with regard to procedural questions** (different systems of organs, sanctions, powers)

- **Unification with regard to material obligations** → Influence of EU and international legislation (e.g. customs, ADN Convention)
Conclusions

- International and EU harmonization has eliminated the differences of national liability rules in contractual liability
- There is a lot to do in other fields of liability – CLNI may be a partial answer to that
- Administrative liability → unification of material obligation is the way forward
Thank you for your attention!

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