



Bulletin of International Carriage by Rail No. 4/2013, p. 20-21

Bundesgerichtshof (Germany)
Ruling of 9 October 2013¹

Scope of application of the CIM UR – multimodal road-rail transport – international rail transport Turkey-Germany, carriage by road "as a supplement to carriage by rail" – sealed container – liability of the carrier – compensation for partial loss – means of proof

Article 1 § 3 CIM

Headnote formulated by the court:

"The "as a supplement" criterion in Art. 1 § 3 CIM does not require that the railway cannot reach the place where the goods are taken over or delivered by rail, for example because there is no track. What is more significant is simply that less significance is attributed to carriage by road than to carriage by rail."

Comment:

For a sound and detailed analysis of the various elements of the ruling, please refer to the study entitled "*Das internationale Eisenbahnfrachtrecht als Einheitsrecht für bestimmte Multimodalverkehre*" (International rail freight law as uniform law for certain multimodal consignments). Likewise, a discussion of the Bundesgerichtshof ruling of 9 October 2013 – I ZR 115/12 by Professor Rainer Freise, published in the journal "*Transportrecht*" (Transport Law)², volume 11/12-2013 (pp. 426-428).

From OTIF's perspective, what should be noted above all is that in this ruling, the highest court in Germany interpreted the legal text exactly in accordance with the legislator's aim and hence rejected a restrictive interpretation, by means of which an additional, unintended criterion was added to the definition of the scope of application of the CIM. The Explanatory Report on Article 1 of CIM says: "The term "as a supplement" is intended to express the idea that the principal subject matter of the contract of carriage is trans-frontier carriage by rail."

¹ Ref. I ZR 115/12; courts of lower instance: Landgericht Nuremberg-Fürth, ruling of 28.9.2010 – 2 HKO 8146/09, Oberlandesgericht Nuremberg, ruling of 31.5.2012 – 12 U 2078/10

² Luchterhand Verlag, Wolters Kluwer Deutschland GmbH, Cologne; publisher: Prof. Dr. Rolf Herber, Hamburg

In addition, with this ruling the court confirms the view according to which the CIM carrier need not necessarily be a rail (transport) undertaking. If the carrier is not a rail transport undertaking himself, he must make use of such an undertaking to be able to comply with his contractual obligations.

Ultimately, if a CIM consignment note was only produced when the container was handed over to the first participating railway, which Professor Freise considers likely in this case, and perhaps only part of the consignment is documented in a CIM consignment note, in the light of Article 6 § 2 of CIM, this does not present an obstacle to the application of the CIM UR to the entire consignment.³ On the other hand, it goes without saying that there must be no doubt that the entire consignment is covered by a single contract of carriage (consensus-based contract).

From OTIF's point of view, the ruling is welcome. It should help broaden awareness (and not just in the German courts) of the fact that the CIM UR also apply to specific cases of multi-modal transport such as this one, where the focus is clearly on rail transport.

It would also be useful if, with regard to general questions on the application of the COTIF regulations, the courts in the COTIF Member States, as well as other users of COTIF, would refer directly to OTIF's website (Publications/Depositary and Law/Scope of application – particular features), rather than to commentaries dealing with this information.

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(Translation)

³ The second sentence of Article 6 § 2 of CIM reads: "However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules. "