

WORKSHOP CLNI 2012

CLNI 2012 CONVENTION AND ITS HISTORICAL BACKGROUND

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IVR'S FOCUS

1. UNIFICATION TRANSPORT- AND LIABILITY LAW
- CMNI, CLNI
2. COLLECTION OF PUBLICATIONS
- DATABASE OF JURISPRUDENCE
3. GUIDELINES ON IMPLEMENTATION OF CLNI

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2. COLLECTION OF PUBLICATIONS

- PUBLICATIONS ON CLNI/CMNI
- DATABASE OF JURISPRUDENCE

All published on www.ivr.nl under Legal

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2. COLLECTION OF PUBLICATIONS - DATABASE OF JURISPRUDENCE

A collection of judgements regarding CMNI and CLNI with reference

- To the court and the location where the judgement officially has been published (if published)
- To the article involved
- A short summary of the substance

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CMNI

RB Rotterdam 30.9.2009	ECLI:NL:RBROT:2009:9227 S&S 2010,27	Art. 3 Abs. 2, 10 Abs. 2, 16 Abs. 1	Begriff Ablieferung
<p>Der Begriff Ablieferung (“aflevering”, “delivery”, “livraison”) wird in der CMNI nicht näher definiert. Im Lichte der CMNI als Ganzes und dessen Art. 10 Abs. 2 im Besonderen muss der Begriff Ablieferung im Sinne von Art. 3 Abs. 2 oder Art. 16 Abs. 1 CMNI als der Moment, an dem der Frachtführer dem Empfänger (oder sonstigem Berechtigten) die Gelegenheit bietet, über die Güter an Bord des Schiffes zu verfügen, ausgelegt werden.</p> <p>Der wegen Regen an den von Deutschland in die Niederlande beförderten Gütern während des Löschens entstandene Schaden ereignete sich nachdem das Schiff löschbereit war und kommt deshalb nicht mehr zu Lasten des Frachtführers.</p>			

RB Rotterdam 30.09.2009	ECLI:NL:RBROT:2009:9227	Arts. 3, para.2; 10, para. 2; 16, para. 1	The term ‘delivery’
<p>The term delivery (“Ablieferung”, “aflevering”, “livraison”) is not defined in the CMNI. In the light of the CNMI as a whole, and of Art. 10, para. 2 in particular, the term delivery as used in Art. 3, para. 2 or Art 16, para. 1 of the CNMI is understood to mean the moment at which the carrier gives the consignee (or any other person entitled to receive them) the opportunity to take charge of the goods on board the ship.</p> <p>The damage caused to the goods transported from Germany to the Netherlands by rain during unloading occurred after the ship had been prepared for unloading and is therefore not the liability of the carrier.</p>			

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CLNI

Hof Den Haag 26.10.1999	ECLI:NL:GHSGR:1999:4181 (Berufung von ECLI:NL:RBROT:1996:2984, S&S 1997,41) S&S 2000,132	Art. 2 CLNI	Haftung für Kosten und Massnahmen zur Vermeidung von Wasserverschmutzung
Zur Beschränkung der Haftung für Vorbeugungsmassnahmen zur Vermeidung von Umweltverschmutzung reicht nicht die Errichtung eines Sachfonds, sondern es muss der dazu bestimmte Wasserverschmutzungsfonds errichtet werden.			

Hof Den Haag 26.10.1999	ECLI:NL:GHSGR:1999:4181 (Appeal re: ECLI:NL:RBROT:1996:2984, S&S 1997,41), S&S 200, 132	Art. 2	Liability for costs and measures to prevent water pollution
To limit liability for preventive costs related to environmental contamination, it is not sufficient to constitute a property fund; rather the specific water pollution fund should be constituted			

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8th IVR Colloquium on 17 & 18 March 2016 in Bonn.

Dr. Martin Fischer, chair of the IVR Legal Committee hands the guidelines to the director of the Danube Commission, Dr. Petar Margic and the Secretary General of the Central Commission for the Rhine, Ing. Hans van der Werf LL.M.

The Guidelines were developed by the Legal Committee of IVR in order to support a broad deployment of the Convention.



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- DIPLOMATIC CONFERENCE 25-27.9.2012
- Creation under the patronage of the Central Commission For the Navigation on the Rhine (CCNR)
- Follow up of the CLNI Convention 1988

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- Signing of the **FINAL ACT** on 27 September 2012 in Strasbourg by 13 countries: Belgium, Bulgaria, Germany, France, Hungary, Luxembourg, the Netherlands, Austria, Poland, Serbia, Slovakia, the Czech Republic and Switzerland.
- Belgium, France and Luxembourg also signed the Convention

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Reason for the revision of the Convention

- Limited regional scope of the current CLNI
 - Rhine and Moselle
- European legal developments
 - Attempts of the EC to declare the Athens Convention applicable for Inland Navigation
- Raise of the limits in close coordination to the maritime LLMC Convention

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CHAPTER I CLNI 2012

Right of limitation

- Vessel owners/salvors of vessels used for commercial navigational purposes(Art. 1)

Claims subject to limitation (art 2) in respect of

- loss of life or personal injury
- loss and damage to property
- loss resulting from delay
- loss resulting from infringement of rights other than contractual rights

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Chapter I CLNI 2012

Claims excepted from limitation (art 3)

- Assistance or salvage
- Contributions in general average
- Nuclear damage

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Chapter II CLNI 2012

Limits of liability

General limits (Art 6)

- For claims other than those mentioned in Articles 7 and 8
- 100 % increase compared to 1988

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Limits of liability

Damage arising from the carriage of dangerous goods (Art 7)

- New compared to the current convention:
 - possibility of exclusion of the scope by reservation in the present convention
 - introduction of higher national limits (f.i. Germany and Netherlands)
- Double amounts of the general limits in article 6
- Reservation still possible (art. 18 /1b)

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Limits of liability

Passenger claims (Art 8)

- Claims for loss of life or personal injury 100.000 (now 60.000) units of account multiplied by the number of passengers which a vessel is authorised to carry.
- Omission of absolute limits (now resp. 3, 6 and 12 million units of account for vessels authorised to carry 100, 180 and more than 180 passengers)
- Possibilities of reservation eliminated

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Scope (Art. 15)

- Purpose: opening of the scope
- Convention shall apply where the vessel was being operated on a waterway located on the territory of a State Party
- Any State may exclude the application of this Convention on waterways not listed in Annex I of the European Agreement on Main Inland Waterways of International Importance (AGN)
- Any State may exclude application of the Convention for a maximum of 8 years after entry into force on small crafts (less than 20 m) exclusively used in internal traffic.
(proposal Hungary during DC)

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Reservations CLNI 2012

Article 18 o.a.

- art. 7 (carriage of dangerous goods) so far as they are governed by an international convention or domestic regulations excluding the limitation of liability.
- Claims for damage due to a change in the physical, chemical or biological quality of the water.

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Entry into force (Article 17)

- 1 year after the ratification by 4 States or
- On the date on which the 1988 CLNI ceases to be in force, whichever date is the later.

The current Party States have signed during the signature of the Final Act a declaration for the cessation of the present convention.

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Importance of the Convention

- legal certainty;
- legal clarity;
- opportunity for IWT countries (particularly CEE countries) to introduce a limitation of liability through an international convention

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QUESTIONS?

THANK YOU FOR YOUR ATTENTION!

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