



Global Journal of Scientific Researches



Global Journal of Scientific Researches

Available online at gjsr.blue-ap.org

©2021 GJSR Journal. Vol. 9(2), pp. 8-12, 24 June

Investigation of the responsibility of the transport operator in the ship's deviation

Rouya Jabbari

Corresponding Author: Rouya Jabbari

Received: 20 May, 2021

Accepted: 10 June, 2021

Published: 24 June, 2021

ABSTRACT

The issue of the deviation of the carrier from the route of transportation is a well-known issue in maritime law and means the change of geography of the carrier by the carrier and has important effects on the law of maritime transport. Deviation is divided into three types and includes geographical and non-geographical deviation, justified and unjustified deviation, reasonable and unreasonable, and it has different effects depending on whether it is justified or unjustified. Reasonable deviation exempts the carrier from liability and unjustified deviation aggravates this responsibility. Iranian maritime law has remained silent on the effects of unjustified diversion, but it is acceptable to refer to the general rules of trustworthiness. In the leading text, the types of deviations are examined and the effects of justified and unjustified deviations are discussed, and the condition of freedom of deviation in contracts and maritime insurance in deviation is also stated.

Keywords: *Maritime law, deviation, justified and unjustified deviation, intensification of responsibility, encroachment and misconduct*

©2021 GJSR Journal All rights reserved.

INTRODUCTION

Deviation means the diversion of the geography of the cargo by the transport operator and has important implications for maritime transport law. Deviation comes in many forms. Deviation in an important category is divided into justified and unjustified deviation that most international conventions consider justified deviation as a means of exemption of the transport operator from liability. This exemption is an example of urgency in civil liability, while urgency does not in itself absolve of responsibility.

It is necessary to explain that the Iranian law, following the Hague rules, is silent about the effects of unjustified perversion, and in Iranian domestic law, the question arises as to what is the responsibility of the custodian (trustee) by appealing to the general rules?

In this article, after discussing the concept of deviation and its types, the effects of justified and unjustified deviation in the civil liability of maritime transport are discussed, and then the effects of the conditions related to deviation are stated, and then maritime insurance in deviation is examined. Takes.

Definition of deviation

Deviation means the change of geographical direction of transportation of goods by the transport operator and can be justified or unjustified. In other words, the voyage starts from the port of origin and ends at the port of destination. The carrier or landlord, whether in the contract of carriage or in the lease of the ship, must follow the route specified in the contract, and if the route of carriage is not specified in the contract, it is assumed that the appropriate route is a direct geographical line from The port of origin is the port of destination, and the custom of shipping or the custom in shipping companies can be different.

In the first part of the transportation of goods in the law of the sea, the sentence of justified deviation is stated, but the legislator has been silent in defining the correct route and apparently has left the determination to the custom and agreement of the parties. Article 129 of this law also states in the passenger transport section that "the commander is obliged to follow his route directly and move to the destination of the trip unless there is an existing contract or diversion to save the property and lives of individuals. In case of violation, the passenger has the right to terminate the contract and claim his damages. "

According to what was stated, according to the law, the shipping operator should move in a straight line, but there is a possibility of agreement to the contrary, and according to it, the order of agreement between the parties, the parties' previous trading procedure and maritime custom should be the criterion. Direct between the 2 points of origin and destination is the criterion and the change of geographical direction of the trip by the ship is a diversion.

Types of deviations

Deviation can be divided into three groups:

- **Geographical Deviation**
- **Non-Geographical Deviation**
- **Justifiable Deviation**
- **Unjustifiable Deviation**
- **Reasonable Deviation**
- **Unreasonable Deviation**

In geographical deviation, the responsibility of the transport operator has a general and specific meaning. In the specific sense, the change of the ship's course is from the conventional and conventional route without changing the destination of the ship, and in its general sense, any change of the ship's course is a deviation.

Non-geographical deviation is said to be a violation of certain obligations of the transport operator. Suppose the transport operator is obliged to transport the goods on time; If it is delayed along the way, it is considered a violation and a deviation.

- In justified diversion, the goal is to save the lives of people at sea or to save another ship, provided that the lives of the people depend on it. On the other hand, a diversion to save property or another ship to save property will not be justified, but if a natural hazard such as hurricanes or political factors such as war threatens the safety of the ship and the cargo, the commander is obliged to change. Of course, it should be noted that this threat must be real enough, severe and permanent enough.

It is necessary to explain that in a classification its justified deviation is divided into 2 types. Deviation that is the cause of exemption from liability and deviation that does not cause exemption from liability but does not aggravate the responsibility of the incumbent. For example, the ship needs to be repaired due to the inability of the seafarer to exist from the beginning of the voyage and the commander is forced to deviate from the route. In some courts, such as the courts of the United Kingdom and the United States, this deviation is not unjustified, but it does not mean justified deviation in the conventional sense.

Regarding reasonable diversion, it should be said that paragraph (4) of Article (4) of the Hague Regulations states that any change of ship's course at sea, to save and strive to save human life and property or any reasonable deviation of ship, defect and violation of The provisions of this Convention and the Shipping Contract are not.

Regarding the division of deviation into justified and unjustified, reasonable and unreasonable, it should be noted that the division of deviation into justified and unjustified is a common classification, while the deviation into reasonable and unreasonable is specified in the Hague Rules. Also, the realm of justified deviation is wider in one respect and more limited in the other than the realm of reasonable deviation.

In justified deviation, it is sometimes used only in the sense of not arranging the effects of unjustified deviation, that is, in the sense of not intensifying the responsibility of the incumbent without causing the exclusion of the incumbent from civil liability. Whereas in the Hague Regulations, a reasonable deviation is wider in that respect than a justified deviation, and according to the Hague Rules, a deviation that causes salvation or struggle to save property will also be reasonable and is considered as a means of exemption. Deviation is not justified and does not exempt the operator from damages.

Effects of deviation

Transportation in accordance with paragraph (1) of Article 29 (4) of the Brussels Convention (Hague Regulations) and paragraph (1) of paragraph (2) and paragraph (4) of Article (55) of the Iranian Maritime Law and paragraph (6) of Article (6) "Hamburg Convention", the person in charge, assuming the rescue and action to save life or property, is not a guarantor of the damage to the cargo.

In addition, pursuant to paragraphs (1), (m) and (n) paragraph (3) of Article (17) of the Rotterdam Convention shall be liable for damages resulting from the rescue or attempt to rescue humans at sea or property or reasonable measures taken to avoid There is no harm to the environment.

According to the general rules of responsibility, taking action to save is a state of emergency. In Iranian law, necessity is considered justified only when it is to help the injured person or, conversely, in any case exempts the distressed person from responsibility, but in any case, some instances of urgency are subject to the rule of benevolence and Ehsan is the guarantor.

In the practice of navigation, the duty of assistance and assistance is recognized specifically for seafarers, and this custom has also found its way into the law. In fact, according to Article (8) of the Convention on the Harmonization of Laps on Shipwrecks and Article 171 Iran's maritime law entrusts the ship's commander with the task of assisting and helping to save lives. Article 171 of the Maritime Law stipulates that "the commanders of each ship that collided with each other are obliged to fight together after the collision, without posing a serious danger to the other ship or its crew or passengers." To act «.

Also in the rescue chapter, according to Article 182 of the Maritime Law: "The commander is obliged to help any person who is in danger of being killed at sea, even if he is his enemy, as far as possible, without endangering the ship or its crew and passengers."

Article 10 of the 1989 Rescue Convention also stipulates the task of rescue in general. This article states: "1. Every commander shall be obliged to assist to the best of his ability any person at risk of extinction at sea without endangering his vessel and its occupants. 2. Contracting States shall take measures Adopt what is necessary to perform the task set forth in paragraph one.

3. The owner of the vessel shall not be liable for any deviation from the duties of the commander listed in paragraph one. " It should be noted that in Article 98 of the Law of the Sea, adopted in 1983, governments are obliged to provide assistance to persons at sea. It should also be noted that according to the Maritime Law and the 1989 Convention, there is no remuneration for rescuing a person, but the custodian, owner or commander has no obligation to rescue the property at risk, but if they do, they are entitled to legal remuneration, as the case may be. Or become contracted.

Liability of the transport operator for the cargo Where the rescue of the goods is due to the rescue of the carrier and it is not paid, it is logical to not be responsible for the damage to the cargo if the third party property is saved, which at the same time The custodian does not have the right to receive rent, it does not make sense, especially where the value of the salvaged property is less than the value of the lost cargo; Therefore, according to some authors in this field, the criterion of rationality is applicable here.

Deviation exempts the incumbent from liability when it is reasonable. If there is always a reasonable assumption about saving lives; The reasonableness of the diversion to save property must be proven, although the Hague Rules seem to contradict this view.

Paragraph (1) of Article (1) of the 1976 Limitation Convention presupposes the possibility of the rescuer's liability and refers to the possibility of rescuers invoking the rules of limitation of liability.

Also, in the case of paragraph (1) of paragraph (2) and paragraph (4) of Article (55) of the Iranian Maritime Law, it should be noted that if the rescuer commits a mistake that damages the cargo, he is a guarantor according to the general rules of liability. And the action to save the property will be a factor of exemption from liability if it is reasonable in terms of the value of the cargo and the rescuer's property.

It is necessary to explain that in connection with the unjustified deviation of the Iranian maritime law, he has mistakenly translated the fault of the seafarer into the fault of the seaman. In maritime law, the commander's faults are divided into fault in the will of the ship (navigation fault) and fault in the management of the goods (commercial fault), and the Hague Rules exempt the operator from liability for naval fault, it remains to be seen whether the deviation is a naval fault. And is the responsibility of the person in charge of unjustified deviation eliminated or not?

It seems that since unjustified deviation is always a factor in aggravating the responsibility of the incumbent, it is as if deviation is not considered a maritime fault. None of the cases of unjustified deviation from the types of maritime fault that cause the exemption of the operator can be considered: the liability of the operator for the faults of the commander and crew, contrary to the general rules of contractual liability resulting from the act of another

And is, in fact, the expression of an international maritime custom. But the same maritime custom has never considered unjustified deviation as an example of naval fault. The reason for this seems to be that unjustified deviation is an intentional act, while the operator's exemption from naval fault actually refers to the mistakes of the commander and crew, not their deliberate fault in the Hague Regulations, although in case of justified deviation, the carrier is liable for damages. He did not know, he did not determine the effects of unjustified deviation. In fact, there is no ruling as to whether unjustified deviation exacerbates the liability of the incumbent and deprives him or her of invoking defenses and limiting responsibilities. It may be concluded that these regulations have in fact determined the effects of unjustified deviation in the following way: the responsibility of the incumbent is subject to general rules. The liability of the person in charge is not aggravated by the mere fact that the deviation is unjustified, and he is not deprived of invoking the defenses and limiting the liability. On the contrary, others believe that the Hague Rules are silent in this regard and that the effect of unjustified deviation will be determined by the national law governing the dispute. The Hamburg Convention does not specify the effects of unjustified deviation. What has been said about the Hague Rules is also true here.

But the Rotterdam rules clearly state the effect of unjustified deviation. Pursuant to Article 24 of this Regulation, unjustified deviation does not affect the liability of the carrier. The liability of the incumbent shall not be aggravated by mere deviation, and such incumbent shall not be prohibited from invoking defenses and limiting liability.

In Iranian law, there is no provision on the effects of unjustified deviation in the freight section of the Maritime Law, which is derived from the Hague Regulations. Now, should it be concluded that the deviation does not have a special effect on the responsibility of the transport operator? The answer to this question seems to be no in Iranian law, because according to Article 194 of the Maritime Law, in case of silence of the Maritime Law and other laws, one must go to the principles and custom of international law. There is no provision in the laws of the country, including the Commercial Code, regarding the deviation of the route operator, but in Article 516 of the Civil Code, the responsibility of transport operators is subject to the provisions of

trust, and considers maritime transport operators to be subject to this provision. In terms of the rules of trust, it is a kind of encroachment, and without a doubt, the trustee is the guarantor of the damage caused by the encroachment and misappropriation, and the trustee becomes a trustee from a trustee to a guarantor.

Assuming acceptance of the aggravation of the trustee's liability in case of misconduct, it should be said that this ruling also applies to the liability of the transport operator. According to Article 516 of the Civil Code, the rules of trust are specified for maritime carriers, and on the other hand, the responsibility of the trustee in the Civil Code has a mild aspect and a severe aspect. In its mild aspect, Amin has no responsibility, except in case of abuse and misconduct, and its severe aspect is that Amin's responsibility is usurped after the misconduct and misconduct, like the responsibility. The minor aspect of the trustee's liability does not apply to a maritime carrier who is a professional, and the carrier is generally liable unless he proves one of the exempt factors, but there is no reason why the strict aspect is not applicable to the carrier. In other words, if the transferred responsibility in the position of benevolence, which is the iodine of a non-professional, turns into implicit iodine after addiction, the iodine of the incumbent, who is a professional, becomes implicit iodine in the first way. Therefore, by applying this rule, in case of unjustified deviation of the transport operator, the law of the sea does not have a ruling, but according to the general rules, his iodine becomes a guarantee iodine and during the deviation he is the guarantor of defects and defects, even if it is not documented.

The criterion of Article 129 of the Maritime Law regarding the carriage of passengers also confirms this view. According to this article, in case of unjustified deviation from the route, the passenger has the right to terminate the carriage and claim the damage caused to him. In this case, the passenger carrier cannot invoke the limitation of liability provided for in Article 115 of the Maritime Law, and the liability is of a purely liability type.

In the proceedings of the British and American courts, which reflect international custom; The liability of the trustee is intensified in the event of a deviation, and in this regard it cannot be believed that the deviation itself does not affect the responsibility of the person in charge.

The condition of freedom from deviation

The condition of freedom of diversion means that the bill of lading allows the carrier to deviate from the route if necessary, as the carrier personally discerns. The condition is unnecessary insofar as it allows the operator to deviate justifiably. According to international conventions and domestic law, in the absence of a condition, the operator is obliged to deviate from the free path and is obliged to do so. However, the provisions of the condition in that part, which allows the operator to deviate from the path outside the legal cases and thus frees the unjustified deviation, are against the law and are invalid.

It is necessary to explain that according to paragraph (8) of Article (3) of the Hague Regulations and paragraph (8) of Article (54) of the Iranian Maritime Law, any condition that directly or indirectly leads to the removal or limitation of the liability of the operator is void. The condition of freedom from deviation is thus a condition of irresponsibility and invalidity. In other words, part of the condition according to paragraph (2) of Article 232 of the Civil Code is invalid due to its uselessness and the other part according to paragraph (3) of Article 232 of the Civil Code is invalid due to its illegitimacy.

In Iranian law, some instances of this type of condition may be considered contrary to the requirements of the nature of the contract and it is considered void of the contract of carriage. Does not have. The condition that the carrier has the right to deviate from the route and change the destination of the carriage and unload the goods at any port of his choice is contrary to the requirements of the nature of the contract. It is necessary to explain that the conditions related to the deviation in the contract of carriage and bill of lading are invalid for the reasons mentioned above, but the inclusion of this condition in the ship rental contract is correct and there is no such restriction in ship rental and assuming that such a condition as If there is a condition of non-liability, it is correct to include it in the ship rental contract, in accordance with the general rules.

Marine insurance in diversion

In marine insurance, the insurer insures certain risks. One of the conditions of insurance coverage in marine insurance is that the ship does not deviate from its normal course. It is believed that changing the destination of the ship and deviating from the course change the nature of the risk of the insured and thus cause the insurer to lose its obligation. It does not matter if the risk increases or decreases as the ship deviates or changes direction because the nature of the risk has changed. For example, a ship that was supposed to start its voyage from point A to port B in marine insurance insures certain risks. One of the conditions of insurance coverage in marine insurance is that the ship does not deviate from its normal course. It is believed that changing the destination of the ship and deviating from the course change the nature of the risk of the insured and thus cause the insurer to lose its obligation. It does not matter if the risk increases or decreases as the ship deviates or changes direction because the nature of the risk has changed.

In changing the destination of the ship, the insurance is canceled. For example, suppose a ship was supposed to start its voyage from point A, but port B starts again. In this case, the insurance coverage will never be valid because the insurer had insured the goods during another trip that was not done and the trip that was not actually done was not insured. Also, if the trip

starts from the agreed point but changes direction, the insurance coverage will be canceled. In this regard, British Maritime Law is based on the custom of maritime insurance, which according to paragraph 2 of Article 45 of the British Maritime Law, the mere intention of the commander or owner to change the destination of the ship is sufficient for the title change and the insurer's obligation falls. The route has not been redirected yet. In the case of a change in the course of the ship, as well as a change in the destination of the ship, the insurance will be canceled, but a deviation is necessary to stop the insurance coverage.

Paragraph 3 of Article 46 of the English Insurance Act states in this regard that the intention to deviate is not important and in order for the insurer to be released from its contractual obligation, the deviation must actually occur. In this article, the deviation itself causes the insurer's obligation to fall, even though the ship returns to its route after the deviation and the damage occurs after returning to its normal course.

It should be noted that in Iranian law, according to Article 20 of the General Conditions of Carriage approved by the Supreme Insurance Council in the travel change section, it is stipulated that whenever the destination is changed by the insurer after the start of this type of insurance, the validity of this insurance is conditional. The Insurer shall immediately notify the Insurer and the terms and premium shall be agreed. This article is about changing the destination and not about deviation and it is a solution. Based on the insurance custom, it has been extended to deviation and another solution is the narrow interpretation of this article in favor of the insurer. It should be noted that today most insurances contain a condition called covered cover (Held cover), according to which the round insurance, in exchange for receiving a small additional premium, also covers the risk of deviation and change of destination, and as a result, justified and unjustified deviation. In marine insurance does not matter the former.

Conclusion

In Iranian law, justified deviation exempts the carrier from liability, and unjustified deviation intensifies this responsibility. Maritime law does not provide for unjustified effects, so it is necessary to refer to the rules of public law, according to which, the liability of the trustee is intensified after the violation.

The root of the deviation is in the marine insurance, which means that the marine insurance does not cover the deviation and in case of deviation the insurer is generally exempt from liability and the responsibility for compensation rests with the transport operator who caused the deviation. However, today, due to the expansion of insurance, the tendency to adjust the deviation is unjustified, so it seems better to proceed in the same direction in Iranian law.

Also, in international transportation conventions, the effects of unjustified deviation are dealt with more than the effects of unjustified deviation, and in Iranian law, the rules of civil liability on the effect of urgency on liability are dealt with.

Also in the transport contracts, the condition of freedom of diversion, which is a condition of indirect irresponsibility, is invalid, but it is correct in the ship rental contracts.

REFERENCES

1. Mohsen Izanloo, A Comparative Study of Deviation in Iranian, French, British and American Law and International Conventions, *International Law Journal*, No. 56, Spring-Summer 2017.
2. Nasser, Katozian, *Civil Liability*, Volume One, General Rules, Fourteenth Edition, 2016, No. 327.
3. Morteza, Najafi, Esfad, *Maritime Law*, position, 2020, No. 2939, p. 276.
4. Bennet (Howard), *Law of Marine Insurance*, 2nd Ed., Oxford, 2007.
5. Schoenbaum (Thomas J.), *Admiralty and Maritime Law*, 4th Ed., Thomson-West, 2003.
6. McNair (William Lennox), Mocatta (Alan Abraham) & Mustill (Michael J.), *Scrutton on Charterparties and Bills of Lading*, 17th Ed., Sweet Maxwell, 1964.
7. Wilson, *Carriage of Goods by Sea*, (Jean), *Carriage of Goods by Sea*, 7th Ed., Longman, 2010.