60 years CMR
Applicability of the CMR Convention from a Dutch perspective

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Multimodal contract including road leg

- Godafoss (Supreme Court, S&S 2012/95)

Reykjavik
\[\text{sea}\]
\(\downarrow\)
Rotterdam
\[\text{road}\]
\(\downarrow\)
Napels

\[\text{goods stolen}\]
Multimodal contract including road leg

• Questions submitted to Supreme Court:
  
  i. Does the CMR generally apply to multimodal transport?
  
  ii. If not, does the CMR apply autonomously if damage or loss occurred during road leg?

• Arguments Supreme Court:
  
  i. CMR Protocol of Signature
  
  ii. article 2 CMR
  
  
  iv. wording article 1 CMR not decisive
  
  v. legal uncertainty if CMR applies autonomously

• Conclusion: CMR does not govern carriage
Unspecified and optional contracts of carriage

• Unspecified contract of carriage: no mode of carriage is indicated.

• Optional contract of carriage: the carrier has the right to substitute the agreed mode of transportation with another type.

• CMR applies in both cases if carrier elects to carry goods by road.

Contract of carriage by road executed by other means of carriage

• Court of appeal of Den Bosch (S&S 2012/66)

Lopik  road  Rotterdam  sea  Bergen  road  Kokstad

CMR?
Contract of carriage by road executed by other means of carriage

• Interpretation of contract:
  
  i. CMR waybill issued
  ii. Parties agreed upon CMR conditions
  iii. Carriage could have taken place by road as sole means of transport

• Consensus on the means of transport is decisive and not the actual means of transport

Conclusion

• Interpretation of contract is decisive:
  
  i. if multimodal contract of carriage: CMR does not apply autonomously;
  ii. if contract for carriage by road, CMR applies, also in case goods are carried by other means;
  iii. unspecified or optional contract of carriage is contract for carriage by road, if carrier elects to carry goods by road.