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THE MARITIME CARRIAGE OF GOODS CONTRACT IN ALGERIAN LAW

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Abstract:

Maritime transport is of capital importance for the Algerian economy, Trade is essentially carried out by sea; apart from hydrocarbons, the Algerian economy operates thanks to the importation of raw materials, finished and semi-finished products financed by the oil and gas revenues. Algeria spent around $ 7 billion for the freight costs of imported goods and demurrage charges billed by mostly foreign shipowners. These costs would capture up to 25% of the cost price of some of these products.

Furthermore, it should be noted that the maritime transport activity is only one link in a chain in which different operators are acting, involved in ports suffering from organizational and structural problems dating back to the colonial period.

In this study we will identify the legal framework of the carriage of goods by sea contract and the effect of the new international environment upon this contract. Indeed, the international situation linked to the globalization of trade has participated in the overhaul of Algerian texts in order to set up a legislative mechanism for the privatization of maritime transport services and their corollaries, port commercial activities (handling, stevedoring and towing). For a long time under state monopoly, these activities can now be carried out by operators from both the state and non-state sectors. However the application of these dispositions is not so effective in practice though their enforcement dates up to 1998 (law 98-05 dated 26 June 1998).

Key words: ***Maritime transport - carriage – goods – contract – Algerian law.***

Introduction :

I- THE IMPORTANCE OF MARITIME TRANSPORT IN ALGERIA

1- International trade and maritime transport.

Maritime transport is of capital importance for the Algerian economy. Foreign trade is essentially carried out by sea; the Algerian economy operates thanks to the importation of raw materials, finished and semi-finished products financed by the oil and gas revenues. Algeria spends around $ 6 billion for the freight costs of imported goods

and demurrage charges billed by mostly foreign shipowners[1]. These costs would capture up to 25% of the global cost price of some of these products.

Furthermore, it should be noted that the maritime transport activity is only one link in a chain in which different operators are acting, involved in ports the ones which suffer from organizational and structural problems[2], dating back to the colonial period. The current maritime code, adopted in 1976 and amended in 1998, is no longer adapted to the changes and market requirements that have occurred in the maritime world, both internationally and nationally.

We shall try to demonstrate that, reviewing the maritime code, today in force, has become an urgent necessity, because of the globalization of the transport sector, and the redeployment of port activities, the dispositions concerning the carriage of goods by sea contract being a priority since it represents the main link of the chain transport.

Recent provisions[3] consider maritime transport, handling and any port services as sectors with a strategic character and therefore subject to rule 49/51[4] when a foreign partner is involved. Hence the political authorities will to encourage foreign services participation to promote modernization of Algerian ports is clearly evidenced and

[1] The companies MSC (Switzerland), Maersk Lines (Denmark), CMA-CGM (France) share the Algerian freight market. these companies did not contribute to improving the transport chain but above all made sure to transfer the bill for services carried out without significant.

[2] El Watan October 7, 2019 : « Freight and logistics in the maritime sector, a national industry struggling to get its head out of the water ».

[3] Decree 21-145 of April 17, 2021determinng the list of the activities having a strategic character.

[4] This rule determines the participation of the foreign investor and that of his Algerian partner in the share capital, thus allowing the latter to have control of the company. Foreign partners argue that this rule puts them in a position of weakness and fear a lack of security threatening their interests.

privatization process enhanced, though it seems that the 49/51 rule may discourage foreign investment instead of boosting it.

2- Maritime carriage of goods and port activities : a changing sector

In this study we will identify the legal framework of the carriage of goods by sea contract and the effect of the new international environment upon this contract. Indeed, the international situation linked to the globalization of trade has participated in modifying Algerian dispositions in order to set up a legislative mechanism for the privatization of maritime transport services and their corollaries, port commercial activities[5] (handling, stevedoring). For a long time under state monopoly, these activities can now be carried out by operators from both, state and non-state sectors. However, the implementation of these dispositions has not been effective until today.

It should be noted that the maritime carriage of goods contract, stevedoring and handling contracts are closely linked. The first one is performed only if it is surrounded by auxiliary contracts working to achieve its ultimate goal, namely the delivery of the goods to the legitimate consignee.

II- NORMATIVE FRAMEWORK FOR MARITIME CARRIAGE OF GOODS CONTRACT.

Ordinance 76-80 is considered as the basic text in Algerian maritime legislation. It contains *inter alia* the dispositions related to the carriage of goods contract and those of handling and stevedoring activities.

[5] Law 98-05 regulates port activities in articles 912 and following

3- Algerian legislation concerning the carriage of goods by sea[6].

The carriage of goods contract dispositions are closely inspired both by the international convention of Brussels of August 25, 1924 unifying certain rules in terms of bill of lading[7] and by French law 166-120 of June 18, 1966 on transport and charter contracts today modified[8]. It is necessary to underline the insertion of port provisions in law 98-05, a specific and autonomous port code does not exist[9] in Algerian law.

Extensive changes were made to it by law 98-05 of June 25, 1998[10].

As for the whole of the Algerian legislation an adjustment responding to the movement of privatization of the economic sector -- starting in the 1980s -- is perceptible in the content of law 98-05. Moreover, other important executive dispositions have been held in order to implement it[11].

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[6] Ordinance 76-80 contains two books (parts):
-- On Maritime Navigation and Seafarers (Book I),
-- On the Commercial Operation of the Ship (Book II).
-- A third book –On port operations--was added by Law 98-05 supplementing and modifying Ordinance 76-80. It should be noted that maritime legislation draws its sources from other legislative and mandatory texts: the environment code; decree setting the general regulations for the operation and security of ports, etc.

[7] Adhesion of Algeria with decree 64-70 dated on 7 march, 1964.

[8] This law was amended by Ordinance No. 2010-1307 of October 28, 2010 on the transport code.

[9] One of the main modification to the ordinancy on maritime law entered by Law 98-05on the 25th of june 1998 concerns the insertion of a third part (Livre III) entitled « port exploitation », essentially dealing with port provisions and completed by the decree determining general exploitation and security of ports

[10] F. BOUKHATMI : « Les nouvelles dispositions de la loi 98-05 portant code maritime algérien », in Droit maritime français, éd. Moreux, n°610, Décembre 2010, p. 1034.

[11] As an example, we can cite the executive decree 06-139 of April 15, 2006 setting the terms and conditions for the exercise of towing, handling and stevedoring activities modified and supplemented by executive decree 08-363 of 8 September 2008.

The maritime transport and the commercial port activities have been demonopolysed but this demonopolization has been a difficult process to put into practice. The application of this principle is dependent on the implementation of regulatory dispositions which for certain points are slow to come up or, when they are taken, are not applied for different reasons but mainly for unions reasons[12].

4- Charter contract and carriage of goods contract.

In its Part 2 (Livre 2) entitled "On the commercial operation of the ship", the dichotomy between carriage of goods contract and charter contract is clearly underlined. The charter contract relates to the vessel while the transport contract relates to the goods (article 746 law 98-05).

The charter contract obeys the principle of contractual freedom[13] and therefore escapes the mandatory provisions which govern the contract of carriage. The charter party is the document representing the charter contract and which sets out the commitments of the parties. It is subdivided into a voyage, time and bareboat charter contract[14].

The ***volume contract***[15] is unknown in maritime Algerian reglementation.

[12] The port unions have always risen up each time it was question of implementing the privatization of port commercial activities. Being a fundamental sector of the economy, the port sector is approached delicately by political decision-makers in order to avoid decisions that might destabilize the existing social balance

[13] Article 641 of Law 98-05 which underlines that this contract is freely negotiated by the parties, specifies that it may not contain provisions contrary to the general principles of the law in force.

[14] Y. KAHLOULA Thèse de doctorat : « Le contrat d'affrètement en droit algérien », ALGER 1, 2021.

[15] This contract, which has been used in practice for a few years now, has entered the category of internationally regulated contracts in the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Convention) which covers it. defines in its article 1 § 3 as "the contract of carriage which provides for the movement of a determined quantity of goods in

Law 98-05 establishes the rules governing the contract of carriage of goods by sea according to a classical scheme : general rules, bill of lading, execution, liability. It must be noted that the contract of carriage of goods can be evidenced by any document representing the maritime contract of carriage but the bill of lading is the most used in practice, certainly because of its different and important functions[16].

5- Maritime carriage of goods contract, definition and legal nature.

The carriage of goods by sea contract is defined as that by which the carrier undertakes to transport specific goods from one port to another and the shipper to pay the remuneration called freight (article 738 Law 98-05).

Commercial in nature, it responds to the principle of consensualism, which does not exclude its character as a **contrat d'adhésion**[17], however framed by legislative provisions[18].

Taking the form of the bill of lading, it can be considered as a commercial instrument according to the provisions of the Algerian commercial code which states that "the transport document, a document representing the ownership of the goods becomes a commercial instrument when it is issued and / or endorsed to the bearer or to order". This may be the case for the bill of lading.

Consequently, it can be argued that according to the Algerian legislator, the bill of lading which is a transport document - when it is issued and / or endorsed to bearer or to order - becomes a commercial

several shipments during an agreed period. The quantity can be expressed as a minimum, a maximum or a range

[16] Article 749 : 'the bill of lading constitutes the evidence of receipt by the carrier of the goods designated therein in order to carry them by sea as well as a document to dispose of the goods and obtain delivery thereof . »

[17] A « contrat d'adhesion » is a contract whose clauses have been decided by one of the parties and imposed on the other party. These clauses are immutable and non-negotiable.

[18] The provisions concerning the contract of carriage are mandatory, unlike those of the charter contract which are supplementary.

instrument[19] at least in relation to the fact that it appears in the listing established in Part IV (Livre 4) of the Algerian Commercial Code which enacts the provisions relating to commercial instruments[20].

6- Obligations and liabilities.

Concerning the carrier, his obligations are classical (seaworthiness of the ship on departure, obligation to load, stow properly and carefully, obligation to take care of the goods, obligation to transport to destination, obligation to unload and delivery to the legitimate consignee or his representative).

While being subject to an obligation of diligence concerning the making of the vessel seaworthy on departure, the carrier remains subject to an obligation of result as to the destination of the carried goods and any delay or damage makes him limited liability presumed unless he has committed a willful or inexcusable fault in which case the compensation ceilings are raised and give way to full compensation (article 805 law 98-05).

However, he can exempt himself from this responsibility if he proves the existence of one of the excepted cases listed in article 803[21].

It can easily be argued that the principle of presumed liability accompanied by an obligation of result weighing on the maritime carrier - set out in article 802 - is emptied of its whole substance by the density of the excepted cases to which this carrier can claim to be exempted from this responsibility. According to Professor VIALARD, it is a quite comfortable liability[22].

[19] Article 548 bis 8 Algerian commercial code

[20] Article 543 bis 8 of modified and completed ordinancy 75-59 on 26th September 1975 on commercial code. Originally there were three commercial instruments: the bill of exchange, the check and the order bill. It has been added the warrant, the factoring and the transport document

[21] The excepted case (12 excepted cases lister in article 803 law 98-05) are mainly those drawn from those contained in article 4 of 1924 Brusseles Convention.

[22] A. VIALARD, Le droit maritime, PUF Edition, 1997, p. 408.

This responsibility extends from handling (prise en charge) to delivery (livraison) of the goods to the consignee or its legitime representative. There is no delivery when the goods are unloaded just as there is no delivery when they are handed over to the port company.

As for the shipper, basically he has to pay the freight but it can be agreed

that this obligation weighs on the consignee. This latter assumes other obligations, in particular with regard to the description and nature of the goods that he hands over to the carrier.

The consignee has an obligation to withdraw the goods, once he has been informed by the carrier's representative of its arrival. He must also report a non-compliant delivery by the procedure of reservations on delivery (réserves à la livraison). He also owes the freight when so agreed as he owes indemnisation for delay due to the carrier when failing to withdraw the goods in good time.

We can add that the bill of lading is an instrument of documentary credit[23].

Indeed, being established that imports to Algeria are financed almost exclusively with documentary credit (CREDOC), the bill of lading represents the key document of this operation, and thus acquires this other function, in addition to those appearing in article 749 of law 98-05 : « *Le connaissement constitue la preuve de la réception par le transporteur des marchandises qui y sont désignées en vue de les transporter par voie maritime de même qu'un titre pour disposer des marchandises et en obtenir la livraison*[24] » .

[23] A. VIALARD, Le droit maritime, PUF Edition, 1997, p. 388.
[24] See footnote 16.

7- Parties to the maritime carriage of goods contract.

The contract of carriage associates the shipper and the carrier but also the legitimate consignee.

Identification of the carrier is often problematic given the different commercial operations affecting the vessel. The Algerian Supreme Court has ruled that in the absence of any particular in the bill of lading it is the shipowner who is responsible, applying Article 754 of the law 98-05[25] joining the French Court of Cassation in the VOMAR case.

The shipper is the one who contracts with the carrier. It is often represented by various intermediaries (forwarding agent, freight forwarder).

Concerning the legitimate consignee (article 784 law 98-05), he is identified as:

- the one whose name is indicated in the bill of lading when it is to a named person.

- the order in which the bill of lading is drawn up and in the event of a transfer of the bill of lading, the last endorsee.

- the one who presents the bill of lading on arrival when the bill of lading is drawn to the bearer.

However, the question arises as to the place of the consignee in the carriage of goods contract since "owing to what alchemy, originally foreign to the contract, the consignee suddenly bursts into it[26]". The fundamental civil law principle of the binding effect and the relative effect of contracts[27] (privacy of contract in common law) are

[25] Supreme Court commercial and maritime chamber n° 145015 December 17, 1996 ; n° 199632 January 18, 2000, n°271334 Mach 5, 2002. The French Court of Cassation adopted the same principle in the VOMAR judgment of July 21, 1987.

[26] M. REMOND-GOUILLOUD, Le contrat de transport, Dalloz 1993, p. 32.

[27] These principles are embodied in articles 106 and 113 of the amended Ordinance 75-58 on the Civil Code .

eroded since the contract of carriage has its effects extended to the consignee[28] who does not participate in the formation of this contract.

R. RODIERE qualified the transport contract as a **tripartite sui generis contract** (carrier, shipper, consignee), which settles the question of the place of the consignee in this contract.

The Algerian maritime code recognizes him - in the definition it sets out of delivery, a legal act - as being the one to whom the carrier undertakes to deliver the carried goods and who expresses his acceptance of the goods by this act (article 739-2 law 98-05). It can be concluded that the consignee is party to the contract from the moment he accepts delivery of the goods that this contract represents. This analysis corresponds to the civil law theory of the safe-holder (convention de porte-fort) convention according to which a contractor promises for another and if the latter does not comply, this contractor will perform in his stead[29].

III- SOME PARTICULARITIES OF THE CONTRACT OF CARRIAGE OF GOODS BY SEA UNDER ALGERIAN LAW.

8- Concerning the bill of lading the Algerian dispositions give it pride of place and more than 20 articles are devoted to it, without excluding other forms of carriage contract but without naming them either. However, in practice, only the bill of lading is used, which raises some problems given the universal tendency to let more and more place to substitutes for the bill of lading[30].

[28]Freight or any other amount may be paid by consignee, article 791 law 98-05.

[29] Article 114 of ordonnance 75-58, September 26, 1975 on civil code modified and completed.

[30] Many criticisms have been leveled at the bill of lading, in particular its heaviness, its slowness and its ability to facilitate fraud; this allowed the use of other less restrictive transport documents.

M.REMOND-GOUILLOUD names them « les succedanées du connaissement[31] »

At the request of the shipper the carrier can draw many copies as necessary of the bill of lading (article 748 and 760 law 98-05).

This document includes statements relating to the identity of the parties, the goods, the conditions of the voyage and the amount of the freight (article 748 law 98-05). It is available as a bill of lading to named person, to order or to bearer. Only the first two are used in Algerian practice[32].

-Multiple bills of lading.

If several holders of the bill of lading show up, the carrier has the obligation to deposit the goods and to notify the shipper and those who have presented themselves (article 785 law 98-05). When the carrier makes delivery in exchange of a copy of the bill of lading, the other copies lose all legal value (article 786 law 98-05).

9- Combined transport.

Interesting provisions specific to combined transport can be noted. It relates to the through issued bill of lading, the resulting legal relationship both between the shipper and successive carriers and the relationship between successive carriers between them (article 763 law 98-05). The maritime carrier who issued the through bill of lading is responsible for the satisfactory performance of the obligations of other carriers during the voyage of the goods until their delivery to the consignee. He has a right of recourse against other responsible carriers.

[31] Read M. REMOND -GOUILLOUD, Maritime Law, ed. Pedone 1988, n °. 550.

[32] In order to avoid maritime fraud, Algerian regulations have banned the use of bearer bills of lading.

10- Deck loading (article 774 law 98-05). Carriage of particular goods.

Deck transport[33] is seen from the perspective of travel safety more than that of the cargo or seafarers. The shipper is subject to an obligation of information related to the goods towards the carrier. In the event of loading on deck, contrary to the will of the shipper, the captain commits a nautical fault which could exonerate the carrier in case of damage, this fault appearing among the excepted cases listed in article 803. However, by virtue of article 812-2, the carrier is allowed to waive his responsibility for the transport of live animals and goods loaded on deck[34].

Law 98-05 added provisions relating to the transport of dangerous goods and that of food products intended for human or animal consumption (articles 801-1 and 801-2 law 98-05). In both cases, these provisions refer to international standards in the matter.

11- Obligation of righteousness (article 775 law 98-05).

Although subject to an obligation of righteousness (agreed or usual route), diversion is nonetheless possible in the event of rescue assistance or when it is "reasonable" a fairly general term allowing a wide discretion of the courts in its interpretation.

The case of diversion due to a fortuitous event obliging the carrier to unload at the nearest port or to return the goods to the port of loading is foreseen. As a result, the re-shipment costs are due by the carrier, except when the impediment to unloading at the place of destination is of force majeure.

[33] M.S. DAHMANI : « Le chargement en pontée dans les conventions internationales et dans le droit maritime algérien », in Actes du colloque sur le contentieux maritime du 2 et 3 mai 2009, Dar el oulfia atalita, p. 59

[34] Supreme Court commercial and maritime chamber n° n°149627 April 8, 1997.

As in French law, in Algerian law these two concepts - fortuitous event and force majeure - do not have a strictly defined content[35].

The carrier ensures the transhipment of the goods in the event of interruption of the journey and ensures their movement to the planned port of destination.

12- Liability carrier.

Article 802 of law 98-05 imposes full liability on the carrier; this liability is presumed and accompanied by an obligation of result. As seen earlier, it can be neutralized by the excepted cases listed in article 803.

When an excepted case does not occur and the goods are lost or damaged, compensation by the carrier is limited; the ceiling is calculated on the basis of the Visby protocol although Algeria has not adhered to this instrument.

In Algeria, this rule of limitation of compensation is however not applied by the courts and constitutes the main defense argument of carriers before the courts. However, these carriers are largely catching up with freight rates - towards Algerian ports - which are prohibitive.

The repair ceiling does not play in the event of a declaration of value of the goods on the bill of lading and in the event of willful or inexcusable fault article 809 law 98-05).

We must retain an original provision of law 98-05: The article 812 allows the carrier to modify the liability clauses and the amount of compensation during the phase from the goods handing over for carriage until the starting of loading on the ship and the end of

[35] Supreme Court commercial and maritime chamber n° 65920, June 11, 1990. In this ruling, force majeure was qualified as "an event beyond the strength of man in such a way that he cannot avoid, control or expect it".

unloading until delivery to the legitimate consignee. However, the Algerian Supreme Court placed on the carrier the burden of compensation for damage or loss suffered by the goods up to the moment of delivery to the legitimate consignee or his representative and rarely accepts article 812 application. It seems that the high court has reconsidered its position as regards the extent of the carrier's liability in a case in which it affirms that "the port company of Bejaia is responsible for the damage caused to the goods during the unloading operations, because it has a monopoly on the handling activity[36] ".It must be noted that delivery principle has dominated Supreme Court cases for almost two decades[37]»

13- Obligations of the shipper.

The shipper is responsible for the payment of the freight which is no longer due in the event of fortune at sea or when the goods are lost through the fault of the carrier. He must present the goods at the agreed time and place, otherwise he is liable to the carrier for compensation corresponding to the damage suffered by the carrier and at most, equal to the amount of the freight (article 772 law 98-05). He guarantees the accuracy of the statements relating to the goods and is liable for damage caused by his goods to the ship or to other goods article 779 law 98-05).

Are null and void any agreements by which the shipper undertakes to compensate the carrier when the latter has issued a bill of lading without reservations when he knew or could reasonably suspect the inaccuracy of the particulars he made there[38]. This raises the problem of the validity of the letter of guarantee issued by the shipper for the benefit of the carrier in exchange for a clean bill of lading.

[36]Supreme Court commercial and maritime chamber n°355935 October (, 2005.
[37] Supreme Court commercial and maritime chamber n° 111518 décembre 20, 1993
[38] Article 757 law 98-05.

It is in the shipper's interest to be issued a clean bill of lading, is free of reservations. A claused bill of lading is generally rejected by the bank, which leads to a loss of its commercial value.

A shipped bill of lading is a conclusive evidence of the receipt of the goods by the carrier[39] and that goods have been embarked, that makes a supplementary garantee for the buyer -- who is generally the consignee -- in the performance of a documentary credit.

14- Obligations of the consignee.

As for the consignee, he is allowed to check the size and condition of the goods upon delivery, which he can have ascertained by an expert report (article 789 law 98-05). Damages and losses are notified at the time of delivery when they are apparent and within three working days after delivery when they are not apparent (article 790 law 98-05). In practice, this period is too short.

It is through the play of reservations that the consignee can claim a non-compliant delivery (livraison non-conforme), but the issuance of these reservations does not prove the responsibility of the carrier.

A former text[40] allows the consignee to present a letter of guarantee in place of the bill of lading and withdraw the goods. This letter of garantee[41] covers the carrier for damages that may result from the carriage of the goods. It will be returned by the carrier to the

[39] C.M. SCHMITTHOOFF, The export trade, sixth edition, Stevens and sons, London, p.325

[40] Ordinance 75-40 of June 1, 1975 organizing the stay of goods in ports.

[41] It must be distinguished between the letter of guarantee protecting the carrier in exchange for a clean bill of lading issued by the latter from the letter of guarantee protecting the carrier but issued by the consignee due to the fact that the latter does not present the bill of lading at the time of delivery of the goods.

consignee in exchange of the bill of lading which has in the meantime be received by the consignee.

The purpose of this operation is to clear the port of goods that could obstruct the loading and unloading of ships, thus avoiding additional port costs such as demurrage of ships remaining in the harbor. Harbour costs are very high in Algerian ports and largely contribute to the freight cost of ships docking in Algerian ports.

15- Right of action of the consignee.

Concerning the right of action for loss or damage to the goods, it comes to the consignee[42] within one year by virtue of a bill of lading, the starting point of this action being the day of delivery and the conditions of subrogation being duly respected[43].

In addition, law 98-05 specifies that actions arising from the contract of carriage are prescribed for two years from the day the goods were or should have been delivered (article 742 law 98-05). The action of the carrier may be raised :

- against the shipper due to the inaccuracy of his declaration, or when the latter does not present the goods in agreed time at the agreed place or,

- against the consignee for non payment of the freight or for the failure to withdraw the goods or the delay to withdraw them.

[42] For the Algerian Supreme Court, "it is the mentions of the bill of lading which prove the quality of the consignee, thus opening the right to take action against the maritime carrier for damage to the goods" (ruling n ° 145015 of December 17, 1996. In reality by the act of subrogation and recourse action, it is the consignee's insurer who sues the carrier

[43] The payment of the subrogeant by the subrogator -- the subrogation not being able to confer more rights to the subrogator than the subrogeant had -- and the existence of an act of subrogation are the conditions recalled by the Algerian Supreme Court in the judgment of the commercial and maritime chamber n ° 371786 of 6 December 2006 enforcing the provisions of the law on insurance

In practice, in the case of loss or damage, the carrier compensates the consignee even if this loss or damage occurred during the land phases (taking in charge - loading and / or unloading - delivery)[44] and sues the person who was the cause of the loss or damage, namely the stevedore or stevedore[45].

This action is based on the contractual nature of the consignee's relationship with the carrier and that such a relationship does not exist between the consignee and the handling company[46]. However in contradiction with law 98-05 dispositions, we can note the intrusion of the executive decree of January 6, 2002 setting the general operating and safety regulations for ports in the scope of the carriage contract by sea. Its article 22 draws attention since it states that throughout the authorized period of stay in port, the guarding and conservation of the goods until their delivery are weighing on the stevedore who also ensures its reception and recognition ".

Should it be deduced that the carrier's liability ends with the delivery of the goods to the stevedore? If so, the contract of carriage would suffer from an additional sectioning having the effect of calling into question the moment of delivery of the goods and certainly puts an end to the responsibility of the carrier at that moment. This would contradict article 802 of law 98-05 according to which the carrier is responsible for the goods from the taking over (prise en charge) until the delivery (livraiseon) to the legitimate consignee or his representative.

It should be noted that in Algerian ports, it is the state owned company --l'entreprise portuaire -- that performs the handling and stevedoring (acconage et manutention); it exercises de facto monopoly

[44] MESTIRI Fatima : « Missions et responsabilités de l'entrepreneur de manutention dans les ports », in Revue de la Cour suprême, jurisprudence de la chambre commerciale et maritime, numéro spécial 1999 ; p. 69.

[45] Supreme Court commercial and maritime chamber n° 114929 septembre 27, 1994, n°113345 du 16 mai 1995 etc.

[46] Supreme Court commercial and maritime chamber n° 103365 September 27, 1993.

on these activities to this day despite the texts establishing their demonopolization in particular law 98-05.

The competent jurisdiction obeys common law rules (judicial order, commercial section). As to territorial jurisdiction, this will be either the jurisdiction on which the place of the defendant depends (article 745 law 98-05) or that of the port of loading or unloading[47].

The code of civil and administrative procedure establishes specialized judicial poles, one of which deals with maritime matters (article 32 of the civil and administrative code[48]).

It should be noted that recourse to arbitration in maritime matters is very common. Thus, the arbitration clause is often inserted in charter parties and to a lesser extent in bills of lading.

The question of its opposability to the consignee arises and therefore of the legal nature of the contract of carriage[49].

French cases seem to favor the idea of "the general economy of the contract", which does not include the arbitration clause, and require express acceptance of the clause by the consignee for it to be enforceable against him[50].

The position of Algerian jurisprudence emerges from a case in which it is affirmed that "the arbitration clause of a charter-party is not opposable to the assignee insurers of the rights of the consignee of the

[47] It should be noted that there is a disparity between the Arabic and French versions of article745; The Supreme Court made prevail the French language version in its ruling of the commercial and maritime chamber and which gave the choice between the jurisdiction of the domicile of the defendant and that of the port of loading or unloading, judgment n ° 163410 of May 26, 1998 .

[48] Law 08-09 of February 25, 2008 on the code of civil and administrative procedure.

[49] Is this contract tripartite implying the consignee near the carrier and the shipper or is the consignee just an external operator?

[50] Ruling of the French Court of Cassation, Navire Stolt Ospray December 8, 1996. Note the divergence between the commercial chamber and the civil chamber of the French Court of Cassation

goods, third party in relation to the charter. and bearer of the bill of lading[51] ".

The question is who - the state judge or the arbitrator - will rule on the validity of the arbitration clause. It seems that the competence-competence principle has been validated by the Algerian code of civil and administrative procedure since in international arbitration the arbitrator is empowered to rule on his competence.

IV- THE NEED TO REVIEW THE PROVISIONS OF THE MARITIME CARRIAGE OF GOODS CONTRACT IN THE PERSPECTIVE OF THE PRIVATIZATION OF MARITIME TRANSPORT ACTIVITIES

16- Desetatization of maritime activities and difficulties of implementation of privatization process.

One of the main innovations of law 98-05 on the Algerian maritime code was to lift the state monopoly on the activities of chartering, maritime transport and its commercial auxiliaries (mainly handling and stevedoring). These activities were carried out by a state-owned company, which in the 1970s, enjoyed hours of glory owing to its large fleet and efficient seagoing personnel[52].

It should be noted that in the present time, 95% of Algeria's commercial needs are covered by foreign vessels flags, the national vessels covering only 5% of these needs and coming under state-owned companies, a situation depriving the Algerian private sector to invest in this key economic niche.

The implementation of the privatization of the maritime transport activity, that is to say the possibility of acquiring the quality of carrier by Algerians - natural or legal persons (other than state

[51] Supreme Court commercial and maritime chamber, May 20, 2003
[52] This is the Algerian national navigation company CNAN.

entities) - has proved to be complex, the regulatory texts in this area not being sufficiently attractive[53].

The procedure for granting concession[54] makes it possible to circumvent article 14 of the Algerian Constitution which states that "maritime transport (...) is public property". Regulatory provisions set out the terms and conditions for the concession of operating maritime transport services, terms and conditions that are quite cumbersome[55].

The last modification of these provisions[56] sets up a more flexible procedure but it remains globally incomplete[57] and not very attractive[58]. Nevertheless, we can see the legislator effort to limit the perverse effects of privatization that could sell off social gains. In the end, very few concession requests for maritime transport have been awarded.

Finally, it was in January 2018 that the freezing measures taken in 2003 were lifted and that the maritime transport services of "freight" goods under the concession regime[59] were opened.

In this context, six private operators, out of eight applicants, have obtained, in accordance with the regulations in force, an

[53] BOUKHATMI F. « Privatisation des transports maritimes en Algérie, troisième essai »in Revue de droit des transports » in Revue de droit des transports, Lexis Nexis Jurisclasseur, n°12, décembre 2008, p.14.

[54] Concession: legal tool allowing the private sector to invest in the field of maritime transport.

[55] Decree 02-261, august 17, 2002 fixing the terms and conditions for the operation of maritime transport services.

[56] Decree 08-57 February 13, 2008.

[57] For example, the organization at the port level to facilitate the stopover of the ships has not been the subject of specific texts.

[58] Ownership of a vessel with Algerian nationality is an essential condition for the granting of the concession except that the conditions for acquiring Algerian nationality by the vessel are such as to discourage foreign investors for such a purchase (see article 13 of law 98-05).

[59] REZAL A, Problématique de l'investissement dans le domaine des transports maritimes, Séminaire national LADMAR --Spécificités de l'investissement en matière de transport--27 juin 2021, Faculté de droit et des sciences politiques. ORAN 2.

agreement which covers, in terms of time, the period necessary for the completion of the formalities required to meet the conditions of grant of the concession, taking into account the nature and size of the planned investment (acquisition of vessels)[60].

It would be interesting to consult the conventions thus signed in order to measure the effectiveness of the texts that we have analyzed.

Regarding handling and stevedoring - commercial port activities - they experience the same implementation difficulties.

In these activities, it is also the "small steps policy" since the texts put in place are progressing slowly and sparingly. The concession system as for maritime transport - is also adopted there.

Given the social desorder that accompanied the promulgation of decree 06-139 on the conditions for the exercise of stevedoring and towing handling activities, the latter was amended to take into account the criticisms put forward. Among the new provisions we can cite:

- The criterion of the nationality of the concessionaire which has been revised in the sense that it is required that the latter as a natural person be of Algerian nationality and as a legal person be under Algerian law.

- The duration of the concession has been revised upwards, 40 years maximum (instead of 20 years in the previous text) depending on the activity conceded and the investments to be made by the applicant.

- This is the competitive bidding procedure or direct negotiation with applicants and no longer the procedure of the award (adjudication).

[60] One operator, Global Maritime Algeria GMA, applied for a concession related the acquisition of a container ship. These future public and private investments aim to improve the connectivity of Algerian ports and thereby promote the non-hydrocarbon export and in particular of agri-food products.

On the other hand, other questions have not been clarified, for example that of the future of investments made in the port area after the suspension, withdrawal or end of the concession, questions that were not considered in the decree.

It should nevertheless be noted that a concession concerning the management of the port terminal of Bougie and Djen-Djen was created for the benefit of a company putting in partnership the Port Enterprise of Bougie and a Singaporean company. The same operation was carried out for the port of Algiers where a company from Dubai took over the container terminal.

17- The port authority: a non-operational institution

The decisive question for the entry into force of the texts privatizing the handling and stevedoring activities in Algeria is related to the operationality of the port authorities[61] whose legal regime has been made in place since 1999 and whose law 98-05 had settled in its article 895.

In view of this text, this entity - having the status of EPIC[62] - retains the exercise of traditional commercial activities in addition to activities falling under public service missions. To date, the social component is threatened in its sustainability and refuses this new organizational scheme. It is clear that competition will allow new port partners to emerge and impose themselves according to the law of the market, endangering the survival of the port authority if this latter does not get rid of monopoly reflexes.

[61] Decree executive 99-200, 99-201 and 99-202 respectively establishing the port authority of the east, the center and the west, JORA n ° 57 of August 22, 1999, p. 10.
[62] EPIC : établissement public à caractère industriel et commercial.
An EPIC or (public establishment of an industrial and commercial nature) is a public establishment, a legal person, whose aim is the management of a public service activity of an industrial and commercial nature.

The dispositions governing their creation and organization had also been criticized for making the port authority an appendix of the supervisory authority (transport ministry) in terms of operation with its corollary, a heavy bureaucratic machine. Constituting the main link in the implementation of the privatization of maritime transport and port activities, the port authority is struggling to establish its foundations. It would be wise to review its place in the port sphere as well as the various contracts it promotes within the framework of an egalitarian coexistence of port partners while respecting the principles of freedom of enterprise, fair competition and transparency.

CONCLUSION

It is clear that law 98-05 on the Algerian maritime code has been a powerful lever that has made it possible to change the port and maritime landscape, but there are still many questions that need to be clarified[63].

Many questions remain to be reviewed, in particular those relating to the intrusion of the private sector in the port sphere: indeed the question of the unity or the severing of the maritime carriage of goods contract is still relevant. The Algerian supreme court seems hesitant but it will have to settle the debate definitively.

In another hand, the port authority has to be operational in order to allow le mechanism of privatization of port activities be effective and permit the harmonious coexistence of the different contracts preceding or following the carriage contract with this latter.

Finally, the Algerian experience in the privatization of maritime commercial activities is interesting, but it has been accompanied by an insufficiently effective legislative framework.

The provisions recently settled[64] could help privatization process to be effective unless rule 49/51 is considered to be a brake on foreign investment[65]

[63] The legal vacuum characterizing the Algerian maritime code was noted during the audit carried out from September 13 to 22, 2019, by the International Maritime Organization IMO as part of the mandatory audit program of Member States of the said organization.

[64] Decree 21-145 of April 17, 2021 determining the list of the activities having a strategic character.

[65] The project of the construction of the port of El Hamdania in partnership with Chinese operators would constitute a good case study concerning the privatization of port activities in Algeria.

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