

JUDICIAL – FINANCIAL ASPECTS OF THE CROSS-BORDER COOPERATION IN THE DOMAIN OF ENVIRONMENTAL PROTECTION

ASPECTE JURIDICO – FINANCIARE ALE COOPERĂRII TRANSFRONTALIERE ÎN DOMENIUL MEDIULUI ÎNCONJURĂTOR

Diana CÎRMACIU, Ildico SMIT

University of Oradea, Faculty of Law

Gen. Magheru Street, no. 26, Oradea, Bihor, diana.cirmaciu@rdslink.ro

Abstract: The evolution of the cross-border cooperation along the ages has come to the point that it registered a great importance; it implies more and more various instruments and in the same time it raises some complex problems of approach – one of them being the environmental protection. The complexity of the regional cross-border phenomenon in Europe, in the domain of environmental protection, assesses the comparative analysis of norms, of European recommendations, of national legislations, of measures taken by autochthon decisional factors. In some European cross-border spaces the tendency exists to outline a “mixed law” for environmental protection instead of outlining a judicial frame which could facilitate a real fundament of cooperation. Through this study we try to present the importance of the concept of cross-border cooperation in the domain on environmental protection, to accentuate the normative, institutional frame regarding to this domain, the system of the necessary financial resources, because every European state is liable to consolidate the cross-border relations in the domain of environmental protection.

Rezumat: Evoluția cooperării transfrontaliere pe parcursul timpului a făcut ca aceasta să înregistreze o importanță din ce în ce mai mare, să implice instrumente din ce în ce mai variate și totodată să ridice unele probleme complexe de abordare – cum ar fi și cea a mediului. Complexitatea fenomenului regional transfrontalier în Europa, în domeniul protecției mediului impune analiza comparativă a normelor, recomandărilor europene, a legislațiilor naționale, a măsurilor luate de factorii decizionali autohtoni. În anumite spații transfrontaliere europene există tendința conturării „dreptului de amestec” în protecția mediului și nu al cadrului juridic ce ar facilita un real fundament al cooperării. De asemenea, cercetarea se confruntă cu problema determinării competențelor instituțiilor transfrontaliere implicate în protecția mediului. Prin prezenta lucrare am încercat să prezentăm importanța conceptului cooperării transfrontaliere în domeniul mediului, să evidențiem cadrul normativ, instituțional privind acest domeniu, sistemul resurselor financiare necesare, deoarece orice stat european este obligat să consolideze și relațiile transfrontaliere în domeniul protecției mediului.

Key words: cross-border cooperation, environmental protection, Council regulations, directives, national legislations

Cuvinte cheie: cooperare transfrontalieră, protecția mediului, regulamente, directive, legislație națională

INTRODUCTION

The motivation on the concern in the matter of the cross-border cooperation is justified by the wish to improve life standards, by the erase of border limits, of restrictions and of other factors which have lead to the separation of individuals and institutions from some neighbour regions. The promotion of the cross-border cooperation is necessary to increase the efficiency of dealing with some environmental problems like:

➤ improvement of the quality of environment - and struggle against pollution – because pollution is not restricted by political boundaries, but effective legislation can be. We noted that there are numerous models for cross-border collaboration on pollution control

ranging from institutions with a strong formal legal base to ad - hoc and informal cross-border initiatives. The appropriate model for regional cooperation depends on the nature and severity of pollution problems, but perhaps most importantly on perceptions of sovereignty among all participating countries or sub-national jurisdictions.

- prevention measures against some disasters;
- protective measures for public health;
- the rational and cautious use of natural resources.

MATERIAL AND METHOD

Among the factors which support the cross-border cooperation in the domain of environmental protection (and not only) we can mention: the political will of the local, regional authorities (and to sustain this „will” the political class must be informed about environmental problems near the borders and must be permanently sensitized to find some real solutions; the political sphere can help or hinder the intensity of cross-border – environmental – cooperation. It is of particular relevance if local governments do accept and support those activities or not. As further European Integration is a shared common goal amongst most European countries, cross-border - activities do find a favourable base-setting there), the existing relation systems between different institutions (aiming to create some special structures for cross-border collectivities, having judicial personality and competence in the domain of environmental protection), etc.

Cross-border cooperation (CBC) is inseparable component of the European Neighborhood Policy (ENP), which gives an opportunity both to European Member States and partner countries to initiate regional co-operation (implicit, in the field of environmental protection).

It is obvious, that cross-border environmental cooperation concerns various fields and needs to integrate specific knowledge for detailed work „on place” as well as regional economics and policy making. The cross-border cooperation in the domain of environmental protection must take account of:

- the cooperation between NGOs and local as well as national governments needs to be promoted and strengthened - this approach is very likely to show best results;
- the very different situation and topics of cross-border environmental problems – given that situation, it came clear that Top-down and Bottom-Up approaches can be appropriate in either case. They even can coexist. Serious and effective cross-border cooperation is not the field to discuss and practice ideologies of planning and policy approaches.
- in order to achieve sustainable cooperation, it is not enough to promote and enforce solely tangible actions. One important objective is to boost public awareness on cross-border environmental problems. Hence „people-to-people” projects and exchange programs for field-workers, scientist, political actors and citizens are not only desirable but required.
- for success it is considered indispensable to integrate the local population and the regional economy in cross-border environmental cooperation. This is a crucial point, as sustained cross-border cooperation, in any case needs wide acceptance by those being concerned of according measures and projects in their daily live.
- founding resources for cross-border activities are an important issue. It can be proven that the possibility for funding from EU-structural-funds and national sources did encourage and activate environmental protection projects across borders. It is advisable to develop special international funding instruments ensuring cross-border environmental-cooperation. Potential providers should be strong NGOs as well as national governments or international organisations and intergovernmental confederations (EU e.g.).

The first European regulation about environmental protection appeared in 1970 (we must remark that the dispositions of the treaties, which are the fundament of the European construction referred to no general competences in this domain). In 1972, in Stockholm was organized, with the support of the United Nations Organization, the Conference regarding to Environment, moment when it was stated, that environmental protection must be considered to be a cross-border action. The improvement of environmental and natural protection at a cross-border level is very important because the air, water and the environment has no boundaries. It was assessed that environmental protection, natural conservation must be cross-border problems and must be integrated in the cross-border development plans. The active panorama design in the borderline and cross-border regions needs to have a common approach, in the same measure as by the elimination of some problems regarding to air pollution, domestic wastes, recycling and cleaning, phonic pollution and inundations. A special attention must be offered for the substantial differences from the domain of environmental protection and natural conservation from the cross-border and borderline regions.

The legal fundament of the European politics in the domain of environment is Article 174-176 from the institutional Treaty of the European Community (Treaty E.C.). This way based on article 174 from T.C.E. the politics for environmental protection must be passed on the following principles:

- That of precaution and preventive action;
- That of the remedy with the priority of the source and the environmental damages;
- The principle „the polluter pays”.

In the same time in the list of contents of article 2 from T.C.E. is stated that the mission of The Community is to institute a common market... „a high level of competitiveness and convergence of the economical performance, a *high level of protection and of quality improvement of the environment...*” and the dispositions of article 6 from T.C.E. foresees that „the requirements of environmental protection must be integrated in the definition and practice of the European politics and actions... to promote durable development”.

In 1991 the Convention of Espoo was signed regarding to the evaluation of the influences upon the environment in cross-border context (including Romania), document that regulates the procedure stages, which must be done by those states which wish to implement a project with negative cross-border impact to consult all the potential states. The parts are obliged to make „individually or together all the adequate and efficient measures to prevent, to bring back and to control the important negative cross-border impact, which are produced upon the environment by the proposed activities.”

Knowing the fact that the application of some different ecological politics in the different member states of the European Union (or even in the different neighbour regions of some member states) could generate *qualitative differences* between the life and working conditions of the citizens from these areas, *economical* disparities, which would influence the good function of the common market, it must be assessed the measure of promotion of some common politics in this domain, politics dealing with the evaluation and prevention of negative effects of the European interior market upon the environment.

One of the most frequent cross-border structures are considered to be the „Euro regions”. Their features are:

- permanently character;
- different identities of their members;
- own administrative, technical and financial resources;
- separate decisional capacity.

The promotion of the cross-border cooperation among the Euro regions is based on:

➤ *The administration of some border problems like: environment, natural disasters or disasters produced by mankind;*

➤ The coordination of politics with mutual interest, like the domain of regional planning, urban and rural;

➤ The establishment of the cross-border cooperation institutes to assure that the cross-border relations are maintained and developed.

An important contribution in the development of the Euro regions have the European Union and other international financial institutes through the liberation of some money to encourage the investments and programs for euro-regional cooperation (we must mention, that the projects of the European Union for the Euro regions are financed through structural funds from the program INTERREG, as through the public funds of local communities and private funds, foundations, ONG s, companies, etc.) For those projects which are for the states that are candidates for the membership of the European Union are offered special funds through the PHARE-CBC program, Instrument for Pre-adheration Assistance (IPA) or European Neighbourhood and Partnership Instrument (ENPI).

RESULTS AND DISCUSSIONS

The legal frame for the actions of cross-border cooperation is offered by the authorities and local communities from our country by the Governmental Ordonance No. 120/1998 about the ratification by Romania of the European frame-convention upon the cross-border cooperation of the territorial communities and authorities, adopted in Madrid at 21 May 1980. According to the Convention of Madrid, the cross-border cooperation aims to increase and develop the neighbourhood relations between communities and territorial authorities which are depending on two or more contractual parts, as on some agreements in this matter.

The communities, authorities or the institutions on duty to exercise regional functions are according to Romanian law, the regional and local councils.

The administrative territorial units which are parts of the Euro regions have an instrument for the territorial cooperation regulated by Regulation No. 1082/2006 regarding to the institution of the European Group of Territorial Cooperation (EGTC). In Romania the national legal frame which permits the direct application of The Regulation No. 1082/2006 is created by the Urgent Ordinance of the Government No. 127/12.11.2007 regarding to EGTC.

Romania takes part in the cross-border cooperation process in the domain of environmental protection (and not only) in the following Euro regions:

Carpathian Euro region (as co-operational institutes we mention: the Council of the Carpathian Euro region, Work Commission to Prevent Natural Disasters – Slovakia, Work Commission for Tourism and Environment - Poland); Euro region „Danube – Criş – Mureş – Tisa” (which realized studies and experience changes in the matter of the quality improvement of water, it was created the Regional and Cross-Border Center for Prevention and Intervention in case of inundations, it aims to improve the alarm system to prevent disasters in the member regions); Euro region „Dunarea 21”; Euro region Giurgiu-Ruse (this cooperation aims the treatment of used water from these two cities with the parallel construction of treatment stations or through the construction of a common station, to reduce emissions during the heating activities in these two cities – realized with thermo-electical stations with coal-, and the arrangement of the shores by the Danube); Euro region „Dunarea de Sud”; Euro region „Danubius”; Euroregion „Dunarea de Jos” (as finalized projects we can mention: „Management Plan for the Protection of Biodiversity and Long-Lasting Development in the Protected Natural Areas of the Euroregion „Dunarea de Jos”, „The integrated system to control the environmental, biodiversity and natural resource factors of the Cross-Border Reservation Biosferei Danube Delta Romania – Ukraina”); Euro region „Prutul de Sus”; Euro region Siret-

Prut-Nistru; Euro region „Dunarea de Mijloc –Porțile de Fier”; Euro region „Dunarea Inferioară”.

CONCLUSIONS

We can form the conclusion that the reform in the matter of environment, the progress of the environmental protection and the improvement of its quality are problems with interest for all the European countries (member states of the European Union or candidates for the European construction, states with engagement in different forms for regional/cross-border cooperation). The environmental politics is called to establish the strategies, methods and instruments applied in the actions used at national level to prevent and fight against pollution, to improve the environmental conditions (it will be taken into consideration: the reorganization of the competence sphere and the structural reorganization of those institutions which administrate natural resources; decentralization of the management of natural potential; re-evaluation of the normative existing documents, the adjustment of the applying mechanisms and the harmonization of the legal fundamentals of the European Union, etc).

BIBLIOGRAFIE

1. CĂLIN R., C. TEODOR, Politica de mediu, editura tritonic, seria europa mea, bucurești, 2007;
2. LAW NO.22/2001;
3. GOVERNMENTAL ORDONANCE NO.120/1998.