
Transfrontier Co-operation for Units of Local Government in Europe and Croatian Law

MARIO JELUŠIĆ

Assistant Professor on Faculty of Law in Zagreb

Summary

Transfrontier co-operation between units of local government in different fields of activity as environment and spatial planning, transport, traffic, improvement of local infrastructure, forestry, agriculture, water-supply and energy economy, health service, economy and employment, trade, tourism, education and culture is usual between the member states of the Council of Europe, as in the others as well. Author discusses about principles of transfrontier co-operation for local units of different states, following the regulation of European outline convention on transfrontier co-operation between territorial communities or authorities, European charter on local government, and new croatian regulation on transfrontier co-operation.

1. Introduction

The basic principle of transfrontier co-operation is in creation of institutional links and contractual relations between various bodies in border areas in order to find common solutions for similar problems. The neighboring states are usually conscient of specific problems in peripheral bordering areas, so that the institutional transfrontier co-operation appears as an efficient way of solving specific problems that exist only in such bordering areas. Concerning these questions, in the activity of some states of the European union that follows the regulation of *European outline convention on transfrontier co-operation between territorial communities or authorities* from 1980,¹ until today there are established more than 70 transfrontier regions in different bordering areas of member states of the Council of Europe.²

If we define the term *transfrontier region* as an wide area that is split in two or more parts by the state borders, and that each of those parts is under sovereignty of different state, retaining common geographical, historical, cultural, ethnic, economical and eco-

¹ European outline convention on transfrontier co-operation between territorial communities or authorities; European Treaty Series No. 106. This convention is translated and several times published in Croatia, see *Okvirna europska konvencija o prekograničnoj suradnji između područnih zajednica ili vlasti*, Informator, br. 4307, Zagreb, 17 June 1995.

² See: Charles Ricq: *"Handbook on transfrontier co-operation for local and regional authorities in Europe"*, 2nd edition, Council of Europe, Strasbourg, 1995, p. 8.

logical characteristics, we shall obtain a functional term which certainly does not define such a region as a *political entity*, but which includes all aspects of similarity mentioned for such bordering areas of different states that are included in some level of transfrontier co-operation.³ Regularly, the aim of different inter-territorial organisations is in common consideration of the same practical problems of all member-states in such transfrontier organisations, in order to find the best and the most functional solutions together. In the praxis of transfrontier co-operation that exists between local units of European union member states, so called *euro-regions* are mentioned very often, but they don't represent special interstate entities. They represent only working groups (in french: *communautés de travail*). Such working groups may be established by the activity of smaller interlocal initiatives or bigger regional entities.⁴ In this functional sense, the terms *working group* or *euro-region* are synonyms.

So it is not by accident that the problem of borders and bordering areas, particularly in the European Union, attracts more and more attention, because we witness the process of weakening the border significance as lines of political demarcation, with planned disappearing of economic obstacles. We face all the difficulties and limitations that have to be overcome, in order to realize european integration in the full meaning. That is why the transfrontier regions, as some kind of working groups, should become the touching points and the catalyst of the progress of the european integration.

Transfrontier co-operation for units of local government in some parts of Croatia has attracted the important interest, but although the transfrontier co-operation has been foreseen by the Law on local government, it was not precisely regulated. It has left the area for different, very often politically marked interpretations of a possible and permitted subject-matter of the transfrontier co-operation.⁵ Recently, these relations are regulated more precisely with the amendments on the Law on local government, and in this paper we shall describe what is the constitutional and legal framework of transfrontier co-operation for units of local government in the Republic of Croatia.

³ Denis de Rougemont: *"L'avenir est Notre Affaire"*, Seuil, Paris, 1978

⁴ Republic of Croatia, for example, is participating in such working group "Alps-Adria" for very long, but wide-spread the member-states of Council of Europe, or European Union, there are very common working groups that include only smaller parts of the state territory, specially the units of local government. The most numerous are along the western border of Germany with neighboring countries (e.g. *Planungsgemeinschaft Rheinpfalz*; *Interessengemeinschaft Moyenne Alsace - Breisgau - CIMAB*; *Regio Basiliensis*, etc.) as well along the french-italian border (e.g. *Région Valle d'Aosta - Haute Savoie - Valais*; *Arbeitsgemeinschaft der Kantone und Regionen der Westalpen*; *Alpazur*, etc.).

⁵ The Council of Europe in co-operation with Istrian county has organised in june 1995 in Brtonigla a seminar about local government and transfrontier co-operation, but at the time there were no regulation that would precisely determine these relations in the Republic of Croatia. See more in Mario Jelušić: *"Ustavno-pravni okviri prekogranične suradnje jedinica lokalne samouprave"*, Informator, br. 4307, Zagreb, 17 june 1995.

2. Local government and the transfrontier co-operation

Local government, as principle the highest level of independence for the local bodies in the Republic of Croatia, in the limits of the law means the legal and real ability of local units to regulate and administrate the essential part of public affairs, with their own responsibility, and for the benefit of the local population. But, it is in the European tradition that the local government includes only those affairs that by their nature can be considered as local affairs for the reason of interest for local population. On the other hand, affairs connected with the application of the laws that regulate local government are regularly separated from the local affairs, and those affairs are not included in the field of local government. These affairs that represent the supervision are executed by the central state administration.

The affairs of the transfrontier co-operation for the local units are quite different. Here we have to include the spacial planning, transport, traffic, communications, improvement of local infrastructure, forestry, agriculture, water-supply and energy economy, health service, economy and employment, trade, tourism, education and culture. Co-operation for the local government units of different states in bordering areas as such represents specific microintegration beside the macrointegration of whole states that are already members of the European union, or intend to be in the future.

3. Legal framework of the transfrontier co-operation

Transfrontier co-operation for units of the local government is regulated by different acts of the international law, as well by the regulation of national law on local government. Beside that, certain countries have made numerous bilateral contracts that regulate special sorts of transfrontier co-operation between their bordering local government units. Among other documents, we have to emphasize the *European outline convention on transfrontier co-operation between territorial communities or authorities*, and *European charter on local government*.

3.1. European conventions

In order to promote and to facilitate the co-operation in Europe on the local level, the Consultative Assembly of the Council of Europe adopted Recommendation Nr. 470 from 1966 on European co-operation between local authorities, and this represented one of the first impulses for the creation of the future convention on transfrontier co-operation. Within all those efforts for the strong support of the transfrontier co-operation, Council of Europe has adopted the European outline convention on transfrontier co-operation between territorial communities or authorities (in French: *Convention-cadre européenne sur la coopération transfrontalière des collectivités ou autorités territoriales*) which by its twelve articles establishes the aims of the undersigned countries, determines the idea of “transfrontier co-operation” and opens up the adaption possibilities for the offered regulation by the constitutional limits in certain countries. Having realized the importance of transfrontier co-operation for the process of European integration, the Vienna Declaration made by the heads of state and government of the Council of Europe's member states in October 1993, has emphasized the importance of

the transfrontier co-operation among the local and regional authorities for *the creation of the tolerant and prosperous Europe*. Although the discussions about institutional transfrontier co-operation in Republic of Croatia dating from the early nineties have been very intensive, and sometimes controversial, Republic of Croatia signed this Convention not earlier than in May 1999. Although Croatia by signing this Convention has not become its contracting party, for quite a long time in the public there are articles that refer on this document, although it still does not obligate Croatia in the formal sense. Because of the protection of the rights of all states, the regulation of the Convention have been stipulated the way to protect constitutional integrity, state sovereignty and coherence of their territories from eventual attempts of local units for usurpation of competence, that by the constitutions of the signatory states belong exclusively to the central state, which is very important for each state as well for Croatia.

For the purpose of this Convention, as prescribed in its Article 2, transfrontier co-operation shall mean any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more contracting parties and the conclusion of any agreement and arrangement necessary for this purpose. It is also prescribed that transfrontier co-operation shall take place in the framework of territorial communities' or authorities' powers as defined in domestic law, and it is emphasized that the scope and nature of such powers shall not be altered by this Convention. Beside this, the expression *territorial communities or authorities* the rules of the Convention mean communities, authorities or bodies exercising local and regional functions and regarded such under the domestic law of each state. However, each contracting party may, at the time of signing this Convention or by subsequent notification to the Secretary General of the Council of Europe, name the communities, authorities or bodies, subjects and forms to which it intends to confine the scope of the Convention or which it intends to exclude from this scope.

It is often demanded why Croatia hasn't ratified this Convention until today. The reason is probably also in the complexity of the procedure prescribed for it, but in its legislation on local government Croatia has effectuated what is by the Convention generally seen, and the Croatian legislation isn't contrary to it at all. Furthermore, with the newest amendments on the Law on local government the area of transfrontier co-operation have been fully regulated⁶ in the manner which is appropriate to the Convention, and to the already established praxis of transfrontier co-operation of the units of local government in Croatia with the local units of other states as well. By this regulation, as emphasized in the explanation of the Government that has proposed this Law, it is not restricted the establishing of transfrontier co-operation with local units of other countries, but the accomplishing of the general policy is assured at the same time as well, avoiding the disturbance of the relations with other countries.⁷

It is important to emphasize that Convention does not have any regulation about creation of transfrontier regions which would be of supra-state or inter-state character.

⁶ See: Zakon o izmjenama i dopunama Zakona o lokalnoj samoupravi i upravi ("Narodne novine", br. 128/99)

⁷ See: Vlada Republike Hrvatske: Prijedlog zakona o izmjenama i dopunama Zakona o lokalnoj samoupravi i upravi, Zagreb, September 1999. (Law proposal Nr. 656), p. 12.

By the totality of its rules, the Convention consequently and fully respects the sovereignty of individual states. That is why the Convention by its Article 2 determines that transfrontier co-operation has to be exercised within the competences of local communities or authorities, as are determined by the internal law of signatory states. The fact that the width and nature of these competences are not the subject of the Convention is of special importance. On the contrary, it is upon each legislative body of each state to make its own Law on transfrontier co-operation, with which it would determine by its own will what the transfrontier co-operation could comprise, and what local units could carry it out, in which way and under what conditions. By this, the rules of the Convention respect the sovereignty of signatory states, as well as the political will of a single state that its local units have the transfrontier co-operation with corresponding foreign local units just in those fields that it would consider useful. Beside the fact that Conventions respect the competences of the bodies determined by the inner law of each contracting party in the field of international law and political mainstream, it emphasizes the respectation of the rules about the control and supervision that the territorial communities or authorities are submitted to in certain states. Convention in the Article 8. requires that each contracting party shall forward to the secretary general of the Council of Europe all relevant information concerning the agreements and arrangements provided by Convention, that are relevant for making bilateral or multilateral contracts among states. So beside the certain control from the Council of Europe, with regard to wide potential field of co-operation, the registration of relevant facts will be made possible too. In this sense the Council of Europe has proposed some model and outline agreements. The purpose of it is to facilitate making agreements. Those forms are not obligatory, and it is also possible to make the agreements in other form and contents.

Beside the mentioned Convention, European charter on local government is an act of signatory states, mainly member-states of Council of Europe, that have signed it in Strasbourg 15 October 1985. Republic of Croatia has accepted the principles and regulation of the Charter even before its ratification at the end of 1992,⁸ having decided that it would respect them, and consequently apply. The normative basis to a consequent application of the Charter in domestic legislation represents Article 134 of Croatian Constitution which prescribes that the international agreements that are made and ratified according to Constitution, and officially published, make part of the legal system, and are stronger than laws.

European charter on local government reflects the logics of the integration processes in Europe, and democratic principles that are included in rights of local units to perform public competences, as well the affairs of the local government. The Charter generally prescribes the lowest conditions and criteria that had to be respected by the states which have adopted it in their legislation. In Croatian legislation all prescribed criteria are realized, and considerably exceeded. But, with regard to co-operation of units of local government the Charter does not prescribe a lot. In the Article 10, paragraph 3, it opens only the possibility of co-operation with the local units of other countries, and the conditions for it will be prescribed in legislation of every state.

⁸ See: Zaključak o prihvatanju i poštivanju načela i instituta (odredbi) Europske povelje o lokalnoj samoupravi, "Narodne novine - međunarodni ugovori", No. 1/93, 15 January 1993.

3.2. *Bilateral international agreements*

Beside conventions of the Council of Europe already mentioned, according to their own law and interests, many European states have regulated relations of their bordering local units in transfrontier co-operation independently by special bilateral international agreements. Different agreements regulate different kind of co-operation in the fields as economy, tourism, agriculture, transport, traffic, employment of the persons who live along the bordering areas, security, fire protection and natural disasters, protection of environment, recycling of wastage materials, water supply, spatial planning, culture, education, research, sports, and judicial assistance.⁹

3.3. *Croatian law*

Article 11, paragraph 4 of the Law on local government from 1992 prescribes that the units of local government, under conditions foreseen by the law, may co-operate with corresponding units of local government from other states.¹⁰ But until 1999 when this Law has been amended with regulation on co-operation for communes, cities and counties (*županije*) with the units of local government from other states,¹¹ there were no law regulation on this matter. New rules of this Law prescribe in general that the co-operation for communes, cities and counties shall take place according to laws, international agreements of which Croatia is a state party, and with the respect of general policy of the Republic of Croatia. Such directives are based on the right of every state to regulate these relations by the law, which is foreseen in the European outline convention on transfrontier co-operation between territorial communities or authorities.¹² After the representative body of the unit of local government, according to its statute and law, has made a *decision on establishing of co-operation* for communes, cities or counties with corresponding units of local government from abroad, and on the matter and form of the

⁹ List of such agreements among different member-states of the Council of Europe is published in: *Documents et accords concernant la coopération transfrontalière en Europe, Strasbourg, 1995*, and Charles Ricq: *"Handbook on transfrontier co-operation..."*, p. 73-95.

¹⁰ Before the amendment, originally the Article 11, paragraph 4 had also the rule that units of local government, under the conditions foreseen by the law, may admit to the international associations of the units of local government. Although this stipulation has been omitted by amendments on this Law ("Narodne novine", br. 117/93), for the units of local government of the Republic of Croatia entering in such associations (e.g. Association of the European Regions) hasn't been prohibited. It has been emphasized in the literature that the right of the units of local government on co-operation has the aim to promote economic and social development of the communities that co-operate, and that the professional and administrative affairs could be exercised cheaper and with more quality. See: Juraj Hrženjak: *"Lokalna samouprava i uprava u Republici Hrvatskoj"*, Informator, Zagreb, 1993, p. 456, 457.

¹¹ See Article 4 of the Law on amendments of the Law on local government (Zakon o izmjenama i dopunama Zakona o lokalnoj samoupravi i upravi, "Narodne novine", br. 128/99) which has included the whole new chapter "Co-operation for the communes, cities and counties with units of local government from other states" with new articles 11b to 11g.

¹² Compare with Mario Jelušić: *"Ustavno-pravni okviri prekogranične suradnje..."*, p. 4; Miroslava Mišković: *"Suradnja lokalnih i regionalnih jedinica na nacionalnoj i međunarodnoj razini"*, Informator Nr. 4778-4779, 22 and 25 December 1999.

co-operation, commune, city or county will deliver its opinion on the draft-agreement to the head of the county (*župan*) in croatian language as well in the language of the foreign co-operating unit. The head of the county has to deliver the draft-agreement to the central body of the state administration for the local government in eight days from its reception, and so is assured the supervision *a priori* of the body of central state administration.

Ministry of Justice and State Administration, as the central body of the state administration competent for local government will require the opinion from the central bodies of the state administration which are competent for the matters of cooperation and obliged to carry out the general policy in those fields, about is the draft-agreement on the co-operation in accordance with laws, or international contracts. Only after having established that the draft-agreement on co-operation is in accordance with the laws or international contracts, and with the general policy of the Republic of Croatia, Ministry of Justice and State Administration will give the consent about the agreement on the co-operation. But, if the Ministry finds that the matter of co-operation is not in accordance with the laws, or international contracts and general policy of the Republic of Croatia, it will ask the commune, town or county to bring the agreement in accordance with the regulation of the laws or international contracts within fifteen days. If the commune, town or county would not do so, Ministry of Justice and State Administration will bring the decision on rejection for such an agreement on co-operation. Against this decision of the Ministry, as it is prescribed, the commune, town or county are allowed to appeal to the Constitutional Court of the Republic of Croatia.

For the establishing of data files about the cooperation for communes, towns and counties with units of local government from abroad, Ministry of Justice and State Administration will have the register and the collection of original acts. The units of local government will deliver to the Ministry one signed copy of the agreement on the co-operation in croatian as well in foreign language, as it could be registered in its data files. In that way the Ministry will have the original documents on transfrontier co-operation for units of local government.

The bodies of the central state administration will exercise the legality supervision of the activities and general acts of the local units' representative bodies in their local competences. According to regulation of articles 78 to 84 of the Law on local government, the Ministry of Justice and State Administration will supervise the transfrontier co-operation *a posteriori*. That is to say that Article 80 of this Law prescribes that the central state administration bodies, considering that representative body's general acts are contrary to the Constitution and laws, are going to suspend their execution, proposing to the Government of the Republic of Croatia to start the proceeding for its judicial review at the Constitutional Court. If the Government does not do so within thirty days from day the execution was suspended, the suspension will be ceased *ex lege*.¹³

¹³ For the reason that representative bodies of the units of local government will be adopting different acts concerning the transfrontier co-operation, the supervising role of the central state administration bodies will be very important. The Government of the Republic of Croatia is allowed at the Ministry of Justice and State Administration's proposal, in cases numbered in Article 81, paragraph 1 of the Law on local government, to dissolve the representative bodies of the units of local government. We may imagine the case from paragraph 1

It is to emphasize that the European outline convention on transfrontier co-operation concerning the state supervision prescribes that every contracting party (i. e. every signatory state) is allowed when signing the present Convention or in a later communication to the Secretary General of the Council of Europe, specify the authorities competent under its domestic law to exercise control or supervision with regard to the territorial communities and authorities concerned, what undoubtedly guarantees respecting the competences of supervising state bodies prescribed by the inner law.

4. Conclusion

The process of globalisation, economic and institutional political integration of the European states, transfrontier co-operation as a solution of interregional co-operation surely represents the way that really accelerates these processes. The objective for activities of inter-regional and inter-territorial organisations functionally designated as *working groups*, or *euro-regions* is consideration and solving practical problems that member-states of transfrontier communities have. Agreements that establish the transfrontier co-operation do not have strong formalised institutional structure, and their common characteristic is to cover few aspects of co-operation.

For the Republic of Croatia models of transfrontier co-operation in Central and Western Europe and the policy of the European union member-states based on principle that borders cannot be an obstacle to common progress, are of great significance. According to this, the regions have to concentrate their common activities towards economic and social cohesion in Europe accepting democratic principles of regionalism. In the process of European integration regional working communities (*euro-regions*) ought to have universal objectives: democratic, economically initiative and socially secure Europe, mutual respect of the cultural, ethnic, linguistic and religious identity of each country, national minorities rights, as well as economic co-operation based on market principles.

European outline convention on transfrontier co-operation between territorial communities or authorities gives us strong guarantees for the respect of state sovereignty of signatory states, and makes impossible the promotion of the local government units on the level they don't have by the constitutions of states they belong to. Therefore, the transfrontier co-operation may be performed only in the limits of competences that counties, towns and communes do have as units of local government, according the Constitution and laws.

of the same Article, that the representative body of the unit of local government frequently adopts acts that are contrary to the Constitution, laws or other regulation; or other frequent violation of laws or other regulation. It is to emphasize the paragraph 6 where the possibility of the dissolution of the local government unit's representative body is connected to its decisions that jeopardize the state sovereignty and territorial integrity of the Republic of Croatia.