The 2003 Kiev Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters

Phani Dascalopoulou-Livada and Alexandros Kolliopoulos*

1 Introduction

The Kiev Civil Liability Protocol which was elaborated by the Economic Commission for Europe (UNECE),1 came as a legal response to the environmental catastrophe caused to the Danube in 2000 by an industrial accident in Baia Mare, Romania.2 The decision to proceed with the project was taken by a Joint Session of the Meetings of the Parties of the two relevant UNECE Conventions, i.e. the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention),3 and the Convention on the Transboundary Effects of Industrial Accidents,4 of

---

* The views expressed in this article are strictly personal and do not reflect those of the Ministry of Foreign Affairs of Greece.


2 Due to the accident, about 100,000 cubic meters of waste water containing 50–100 tons of total cyanide were released into the Someş river. The spill was caused by a leak from the gold mining installations of the Aurul Company, which was a joint Romanian-Australian enterprise. The contaminated water ran 800 km, reaching the Danube through the Tisza River. As a result, the fish produce in Hungary and Serbia was destroyed. Concerning the responsibility of Romania for the consequences of the spill on the health of individuals on the basis of Article 8 of the ECHR, see Tatar v. Romania App no 67021/01 (ECtHR, 27 January 2009).


the same year. The decision was far from easy, as several states thought that there was no real need for a new civil liability instrument since there was already the Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, which had been adopted in the context of the Council of Europe in 1993.5

However, the Lugano Convention was then -and still is- not in force, as the required minimum number of ratifications has not been reached. The results of a survey conducted by the UNECE with a view to identifying the reasons why States abstained from ratifying that Convention showed that the reluctance of States was mainly due to the scope of the Convention which was perceived to be exceedingly large as it covers all types of damage, particularly environmental damage.6 It covers, in other words, every kind of pollution from whatever source.

It was therefore clear that any new instrument on the matter should be as specific and focused as possible. This was indeed the idea that found, in the end, wide support in the abovementioned Joint Special Session of the Meetings of the Parties to the two Conventions held in July 2001, which decided on the elaboration of a Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.7

Negotiations for the Protocol were conducted in the context of an Intergovernmental Working Group specifically set up for that purpose.8

Staying true to the requirement to be as focused as possible, the Protocol declares specifically that its objective is restricted to providing a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters.

---

8 The first co-author of this article chaired the Intergovernmental Working Group which held seven sessions in 2002 and 2003.