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The reform of the State in France: disappointed ambitions of the regional and local authorities

Introduction

Territorial reforms have intensified and accelerated as a consequence of the financial crisis. Several countries in the European Union began to simplify their administrative territorial organization – to merge regional authorities at the level of communes and to eliminate intermediate levels – trying to optimize their organization or because territorial reform was part of the terms of a European Union bailout of their economy. Thus, a drastic fusion of the communes was an integral part of the conditions imposed by the European Commission on the Greek authorities in 2010. The same harsh treatment was to be callously applied to Spain, but the Spanish central government had to contend with the powerful autonomous communities, including Catalonia, which is still tempted by separatism. Germany is still regarded, at least in France, as having successfully completed its territorial reform, because the Länder succeeded in fusing their communes in the 1970s. But that would be to forget that the merger of the Länder turned out to be a failure: to the present day, the only successful merger was the one that gave birth to the State of Baden-Württemberg in 1952. Therefore, it has to be accepted that the weight of history will always interfere in the process of rationalisation. The search for an effective territorial architecture makes sense only if it takes into account the powers of the state and the powers of the local authorities, local autonomy and the process of decentralisation as a whole, that is to say as an integral part of the reform of the state. However, this reform can not be reduced to a strictly technical process: it is first and foremost a political reform.

The French concept of decentralisation has often been reduced to the transfer of responsibilities from the State to one or another level of regional and local authorities¹. From that standpoint, the government created by the changeover of 2012 opened the “Third Act” of the decentralisation process. The beginning of decentralisation in France, in this case Law 1982-213 on the freedom of communes, departments and regions of 2 March 1982 could be therefore considered to be Act I, and Law 2004-809 on local freedoms and responsibilities of 13 August 2004 as Act II of decentralisation. However, such a view would overlook the existence of regional and local authorities as far back as the Revolution and the development of institutional relations between the State and those authorities. Indeed, the French communes with elected councillors were instituted by the Law of 14 December 1789. Later on, in 1790, the departments were established with elected general councillors. However, we should not make the mistake of thinking that suffrage was universal: it was censitary and it was not open to women. Decentralisation progressed in the nineteenth century with the recognition of local affairs, the principle of the election of a mayor and the devolution of a number of local powers to the communes, as well as to the general councillors: this is what the Municipal Law of 5 April 1884 and the Law on General Councillors of 10 August 1870 set out to do. Even today a certain number of provisions of the General Code of Local and Regional Authorities are in their wording of that time. At this point, one might imagine that the process of decentralisation boils down to the administrative aspects of territorial organization, local elections and local prerogatives. However, doing so might lead one to forget that, in parallel, fiscal decentralisation also increased with the recognition in the early twentieth century of local taxes. The process has culminated with the law passed on the 10th of January 1980, which allowed local authorities to vote on the rates of their local taxes. A third level of local government was added by the Law of 2 March 1982: regions gained the status of local authorities, having before been instituted only in the form of an administrative and economic subdivision of the State².

Since 1982, several problems have emerged and the changing majorities seem to be hesitant about the solutions that could be used to deal

¹ G. Marcou, *Changements et permanences dans le système français d'administration territoriale*, “Revue Française d'Administration Publique” (RFAP) 2012, n° 141, p. 5.

² V. Donier, *Droit des collectivités territoriales*, Paris 2014, p. 202.

with them. First, there is the question of the territorial organization. The emergence and subsequent rise of regional power undermines the very existence of departments and even more so if large communes were to be transformed in the short term into real regional metropolises: there would be no more room left for an intermediate level. The creation of the Lyon metropolis (France's 3rd city) by Law 2014-58 of 27 January 2014, which modernized the public action in the area of territorial organisation and asserting the status of metropolises leaves the Rhône department with virtually no territory and no powers (taken over by the agglomeration, which constitutes the major part of the department's territory)³. The project of merging regions presented before the Council of Ministers in June 2014 is now further reducing the role of departments, which seems to be a paradox in the light of the fact that the budget of departments is much higher than the budget of regions (often more than half of the budget is devoted exclusively to social action). Yet the President of the French Republic said, in a public intervention, that he wished to do away with general councils in 2020, which would be tantamount to stripping the departments of their status of local authorities. In such conditions of uncertainty about the future territorial architecture, it is extremely difficult to make the division of powers more consistent and hence more effective.

Territorial reforms usually encounter strong resistance. France does not escape this political tendency, fuelled as it is by powerful lobbies. Therefore, the process of decentralisation, the product of difficult compromises, is necessarily ambiguous (1). In this context, the architecture of regional and local authorities is weakened, but still makes even the slightest territorial reform difficult to implement (2).

1. Ambiguous decentralisation

The constitutional revision of 28 March 2003 provided the opportunity to add a sentence into Art. 1 of the Constitution of the Fifth Republic (1958–): "France shall be an indivisible, secular, democratic and social Republic [...]. It shall be organised on a decentralised basis". Therefore, it is the legislators' role, under Art. 34 of the Constitution, which outlines the areas of legislative powers of the Parliament, to give form to this

³ Official Journal, 28 I 2014, p. 1562.

decentralized organization: “[...] Statutes shall also lay down the basic principles of: [...] the self-government of territorial communities, their powers and revenue”. It appears today that the decentralisation, despite the recent increase in the number of dense acts of legislation, remains a work in progress (1.1). But now it transpires that even if the political will exists, reduced legal and financial means force the authorities to curb their ambitions: decentralisation is hindered by the lack of suitable resources (1.2).

1.1. A work in progress

The growing volume of legislative texts is insufficient to disguise the real problem: the lack of an overall vision of an effective territorial architecture, less expensive than the current superimposition of structures added over time – and above all – one that would be accepted by everyone. It is the state’s role to define the doctrine of administrative division, before starting a reform of the existing configuration. It is only through this process of serious reflection, to be undertaken together with the national representation, that the state can start to redesign the structures and reassign competences (who does what), in accordance with the constitutional principle of free administration. To achieve that, a method would still need to be defined.

1.1.1. The division of competences

In the context of the reform of the State, the division of competences is consistent with the essential principle of subsidiarity. It is necessary to first identify areas that are an exclusive competence of the state, then, with regard to the transfer of powers, identify areas that are the competence of one or another level of regional or local government. This is the point of a real division of competences, incorporating the principle of subsidiarity as laid down in Art. 72 paragraph 2 of the Constitution in its wording of 28 March 2003: “Territorial units may take decisions in all matters that are within powers that can best be exercised at their level”. But the reality does not match this framework. Indeed, the division is blurred: overlapping competences, competition over competences and the very principle of the general competence clause that characterizes the French regional and local authorities to the detriment

of subsidiarity⁴. According to the law, each local authority is entitled to deliberate on every matter at its level. In the General Local Authorities Code (*Code Général des Collectivités Territoriales* (CGCT); Art. L 2121-29), this principle is reflected by the phrase: “the municipal council, through its deliberations, deals with the matters of the commune [...]”. This phrase is reproduced in the other two levels of local authorities. Therefore, it becomes difficult to prevent one commune from interfering in the area of competence of another. Even though regions are in principle the level responsible for economic development, communes and departments are not willing to give up their interventions in this particular area.

The challenge is to create a real division of competences, with areas granted by law exclusively to one or another level of authority. However, in such a rigorous framework, it would be impossible for a commune or a department to intervene in the field of economic development, the outlines of which still need to be clarified. A look at the field of education is equally revealing. According to the division of competences, it is the role of communes to take care of the construction and equipping of primary schools, while the departments are responsible for the construction and equipping of secondary-level schools and regions for the construction and equipping of high schools. The State authorities are in charge of higher education: teaching staff, buildings, and equipment. This scheme is idyllic and reflects a real division of competences. In reality, however, the division is much more complex. From primary schools to universities, all permanent teaching staff are paid by the State, while the departments are responsible for school transportation, and the regions for teaching and vocational training. Those examples alone show the need to find a strategy.

The regional level could become a level for planning and for coordination, rather than a management level. Certain daily management tasks (the management of high schools) prevented the regions from being apart, above the fray. But for regional councillors, elected by universal suffrage, it is more rewarding to show voters their management powers,

⁴ The general competence clause is a principle formally enshrined in the article 4 of the European Charter of Local Self-Government (Council of Europe) adopted on the 15 X 1985: “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority”.

related to daily concerns (high schools, regional trains) than planning competences, which are totally alien to the citizens.

The division of competences can only be successful if the State establishes clear limits for its own powers. This is not the case today.

1.1.2. Free administration

Art. 72 of the Constitution enshrines the principle of free administration by regional and local authorities, but without defining it. Art. 34 of the Constitution allows legislators to give substance to this principle, which is not the same as either decentralisation or local autonomy as defined by the Council of Europe (Charter of Local Self-Government of 15 October 1985). The Constitutional Council had the opportunity to set the limits of free administration, yet it has always refused to define it in positive terms. At the mercy of a praetorian interpretation, the principle is still quite incomplete. However, the Constitutional Council considers that free administration of regional and local authorities represents a "fundamental freedom"⁵. Therefore, each level of local government claims the right to take care of everything and only takes into account the limits of local public interest and budgetary constraints.

The principle of free administration imposes itself very logically on legislators when it comes to the minimum capacities: recognition of legal personality, budgetary autonomy, universal suffrage election of representatives of regional and local authorities, use of public powers (use of expropriation, unilateral enforceable decisions, exercising police powers), freedom to manage (free choice of the management methods of a public service – save for some exceptions). However, this content is not fixed. It was not until 1982 that legislators abolished State supervision of the actions of local authorities; this was an important step towards a more satisfactory form of free administration, and yet the principle of free administration is present in the initial drafting of the Constitution, i.e. since 1958. It was only with the constitutional revision of 28 March 2003 that financial autonomy became a component of free administration (Art. 72-2 of the French Constitution), but the Constitutional Council quickly went ahead and limited it by asserting

⁵ That is the reason why the Constitutional Council recognized that regional and local authorities could raise an exception of unconstitutionality (a procedure known in France as the Priority Preliminary Ruling on Constitutionality).

that this still did not mean that the regional and local authorities would have any fiscal autonomy⁶.

The exercise of civil liberties cannot be hindered by rules issued by regional or local authorities. Only national law can allow some local authorities to limit the exercise of freedoms, such as the freedom of assembly, the freedom of movement, etc. Only imperatives of general interest, in particular those of security, can, under the supervision of an administrative court judge, authorize local authorities to temporarily restrict a given civil liberty. Thus, banning a performance is highly exceptional (e.g. the case of the stand-up comedian, Dieudonné, in January 2014).

The case law of the Constitutional Council in this matter does not adequately define a reliable framework. Thus, while the Constitutional Council had accepted the principle of eliminating individual communes (each commune must be a member of an intercommunal structure with its own tax system), it has recently set a limit: an individual commune, before being made part of an intercommunal structure by the Prefect, must at least be consulted. A lack of consultation would be an obstacle to the free administration of regional and local authorities.

The principle of free administration must obviously evolve. Therefore, one should not regret that it is the constitutional judge who shapes it depending on the circumstances and the requirements⁷. With the new territorial reform under way, there is no doubt that it will be up to the Constitutional Council to decide whether the perimeter of the regions can be unilaterally changed by the Parliament without first consulting the regions that are directly concerned. A strict reading of the Constitution might suggest that changing the perimeter of a regional or local authority may (not “must”) lead to a local consultation (Art. 72-1, para. 3 of the French Constitution). As regards the departments, the solution is thus identical, only a pure suppression of all departments would require a constitutional revision. Finally, as regards the communes, suppressing

⁶ Constitutional Council’s decision 2009-509 of 29 XII 2009 (decision on the law of finances 2010). Official Journal, 31 XII 2009, p. 22995: “[...] It does not follow from Article 72, nor any other constitutional provision, that regional and local authorities have any fiscal autonomy [...]”.

⁷ B. Faure, *Sens et portée de la constitutionnalisation du droit des collectivités territoriales, “Pouvoirs locaux”* 2012, n° 93, p. 40: “It seems that the constitutional case law applying the principle of free administration is characterised less by its degree of control than by its free exercise which goes beyond automaticity [...]”.

a commune, in this case through a merger with another one can be effected formally by decree of the Council of Ministers.

Whether it comes to the division of competences or to the substance of free administration, the project is far from complete, for lack of both a vision and a strategy. In this area, the country's history and the political context make it difficult to learn from the experience of other countries. The dream of French politicians is to create powerful regions such as the famous *Länder* in Germany, but what they are forgetting is that the *Länder* are not simply regions but states led by a government and that Germany is a federal state.

1.2. The inadequacy of resources

The unity of the Republic is a higher principle than that of local autonomy. Legislators may nevertheless derogate from a law uniformly applicable to the national territory in its entirety. The territorialisation of the law appears as a crack, a much needed one today, in the unity of the Republic, because unity no longer necessarily means uniformity. The law can adapt to new realities, but it cannot do much good when it comes to closing the wide disparity of wealth.

1.2.1. A crack in the unity of the Republic: territorialisation of the law

There is a crack in the unity of the Republic, but it does not break! The principle of unity refers here to the principle of indivisibility, enshrined in Art. 1 of the Constitution and protected by the Constitutional Council (which in the name of this principle, refused to validate the recognition of the Corsican people as a nation: in France, there is only French people). Unity is confused with uniformity of the territorial organization, of the applicable law, and of the way in which the institutions operate across the country. Yet this concept, attractive in regard to the principle of equality, has been the subject of concessions, including those in the Constitution, with a specific status for certain territories (like New Caledonia), the overseas communities or Corsica, referred to by the term "special-status authority". For a long time legislators have been creating special statuses for one or another

part of the territory: this is particularly true for the cities of Paris, Lyon and Marseille, France's three biggest cities. It is also the case for some regions: Corsica, but also the Île-de-France region. These particular statuses are certainly a derogation from the uniformity of territorial organization, but they do not fundamentally call into question the principle of equality. It is actually in order to ensure more equality that legislators have created specific forms of organization. The crack in the unity of the Republic resides in the territorialisation of the law, beyond the application of specific rules (in some areas) in overseas communities, or in Alsace-Moselle, and for other reasons in Paris. It is an opportunity for regional and local authorities to seek out a particular organization for themselves or an exemption right under the guise of experimentation. Should one go further, towards a legislative power of appointment that would be awarded to regions? The unity of the Republic would be under serious threat because it would no longer be about organising the territory by law, but about developing a hierarchy of norms, and therefore a hierarchy of regional and local authorities. Reinforcing the legal capacities of the regional and local authorities does not pass entail the erosion of the state. Decentralisation can only be effective if the state stays strong. How could one care about the process of decentralisation in the Ukraine today, while it is the integrity of the state itself that is threatened?

1.2.2. Territorial divide: wealth gaps

While centralisation was fully justified by the concern of the French state for strict (legal) equality between the different territories and for equal access to public services for the citizens, the decentralisation, which began in 1982, increased the differences. Indeed, in 1982, regional and local authorities did not start from an equal situation, from an equal wealth level: some were already rich, others poor. Competition between territories, which is inherent to the process of decentralisation, has widened the gap instead of narrowing it⁸. It is easier for a region, a department or a rich commune to offer facilities

⁸ P. de Viguier, *La réduction des inégalités territoriales: quelle politique nationale d'aménagement du territoire?*, Conseil Economique Social et Environnemental (CESE), Opinion of 13 XI 2013, p. 145, <http://www.cese.fr> (accessed: 29 VIII 2014).

to businesses, thereby attracting even more wealth. Since the state and the local authorities are using 57% of the national wealth for public spending, it is hard to imagine that they could be accused of provoking such a divide.

This is not anything new, and that is why the European funds give priority to supporting regions that suffer from a structural disadvantage. For its part, the state, aware of its important role in consolidating the national community, has launched a policy of narrowing the wealth gap, turning equalisation into a constitutional principle⁹. After vertical equalisation based on positive discrimination in the payment of state grants to regional and local authorities, in 2006 legislators paved the way for horizontal equalisation: the wealthier local authorities are required to pay back a part of their tax revenues to the poorest local authorities. Between these two situations, many local authorities do not share their revenues, but are not beneficiaries either¹⁰.

This territorial divide obviously has some impact on the investment capacity of the less well-off local authorities: providing high-speed connectivity, retirement homes, etc. There are a number of services and equipments that are directly dependent on the financial capacity of local authorities. Could having recourse to the market have a salutary effect? This may be the case, although it could be argued that the private sector is only interested in profitable opportunities and does not deal in "social tariffs". The case of mobile telephony is revealing: although there are parts of France where operators are scrambling for users, there are still "white areas", i.e. areas with no coverage, in predominantly rural departments (Lozère, Creuse).

It is not possible to separate the powers from territorial structures: a simplification of the general architecture could only help to clarify the vision of an optimal division of competences¹¹.

⁹ Article 72 para. 2 of the Constitution introduced by the constitutional reform of 28 III 2003: "The law provides equalisation mechanisms designed to promote equality between regional and local authorities".

¹⁰ The Constitutional Council had to reconcile the constitutional principle of financial autonomy with the constitutional objective of equalization, which meant seeking greater equality between regional and local authorities. Constitutional Council DC 2003-487 of 18 XII 2003 (law on decentralisation of the RMI and creation of the RSA). Official Journal, 19 XII 2003, p. 21686.

¹¹ J.-L. Warsmann (President of the law commission), *La clarification des compétences*, Assemblée Nationale, rapport d'information n° 1153, p. 122.

2. A fragile territorial organization

Art. 72 of the Constitution establishes three levels of regional and local authorities – communes, departments and regions – but allows for another level of local authority to be created by law¹². Compared to the status of regional or local authority under common law, any other type of status has a less positive image. Thus the elected officials of Mayotte battled for a long time to gain the status of department (the 101st department) in 2011, after ten years of adapting to the matrix of a “normal” department¹³. Territorial organization has repeatedly been criticised, but it has not changed dramatically. Since the First Act of decentralisation in 1982, the regions gained the status of “territorial collectivities”, authorities superimposed over administrative regions of the French state. In any case, the State remains the “architect” of the entire institutional structure, the “onion-skin” that has been the subject of so much criticism¹⁴. This architecture represents a cost that does not necessarily bring added value. On the contrary, commentators denounce what they call an “imbroglio”¹⁵.

Today, the territorial organization is weakened both by the territorial architecture being called into question (2.1) and by the search for new territories of governance (2.2).

2.1. The territorial architecture called into question

The Law of 16 December 2010, passed during President Sarkozy’s term in office, provides for the election of community councillors by direct universal suffrage¹⁶. The Law of 17 May 2013, passed on the initiative of the left-wing government formed after the country’s political changeover

¹² B. Faure, *Droit des collectivités territoriales*, Paris 2014, 3ème éd., p. 685.

¹³ Law 2010-1487 of 7 XII 2010 on the Department of Mayotte (the island became the 101st French department on the 31 III 2011, with a single assembly exercising the powers of both a general council and a regional council). Official Journal, 8 XII 2010, p. 21 459.

¹⁴ J.-F. Brisson, *L’Etat, grand architecte du local*, “Pouvoirs locaux” 2009, n° 83, p. 85; N. Kada, *Recomposition territoriale: l’Etat, auteur-compositeur-interprète*, “Pouvoirs locaux” 2013, n° 96, p. 61.

¹⁵ J.-F. P., *La France gaspille-t-elle ses richesses? Territorialité: l’imbroglio*, “Les Echos” 2 and 3 II 2001 (the daily “Les Echos” is a reference point among business newspapers in France).

¹⁶ M.-Ch. Rouault, *La loi de réforme des collectivités territoriales au crible du Conseil Constitutionnel*, JCP éd., “Administrations et collectivités territoriales” 2011, n° 2, p. 16.

in 2012, defined the practical procedures of this mode of election, which had been a campaign promise made by the President of the Republic, François Hollande. And yet it is a serious departure from the principle stating that universal suffrage should be limited to representatives of “territorial collectivities”. The first election of community councillors by direct universal suffrage took place in parallel with the municipal elections of March 2014. Intercommunality is a silent and insidious revolution: it carefully and slowly guts the communes. The territorial reform, which caused a good deal of commotion but is not guaranteed to be successful, targets regions and departments.

2.1.1. Commune and intercommunality

France is attached to its communes. Established during the French Revolution, communes replaced parishes of the former regime. 44,000 communes replaced parishes in 1789.

Although the French commune is an administrative, geographical and sociological reality (each locality, however small it may be, can gain the status of a commune), today, of the 36,767 communes identified by the French National Institute for Statistics and Economic Research (Institut national de la statistique et des études; INSEE), over 32,000 have a population of fewer than 2,000 inhabitants and more than 20,000 have fewer than 500 inhabitants¹⁷. In fact, with the rural exodus, there are many empty villages and ghost communes: 80% of the French population lives in cities, yet in the collective imagination, the communes are primarily something along the lines of rural villages. In these villages, trade is long gone, there are no schools left, there are no firefighters, no priest nor pastor and there has probably never been a doctor. But there is still a municipal council (7 councillors in communes with less than 100 inhabitants) and there is also a Mayor, the symbol of the commune. However, all the key players of the local community have migrated to the central boroughs.

In order to rationalize the management of communes, legislators have tried several times to encourage the merger of small communes. Each and every time, the operation was a failure. This is why the French state has been promoting intercommunal cooperation, in the form of

¹⁷ INSEE, *Les collectivités locales en chiffres*, avril 2014.

public establishments for cooperation between local authorities (*établissements publics de coopération intercommunale*; EPCI). Thus, over time legislators created several types of structures, always in the form of public establishments and began playing an increasingly directive role regarding competences: from associations of communes established by the Law of 1890 to metropolises established by the Law of 27 January 2014, no fewer than seven types of structures have succeeded one another. Today, there are four types of structure that coexist and cover the entire national territory, each one adapted to a particular territory: commune communities in rural areas, conurbation communities from a population threshold of 50,000 inhabitants, agglomeration communities from a population threshold of 100,000 inhabitants, and finally, the most recent form, the metropolis from a population threshold of 400,000 inhabitants.

Intercommunality was founded on the principle of voluntary participation. But the Law of 16 December 2010 established the principle that from the 1st January 2014 each French commune should be a member of a community or a metropolis. Legislators have even given the possibility for Prefects, representing the State in the departments, to automatically link a commune to a community. The Constitutional Council did not consider this method as prejudicial to the free administration of communes.

Following the implementation of the Law of 16 December 2010 and the Law of 17 May 2013, in March 2014 voters were asked to elect by universal suffrage their “community advisers” in parallel with their “municipal advisers”. This means not more and no less than that the decision-making organs of the communities (community councils) have now the same democratic legitimacy as the municipal councils.

In addition, legislators gradually imposed responsibilities on communities and, with the same consistency, increased the number of their competences at the expense of the member communes. Legislators also provided communities with their own tax system: communities can benefit from their own fiscal resources on the same basis as the communes, in this case traditional local taxes (property taxes and a housing tax for households, territorial economic contributions for businesses). It has become all too clear that the spread of intercommunality with its own taxing system has further increased the tax burden on local taxpayers, while there are no proven economies of scale arising from

intercommunality¹⁸. Intercommunality often allows the creation of services or equipment that could not be created were the communes to act separately: it is notable in the case of swimming pools, care services for young children, etc.

Faced with the impossibility of imposing the merger of communes, French legislators chose to implement a circumvention strategy that will still take decades to achieve its objectives. It should be noted that in Greece and in Latvia, the European Commission imposed mergers of communes in exchange for financial support to find a way out of the public debt crisis.

2.1.2. Contested departments, reconfigured regions

France is not the only European Union member state to have an administrative system with three levels of local government, in fact, far from it¹⁹. The communal level exists in every state, even if it gives rise to different forms of organization, the regional level is the sub-state level recognized by the European Union and, in some countries, there is also an intermediate level: this is the case in France with departments having the status of local authorities. Since the Law of 2 March 1982, which made regions into local authorities, the question of the sustainability of departments has become increasingly pressing. Today, there is another question with regard to the reconfiguration of regions.

For the departments, the current question is that of their suppression by absorption of their competences by the regions. In the current configuration there are two to eight departments in every region. Legislators have imposed on the departments, local authorities, increasingly heavy loads that require department-level elected officials (also elected by universal suffrage in cantonal elections) to have budgets that are ever larger and increasingly difficult to balance: social action, construction and equipment for first-level secondary education schools (*collèges*), and school transportation. The share of social action contributions paid by the departments generally constitutes more than half of the institution's annual budget. Why is it then that the mere existence of departments is

¹⁸ The Court of Auditors have been very critical of the intercommunality in a report from 2005.

¹⁹ In Poland, there are regiony (regions), voivodships (departments) and gminy (communes).

challenged? No one is questioning the necessity of their main competences. It is the division of departments and the election of department councillors that are stigmatized. The scope of departmental local authorities is almost exactly the same as the one that was set in 1790, during the creation of general councils. Today, it appears too narrow in the eyes of the critics of departments. The so-called “departmentalists” (who have a majority in the Senate), argue instead that this relatively small perimeter allows the departments to effectively implement proximity policies, which is essential, especially when it comes to the social sector. It is true that the departments, because of the nature of their competences, employ an impressive number of staff. Paradoxically, citizens have trouble identifying departments’ actions and often confuse departmental councils (also known as general councils) with regional councils.

The regions are the most recent level of local authority, the most politicised but the least controversial in its principles. The current perimeter of the regions as local authorities still corresponds to the regions as administrative districts of the State established in 1955 within the framework of regional economic development planning decreed by the State (decree 60-516 of 2 June 1960 on the harmonization of administrative subdivisions). However, for the past several years, there has been real political pressure driving the state authorities to change the map of regions in favour of a reduction in the number of metropolitan regions²⁰. Legislators are set to validate a map of France with 14 regions instead of the current 22 metropolitan regions (a draft law on the determination of boundaries of the regions was introduced into the Senate on the 19th of June 2014 and the government has implemented an accelerated procedure to ensure that the law will be adopted before the end of 2014). Some are already talking about future “super-regions”, bigger (as a result of mergers) and more powerful especially in terms of their economy. How much time will it take these new entities to be in working order when they have managed to amalgamate, decide what the regional capital is going to be, harmonize their tax system, reorganize their administrative services, and to merge or suppress their respective agencies? It is clear that these future regions will no longer suffer from direct competition from the departments since the latter are to be abolished by a future constitutional revision (proposed for 2020). Proponents of the reform concerning the delimitation of regions

²⁰ The overseas regions correspond to the perimeter of the overseas departments.

believe that only those regions that have a significant weight in terms of geography, demographics and economy will be able to compete with the German Länder or the Spanish autonomous regions (e.g. Catalonia). This size complex of the French regions is not justified: there are German Länder that have a smaller population than a small French region (Saarland has 1.1 million inhabitants, while the Free Hanseatic City of Bremen has only 663,000 inhabitants). Therefore, it is not the number of inhabitants that is relevant, but the mode of governance and the concentration of competences in the hands of a strong political authority²¹. In the classification known by the acronym NUTS (*Nomenclature d'Unités Territoriales Statistiques*; nomenclature of territorial units for statistics), the Parisian region is still at level 2 due to the lack of structure of the Paris metropolitan region (Greater Paris)²².

Does the economic power of a region come directly and mechanically from its large population? One might well doubt it. Swiss cantons are the best example of economic power that is not based on demographic expansion.

2.2. The search for new territories of governance

Over the past ten years the issue of territorial governance has resulted in many parliamentary reports and expert reports. The reorganization of regional and local authorities has become a key focus in the reform of the country. If today's financial concerns justify more than ever a rationalisation of the local public action, it is equally important to consider the key demographic and economic data: 80% of the French population lives in urban areas. The French regional policy agency DATAR (*Délégation à l'Aménagement du Territoire et à l'Attractivité Régionale*) has long pleaded in favour of governance concentrated around the tandem formed by the regions and the "regional metropolises". Since its creation in 1963, the DATAR has focussed on promoting balanced metropolises: at the time it was a question of regaining the territory and rectifying the

²¹ H. Wollmann, G. Bouckaert, *Réorganisation de l'Etat en France et en Allemagne: la France "mille-feuilles" versus l'Allemagne "enchevêtrée"*, "Pouvoirs locaux" 2008, n° 76, mars, p. 113.

²² The European Commission has classified regions in different Member states into territorial units called NUTS (common nomenclature of territorial units for statistics). The level NUTS 1 corresponds to units with between 3 and 7 million inhabitants, the level NUTS 2 corresponds to units between 800,000 and 3 million inhabitants.

situation summarized by the assertion “Paris and the French desert”. The State itself, through the reorganization of its services, must accompany the entire restructuring project.

2.2.1. The regions-metropolises tandem

The political authorities are planning to strengthen simultaneously the metropolises and the regional authorities²³. The Law of 27 January 2014 established the metropolises but without giving them the quality of regional or local authorities, except for the metropolis of Lyon, created directly by legislators in the form of a “local authority with a special status”. In addition to Greater Paris and Marseille (their transformation into metropolises is scheduled for 2016), ten other cities are to become metropolises in 2015, pursuant to the Law of 27 January 2014. Legally speaking, they are public establishments for intercommunal cooperation on the same basis as agglomeration communities, except that they hold even more competences and are intended to exercise, in their perimeter, the powers of the current departments. Given the power of metropolises, there can only be powerful regions. This is the challenge of the future law on the delimitation of the regions.

The region-metropolis pairing is expected to bring about the development of synergies and real territorial strategies at the level of European regions.

During the French Revolution, the State’s territory was reorganized around communes and departments, with rapid success. In the near future, territorial governance will be organized around the region-metropolis couple, which will require several real revolutions. What should be done with rural communes, departments, metropolitan hubs²⁴?

2.2.2. The decline of the territorial State

The administration of the French state itself is structured at three levels: communes, departments and regions. In the communes, the mayor is an officer of the State, under the authority of the Prefect of the department

²³ R. Pasquier, *Gouvernance territoriale: quelles articulations entre régions et métropoles?*, “Pouvoirs locaux” 2013, n° 96, p. 34.

²⁴ G. Marcou, *Région, département, commune: complémentarité et concurrence*, “Pouvoirs locaux” 2014, n° 101, p. 28.

(enforcement of laws and regulations of the Republic, organization of elections, etc.) or of the State Prosecutor (the state's civil system, officer of the judicial police). The mayor of a commune therefore acts as the executive power of the local authority "commune" or on behalf of the State. It is even said that the mayor "wears two hats". The state administration has been structured on a departmental basis since Napoleon established the role of Prefect. In each department, a Prefect, appointed by the Council of Ministers, is the only one representing the State and the government in the department. He runs all the State's services in the department and is assisted by sub-prefects in the territorial framework of the districts. The function of regional prefects was established by the decree of 14 March 1964 to manage all the economic services of the State present in the regions as administrative areas. Today, regional prefects are still the prefects of the department capital of the region. In the process of restructuring the regions, the choice of regional capital is not neutral: some regional prefectures will become simple departmental prefectures. State services will therefore themselves need to be restructured according to the new boundaries that will be validated by the law.

The presence of the State has long been considered a guarantee of equality between the local territories: the prefecture, the decentralized services of the State, with (in the case of some services) very intricate structures, down to the level of neighbourhoods in cities and to townships in rural areas. This is particularly the case with financial administrations (tax administration and Public Treasury). This system is not the same as in Napoleonic centralisation: the strong presence of the state administrations all over the country's territory is independent of the centralisation of decision-making authorities. Indeed, the more the state administration grew (during the 19th and the 20th century), the more the central government had to make concessions in terms of decision-making, in favour of deconcentration. Today, the prefects are key actors in the strong deconcentration within the state administration. The strong presence of the state and the deconcentration process have long hindered the development of the idea of "decentralisation": the State was seen as the protector²⁵.

A profound reform of deconcentrated administrations came into force in 2010 under the name REATE (*réorganisation de l'administration*

²⁵ F. Saulnier, *Lorsque la doctrine française exprimait son scepticisme à l'égard de la décentralisation (1910-1940)*, "Revue Administrative" 2006, mars, p. 193.

territoriale de l'Etat; reorganization of the territorial administration of the state). Under the constraints of the financial crisis, the public debt and the General Review of Public Policies (*révision générale des politiques publiques*; RGPP), the reorganization meant a withdrawal of the state, which was presented as a necessary refocusing on the irreducible domains of action of the state. In these circumstances, the territorial coverage of state services has been the subject of the majority of job cuts. The central services (the ministries) were less affected. How can a regional prefect or the prefect of a department be a person embodying public authority with increasingly reduced budgetary resources, with regions or departments that still lead a luxurious lifestyle? Pending a new package of cost-saving measures in the functioning of the state, there are already many sub-prefectures in the hot seat.

Conclusions

The weight of public spending and the size of the public deficit certainly justify a reform or even a complete redesign of the administrative architecture: no savings can be made without a change in the organizational scheme. There is no reason to expect miracles either; the merger of regions, the suppression of departments, metropolitan intercommunality, the reorganization of the services of the French state, all this will not immediately bring budgetary savings.

REFORMA PAŃSTWA WE FRANCJI: ZAWIEDZIONE AMBICJE SAMORZĄDU TERYTORIALNEGO

Streszczenie

Niezerównoważony poziom długu publicznego wymaga reform strukturalnych. W ich ramach reforma terytorialna wydaje się istotną częścią reformy państwa. Niemniej jednak pojawia się pytanie: Jak rozpocząć tak ogromny projekt, w czasie gdy decentralizacja jest, tak jak była, podstawą samorządności? Podział kompetencji między państwem a trzema stopniami władz regionalnych i lokalnych pociągnął za sobą liczne kompromisy polityczne, sformalizowane w wielu poprawkach, które usunęły wszelką jedynolitość z projektów ustaw złożonych w parlamencie; wykonywanie zdecentralizowanych kompetencji terytorialnych staje się coraz trudniejsze z powodu niepokojąco rosnących ograniczeń budżetowych: równość terytoriów wymaga obecnie wachlarza środków ujednocających i solidarności terytorialnej. Ta ostatnia ma jednak sens tylko wtedy, gdy jest co redystrybuować.

Czy ograniczenia budżetowe uzasadniają prawdziwy terytorialny „big bang”, czy może raczej go nakazują? Scalenie regionów postrzegane jest jako najważniejsza część nadchodzącej reformy terytorialnej, tak jakby większe regiony miały wystarczyć do uczynienia ich silniejszymi i lepiej prosperującymi. Ekonomia skali przyniesie skutki dopiero po wielu latach. Komisja Europejska oczekuje od Francji przeprowadzenia koniecznych reform strukturalnych i udowodnienia swojej wiarygodności w kontrolowaniu finansów publicznych. Obywatele natomiast oczekują od państwa oraz władz regionalnych i lokalnych szerszej oferty usług i większej ochrony, a jednocześnie niezwiększania presji podatkowej. Jedynie odzyskanie wzrostu ekonomicznego pozwoliłoby na zbliżenie oczekiwań, które są *a priori* diametralnie przeciwstawne.

Słowa kluczowe: decentralizacja – reforma terytorialna – autonomia regionalna i lokalna – regiony – władze regionalne i lokalne