

***The ultraperipheral regions : emergence and juridical reality***  
**by Pierre-Yves CHICOT\***

The regions of Europe have definitely become a reality. The idea of a closer unity between the member-states to construct a federal state lays on cooperation between local governments and more precisely the regions of Europe. When objectives and strategies are the similar they end up in the expression of local solidarities, as for instance, is the case for the ultraperipheral regions of Europe.

This group of European regions is construed from their geographical position, located at the margins of the centers of Europe. These are the French overseas department: Guadeloupe, French Guiana, Martinique and Réunion, the Spanish island of Canary, and the Portuguese islands of Madeira and Azores.

The searched and found international solidarity, has allowed the emergence of a unitary vision of these ultraperipheral regions. The adoption of the different specific option programs in 1989 is the expression of the principle of reality made up by the European Commission. This principle makes way for the adaptation of European rules and politics.

It is in this spirit that the twenty-sixth declaration of the Maastricht Treaty, first and then, the article 299 paragraph 2 of the Amsterdam Treaty have laid ground for the juridical creation of the ultraperipheral regions of Europe. The constitutional treaty in its article III-330 uses this expression. This notion is the result of juridical and economical pragmatism.

To understand what is at stake for ultraperipheral regions, it is interesting to see how the juridical consecration of the ultraperipheral regions has led to a structural strategy of ultraperipherality (I). It is interesting as well, to understand the interpretation and prospective of ultraperipherality in the light of European law (II).

***I – From the juridical consecration of the regional vision of ultraperipherality to the structural strategy of ultraperipherality***

In the context of integration, European law had to validate the notion of ultraperipherality on the premise of the will to acknowledge the specificity of these regions (A). This acknowledgement has allowed the pursuit local international relations, themselves the expression of an ultraperipherality strategy (B).

**A. The validation of ultraperipherality by European law**

There are two important questions: what is differentiation in juridical terms? (1) What are the consequences of the juridical consecration of ultraperipherality? (2)

**1. What is differentiation in juridical terms?**

Differentiation is not necessary incompatible with the notion of unity. In the national context, it expresses the acknowledgement of diversity. This acknowledgement is crucial to avoid conflicts. Still, the culture of difference can be a source of division, but it can also ease collaboration between central institutions and local governments.

In the case of the construction of Europe, local governments think that they must be able to direct communication with European institutions.

Ultrapерipheral regions want their regional specificity be acknowledged by European law. That is why a declaration which related to the ultraperipheral regions was clearly expressed in the Masstricht Treaty of 1992. This declaration acknowledges the possibility to adopt specific measures towards these regions, as long as they favour their economic and social development.

The article 299 paragraph 2 of the Amsterdam Treaty further consolidate the juridical position of these regions in the European Union by inscribing it in the very body of the treaty. With the Amsterdam Treaty, the seven ultraperipheral regions have a solid juridical basis for the adoption of specific measures.

## **2. The organisation of political cooperation among ultraperipheral regions**

The recognition of ultraperipherality in primary European law constituted a first step. Cooperation between these regions was pursued although this first step was reached. As a recognized juridical group, these regions used this basis to further develop political and technical cooperation.

Further more it is important to notice that this new political status constitute only a first objective in the context of other political claims. The issue is indeed to give substance to article 299 paragraph 2 for its very effectiveness. With the help of the European parliament, ultraperipheral regions want to bring their own contribution to the interpretation of their status.

Political cooperation between these regions brought up fraternal relationships between political authorities and civil servants. Since the first 1995 cooperation framework of Gourbeyre, Guadeloupe, a new framework was concluded on March 31<sup>st</sup> 2000 in Funchal, Madera. This text inscribes an avowed determination to further implement political cooperation between these regions.

### **B. Local international relationships as a sign of the ultraperipheral strategy**

International relationships between local governments led to the inception of the concept of ultraperipherality. With the Açores and Madera, the French overseas departments were able to convince European institutions of the legitimacy of these regions' right to differentiation in law.

The logic is to initiate the search for solidarity between territories not located on the European mainland to preserved specifically local interests. This welcome international alliance was born during the Conference of Maritime Peripheral Regions. The main issue is the adaptation of European law to the reality of these far off regions. This consideration reveals the strategic important of this kind of international cooperation whose aim is to think the future through a movement of unity<sup>1</sup>.

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<sup>1</sup> *Bilan de la coopération entre les régions ultrapériphériques*, Funchal, 31march 2000.

The French overseas department Guadeloupe played an important role in encouraging permanent exchanges between ultraperipheral regions. As a consequence local governments have agreed upon common action for common goals. These regions don not want the concept of ultraperipherality be diluted or melted into other notions such as “poor regions” or “handicapped area”, etc.”

## ***II - The interpretation and prospective of ultraperipherality in the light of European law***

Once the rule has been laid, it has to be interpreted. It can safely be said that a regional interpretation of article 299 paragraph 2 (A) exists. This interpretation favours the application of the principle of reality for ultraperipheral regions (B).

### **A. The regional interpretation of article 299 paragraph 2**

This interpretation lays on the thought of integration into the European Union (1). Next to this interpretation, ultraperipheral regions demand the application of the principle of subsidiarity (2).

#### **1. A thought of integration to the European Union**

It is the Hansen decision of the European Community Court of Justice taken in October 10<sup>th</sup>, 1978 which set the French overseas department within the juridical framework of the European Union<sup>2</sup>. This decision was taken more in the spirit of a “all Europe” vantage than from a “all region” vantage.

Ultraperipheral regions have preferred a text which could take into account their structural difficulties and their development orientations rather than a decision of the European Community Court of Justice which was essentially inclined to meet the French principle of assimilation which finds its roots within the French Constitution of 1958.

It is the ultraperipheral regions determination which led to the inclusion of article 299 paragraph 2 in the Amsterdam Treaty, inclusion which gave them a unique and original dimension.

By this action the ultraperipheral regions do not contest their full integration into the European Union. However, the single European market no longer represents the only basis from which all policies must converge. From these regions’ point of view, the most important issue must be local development before integration into the single European market<sup>3</sup>.

Such a juridical revolution can be explained by the following :

The offset location of these regions prevents any chance of equality for local residents and local businesses and their counterparts on continental Europe. In this context, these regions think it necessary that a systematic evaluation by the European Commission be taken in regards to their specific situation. As such, their integration into the European Union must lay on necessary adaptation of juridical measures and well proportioned derogations.

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<sup>2</sup> Before 1958, the Community had no determined policies towards the French overseas determined. See, *Memorandum : nos différences se ressemblent...nous rassemblent*, final version, Rémire-Montjoly, 5 March 1999.

<sup>3</sup> “ If in 1987, the challenge was the integration into the single interior market, today the major challenge is to fight against unemployment ”. *Synthèse du memorandum*, 5 March 1999.

Furthermore, ultraperipheral regions, more particularly the French overseas departments, claim for more local powers.

## **2. The extension of local powers through the principle of subsidiarity**

In the final declaration of the 11<sup>th</sup> Island Commission organised 1991 in the French overseas department of Martinique, the Brussels Commission was asked to “developed at all levels of decision the principle of subsidiarity”. During the 15<sup>th</sup> Island Commission organised in the French overseas department of Guadeloupe, the participants adopted nine resolutions. Among these resolutions are the themes of “subsidiarity and the representation of local island interests”

Ultraperipheral regions have defended the necessity of decentralised decision-making for more effective administrative action<sup>4</sup>. From their own experience, these regions think that the principle of subsidiarity should not be the sole prerogative of national governments. Indeed, they think this principle should be extended to local governments.

In terms of practice, this local understanding of subsidiarity begins to be taken into account. For the European commission, “the increasing participation of local regional authorities to the policies of the Union, is also for some member-states, the expression of the fuller participation of citizens and of basic organisations in the making of local democracy”<sup>5</sup>.

## **B. The application of the principle of reality for ultraperipheral regions**

The principle of reality derives first from the will to construct European law to the socioeconomic reality of the ultraperipheral regions (1) and second from the necessity to give primacy to economic development (2).

### **1. The will to construct European law to social and economic realities**

Ultraperipheral regions wish that European law would adopt specific policies that would take into account their handicaps be they linked to their geographic location or to problems of demography.

The declaration number 30 of the Amsterdam Treaty combined to the article 299 paragraph 2 should allow these regions to successfully development their respective economy within the framework of the interior European market. Without the juridical adoption of these measures, the development of these regions would quasi impossible.

Given their situation, the French overseas departments do not think that they have the structural capacity to reach fully the interior single market of Europe, particularly because of their delayed development. Other problems such as their offset location, a small local market, high unemployment, etc. make social and economic cohesion hardly possible. As consequence, economic development remains a major issue.

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<sup>4</sup> Supplementary resolutions, 15th island Commission of M.P.R.C., Guadeloupe, 30-31 March 1995.

<sup>5</sup> European Commission, *European governance : a blue book*, COM (2001) 428 final, Brussels, 25 July 2001, p. 15.

## **2. The primacy of economic and social development**

Since 1991, all Island Commission's declarations have presented economic development as a major preoccupation.

To keep their focus on economic development, Ultraperipheral regions have either defended for themselves the advantages of the European integration policy, or have claimed for measures of derogations as to their specific situation. Indeed, the consequences of the European integration policy can be prejudicial to these small local economies.

### **Conclusion**

In the context of political cooperation, the island territories of the European Union have given a central place to local economic development as well as to social questions. Their action is translated by the influence exercise on their respective national governments and on communitarian instances such as the Commission, to obtain that the socioeconomic realities of their territories be taken into account by European law.

As far as the French overseas departments are concerned, this last aspect is fundamental given that they are all considered as region suffering from structural delayed development despite the fact that they fully belong to the world fourth economical power.

Now found, this searched for local international solidarity has made possible the emergence of a unitary vision among ultraperipheral regions. This vision has led to the "principle of parallelism". This is a political concept on which the European commission relies to direct the decisions which relate to regions dependant upon a specific geographical context. As a consequence, the principle of reality allows for the adaptation of communitarian rules and policies.

The adoption of pragmatism each time that the issue to debate upon is the situation of one of these regions, constitutes both the dominant spirit of the international action, and a political gain, because this practice was given juridical substance by national governments as well as by communitarian instances. Without going as far as speaking of common destiny, these regions now represent the battlefield of the European ultraperipheral regions.

**\*Doctor in Public Law**

**Teacher in University of West Indies and French Guyana**

*(Specials thanks to Myriam PAUILLAC for the translation in english)*