

Introduction

I – La cinquième des républiques

La Constitution du 4 octobre 1958 est le quinzième texte constitutionnel que la France a connu depuis la révolution de 1789. Elle entraîne, avec elle, la naissance de la cinquième République dans l'histoire constitutionnelle française. Contrairement à ce que l'on pourrait penser, il n'y a pas de corrélation nécessaire entre République et Constitution. Il existe, en effet, des textes constitutionnels qui organisent parfois une monarchie ou un empire. En outre, le texte officiel de la Constitution actuelle ne mentionne pas qu'il s'agit de la cinquième République. Comment peut-on alors l'identifier dès lors que l'évidence semble marquer sa reconnaissance ? Ici, un détour par la définition de la République et par l'histoire s'impose.

La République est identifiée comme un régime politique au sein duquel le pouvoir est chose publique, ce qui implique que ses détenteurs l'exercent sur la base d'un mandat conféré par le corps social et non en vertu d'un droit propre hérité ou d'origine divine.¹ Plus généralement, la République exclut toute forme d'appropriation du pouvoir par un seul ou par quelques-uns. Ainsi, définir la République revient à écarter la monarchie ou l'empire qui ont jalonné notre histoire et qui se sont intercalés entre des périodes républicaines. La République est également marquée par des symboles : sa devise « *liberté, égalité, fraternité* » constante depuis 1848 dont la Constitution en fait un « *principe* » de la République², la Marseillaise, hymne national depuis 1879³, son drapeau⁴ ou encore sa langue officielle⁵. Elle est déterminée, aussi, par un certain nombre de caractères : « *une et indivisible* » depuis 1792, « *démocratique* » depuis 1848⁶, « *laïque et sociale* »

1. *Lexique des termes juridiques*, 2010, Dalloz, p. 826

2. Il faut noter qu'elle n'est pas reprise par le second empire et s'impose donc réellement à partir de la III^e République.

3. À l'origine, le 14 juillet 1793, la Convention l'avait déclarée par décret « *chant national* ». Interdite sous l'empire et pendant la restauration, la chambre des députés adopte la marseillaise comme hymne national le 14 février 1879. Elle apparaît, ensuite, dans la Constitution du 27 octobre 1946 et est reprise dans l'article 2 de la Constitution du 4 octobre 1958.

4. Né sous la révolution de la réunion du blanc (couleur du roi), du bleu et du rouge (couleur de la ville de Paris), la loi du 15 février 1794 fait du drapeau tricolore le pavillon national. Les constitutions de 1946 et 1958 (article 2) ont fait de lui l'emblème national de la République.

5. Depuis l'édit de Villers-Cotterêts de 1539, la langue française est un élément de l'identité nationale. Aujourd'hui, l'usage du français, langue de la République, est garanti sur le territoire en vertu de l'article 2 de la Constitution.

6. Après avoir rappelé, dans l'article 1 du Préambule de la Constitution du 4 novembre 1848, que la France s'est constituée en République, l'article 11 de ce même texte affirme le caractère démocratique de la République ainsi que son unité et son indivisibilité. Pour comprendre cette première caractéristique, il faut prendre en considération l'article 24 de la Constitution, lequel reconnaît que le « *suffrage est direct et universel* » (et masculin).

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