

Qu'est ce qu'une collectivité territoriale ?

Les collectivités territoriales **sont des personnes morales de droit public** distinctes de l'État et bénéficient à ce titre d'une autonomie juridique et patrimoniale.

Les collectivités territoriales apparaissent dans la Constitution de 1946 et l'expression sera reprise dans le texte de 1958. Elles sont aussi désignées sous le nom de "collectivités locales". Si la Constitution a souhaité privilégier les "collectivités territoriales" (art. 34 al. 13 et art. 72), de même que le code général des collectivités territoriales créé en 1996, les deux expressions sont employées de manière équivalente dans le langage courant.

Selon l'alinéa 3 de l'article 72, **les collectivités territoriales s'administrent librement dans les conditions prévues par la loi**. Elles ne possèdent que des compétences administratives, ce qui leur interdit de disposer de compétences étatiques, comme édicter des lois ou des règlements autonomes, bénéficier d'attributions juridictionnelles ou de compétences propres dans la conduite de relations internationales.

Leur gestion est assurée par des conseils ou assemblées délibérantes élus au suffrage universel direct et par des organes exécutifs qui peuvent ne pas être élus. C'est la loi qui détermine leurs compétences et non les collectivités elles-mêmes. Le législateur ne doit pas méconnaître le principe de leur libre administration et les priver de ce que le Conseil constitutionnel qualifie d'attributions effectives ou de compétences propres, sans en donner pour autant une liste.

Afin de les distinguer des établissements publics, y compris ceux gérant les différentes coopérations locales, **les collectivités territoriales doivent bénéficier d'une compétence générale leur permettant de prendre en charge toute affaire d'intérêt local**.

Les collectivités de droit commun

Les collectivités de droit commun correspondent à des **catégories qui ont vocation à se rencontrer sur l'ensemble du territoire**, que ce soit en métropole ou outre-mer. En font partie à ce jour les **communes**, les **départements** et les **régions** (art. 72 al. 1er de la Constitution). Ces collectivités, pour relever d'une catégorie, doivent posséder des caractéristiques identiques. Chaque commune relève, par exemple, de la catégorie communale car elle est dotée d'un conseil municipal et d'un maire (déc. n° 82-149 DC du Conseil constitutionnel du 28 décembre 1982).

Mais ces catégories peuvent connaître des **dérogations** : certaines collectivités, tout en ayant les caractéristiques générales de la catégorie, présentent des spécificités pour des raisons diverses.

Tel est le cas des grandes villes françaises, **Paris, Marseille et Lyon** qui, du fait de l'importance de leur population, sont divisées en arrondissements. Il existe ainsi 20 arrondissements à Paris, 9 à Lyon et 16 à Marseille (regroupés en 8 secteurs). Mais le Conseil constitutionnel a précisé, dans sa décision précitée du 28 décembre 1982, que ces arrondissements n'étaient pas une nouvelle catégorie de collectivités territoriales car ils ne bénéficiaient pas de la personnalité juridique.

Quant aux **départements et régions d'outre-mer**, tout en étant régis par un article spécifique de la Constitution (art. 73), ils peuvent faire l'objet d'adaptations tenant à leurs caractéristiques et à leurs contraintes particulières.

Qu'est ce qu'une commune ?

Nouveau M Tier Dans Collectivit S Territoriales

JL Elias

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