

INTÉGRAL DU COURS DE DROIT ADMINISTRATIF (CM+TD) AVEC M. AKANDJI-KOMBÉ ET
MME PERRON :

L2 SEMESTRE 2 (JANVIER 2022-MAI 2022) UNIVERSITÉ PARIS 1 PANTHÉON-SORBONNE :



Dura lex, Sed lex

Séance 1, du Lundi 24 Janvier 2022, TD, 17h-18h30 :

Question préjudicielle : questions qui se posent entre juges administratifs pour savoir comment interpréter le droit de l'union européenne :

- Service public
- Police administrative
- Contrats administratifs

CORRECTION DU PARTIEL DU S1 : COMMENTAIRE D'ARRÊT : ARRÊT DU 10 DÉCEMBRE 2021,
NUMÉRO 440458 :

Une femme s'est vue obligée par le directeur spécialisée des finances publiques de remettre son panneau d'affichage syndical et les clés du local syndical du service. Dans le cadre de ses congés, on lui dit qu'elle n'a pas le droit de revenir dans le local syndical. L'administration considère que lorsqu'elle part en congé, elle n'a pas le droit de revenir sur le local syndical qui se trouve sur le lieu de travail. La décision date du 1^{er} Août 2017, date à laquelle le directeur du service prends la décision. La requérante attaque cette décision devant le tribunal administratif de Paris. Elle se pourvoit en appel auprès de la cour administrative d'appel de Paris qui rejette l'appel, elle rends un appel le 5 février 2020, et la requérante se pourvoit en cassation ; arrêt rendu par le conseil d'état. Le tribunal administratif juge la demande irrecevable (pour être recevable, il faut que les conditions soient réunies, le recours doit rentrer dans ces critères pour être analysé. Pour que le recours soit recevable, il faut que la décision attaquée fasse grief, c'est-à-dire qu'elle modifie la situation juridique de la personne)

Il est d'abord considéré que cette décision ne fait pas grief, donc irrecevable. Puis interviendra le conseil d'état. La requérante soulève comme moyen le droit syndical. Il y'a une atteinte au droit de la liberté syndicale, donc la décision fait grief. L'administration de son côté, affirme que les mesures d'ordres intérieures ne font pas grief et sont insusceptibles de recours.

La décision du directeur était susceptible de recours, ou insusceptible de recours ? Une décision litigieuse est-elle une mesure d'ordre intérieur ou un acte susceptible de recours ?

Pour qualifier la décision, le conseil d'état apprécie ses effets sur la personne. Il constate que les faits portent atteinte à la liberté syndicale, qui est au nombre des droit fondamentaux. Le conseil d'état considère que c'est un acte susceptible de recours. Il annule l'arrêt de la cour administrative d'appel de Paris du 5 février 2020, le conseil d'état renvoi devant la même juridictions avec d'autres magistrats qui vont statuer. Il faut regarder si le recours est bien fondé

Les 3 administrations où l'on retrouve le plus de mesures d'ordre intérieur, sont les administrations pénitentiaires, l'armée et l'école.

Le préambule de la constitution de 1946 fait référence aux droits fondamentaux ; liberté syndicale, droits sociaux et économique.

I. LA DÉCISION LITIGIEUSE CONSIDÉRÉE COMME UNE MESURE D'ORDRE
INTÉRIEUR PAR L'ADMINISTRATION :

Rgulation March Droit Administratif

Ensheng Dong



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