

COMMENT RECONNAÎTRE UN SERVICE PUBLIC ?

DÉFINITION

" *Activité d'intérêt général, assurée ou assumée par une personne publique et régie au moins partiellement par des règles de droit public* "

ARRÊTS FONDATEURS

Établissement des critères du service public par le juge

CE 6 février 1903
Terrier

CE 4 mars 1910
Thérond

CE Ass 13 mai 1938
Caisse primaire
"Aide et protection"

TC 8 février 1873
Blanco

CE Sect 20 avril 1956
Epoux Bertin

et une dizaine d'autres...

LA MÉTHODE D'IDENTIFICATION

Fondée sur l'arrêt CE Sect, 22 février 2007, APREI

Le texte qualifie-t-il le service en service public ?

Si le texte est silencieux, le juge regarde les travaux préparatoires et recherche l'intention du législateur

ABSENCE DE QUALIFICATION

Le service répond-t-il cumulativement à ces 3 critères ?

CE Sect, 28 juin 1963, Nancy

Critère organique

Contrôle du service par la personne publique

Critère finaliste

But d'intérêt général du service

Critère des moyens

Présence de prérogatives de puissances publiques (PPP)

ABSENCE DE PPP

En l'absence de PPP, existe-t-il un régime exorbitant de droit commun ?

Mise en place de critères subsidiaires
Recherche d'un contexte de droit public lorsque le service est géré par une personne privée

Conditions de création de la personne privée

Obligations fixées par la personne publique sur la personne privée

Organisation et fonctionnement de la personne privée

ABSENCE DE RÉGIME EXORBITANT

C'EST UN SERVICE PUBLIC !

CE N'EST PAS UN SERVICE PUBLIC !

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