

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

L Darling-Hammond



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Table of Contents Rgulation March Droit Administratif

1. Understanding the eBook Rgulation March Droit Administratif
 - The Rise of Digital Reading Rgulation March Droit Administratif
 - Advantages of eBooks Over Traditional Books
2. Identifying Rgulation March Droit Administratif
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Rgulation March Droit Administratif
 - User-Friendly Interface
4. Exploring eBook Recommendations from Rgulation March Droit Administratif
 - Personalized Recommendations
 - Rgulation March Droit Administratif User Reviews and Ratings
 - Rgulation March Droit Administratif and Bestseller Lists
5. Accessing Rgulation March Droit Administratif Free and Paid eBooks
 - Rgulation March Droit Administratif Public Domain eBooks
 - Rgulation March Droit Administratif eBook Subscription Services
 - Rgulation March Droit Administratif Budget-Friendly Options
6. Navigating Rgulation March Droit Administratif eBook Formats

- ePub, PDF, MOBI, and More
 - Rgulation March Droit Administratif Compatibility with Devices
 - Rgulation March Droit Administratif Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Rgulation March Droit Administratif
 - Highlighting and Note-Taking Rgulation March Droit Administratif
 - Interactive Elements Rgulation March Droit Administratif
 8. Staying Engaged with Rgulation March Droit Administratif
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Rgulation March Droit Administratif
 9. Balancing eBooks and Physical Books Rgulation March Droit Administratif
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Rgulation March Droit Administratif
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Rgulation March Droit Administratif
 - Setting Reading Goals Rgulation March Droit Administratif
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Rgulation March Droit Administratif
 - Fact-Checking eBook Content of Rgulation March Droit Administratif
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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