

Libertés fondamentales

(Chapitre → diagramme 10, question → pourpre 10, définition et notion → magenta 4, 1 → bleu 6, partie → jaune 5, JP → vert 5 et articles → orange 8)

Une matière utile à toutes les sphères du droit.

INTRODUCTION :

Les libertés fondamentales sont un élément constitutif de l'Etat de droit. La liberté individuelle ne va pas de pair avec le fonctionnement et la mise en place d'un Etat.

En France, notre Etat s'est développé très tôt : il y'avait déjà des règles. Mais ça ne va pas forcément avec les libertés, au contraire ! Un Etat peut restreindre et limiter les libertés de ses ressortissants.

Du coup, ce qui va apparaître par la suite, c'est la possibilité d'un Etat respectant les libertés des individus. Progressivement, un certain nombre d'Etat se lancent ce défi.

L'une des voix de ce pouvoir est la possibilité pour les citoyens de s'exprimer, par le vote ou autre. Cependant, cela ne garantit pas les libertés des citoyens par la suite.

Ex : Poutine a été élu de manière loyale mais n'assure pas des libertés fondamentales à ses citoyens. C'est toujours un défi de concilier pouvoir et liberté, même dans un Etat démocratique.

Ce qu'on appelle **l'Etat de droit**, c'est cette modalité particulière du fonctionnement d'un Etat, dans lequel on arrive à concilier harmonieusement, le respect des libertés individuelles et l'existence d'un pouvoir légitime et efficace.

C'est d'abord un Etat, une organisation politique. Mais, c'est un Etat qui va respecter le droit et les libertés.

Un Etat démocratique c'est un Etat qui associe deux choses : la souveraineté de l'Etat et le respect des libertés individuelles des citoyens. Dans ces libertés fondamentales, il y'a par ailleurs, la liberté politique, pour pouvoir choisir librement les dirigeants, de par un étendu de libertés.

Ainsi, des libertés publiques essentielles ne sont plus assurés en Russie. En théorie, le citoyen russe bénéficie des mêmes libertés qu'un citoyen européen. Mais en réalité, il n'en bénéficie pas et voit ses libertés bafouées.

Du coup, le pouvoir démocratique doit respecter les libertés, car il part et a été choisi de par le consentement des citoyens. La contre-partie serait donc de respecter les libertés publiques.

Il doit donc y avoir un principe de proportionnalité entre niveau de restriction apportée à la liberté et ...

Il faut considérer que le respect effectif des libertés, c'est finalement le test de l'Etat de droit. C'est ce qui le caractérise. C'est un moyen pour le pouvoir de manifester les conditions de l'Etat de droit. Un Etat devient un état de droit quand il accepte de se soumettre aux droits et libertés de sa société.

Dans les 70'S, le C.Constit a pris de l'ampleur et c'est là qu'on a vu que l'exécutif et le législatif n'étaient plus suprêmes et qu'ils devaient maintenant respecter les libertés et droits de la société.

De plus, par le Conseil d'Etat, on voit que l'Etat accepte de se faire juger par son propre conseil, ce qui montre qu'il se soumet au droit.

L'Etat de droit doit se soumettre aux droits et règles permettant donc le respect des libertés de cette société.

Liberts En Questions 1

Robert R. Redfield



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