

PROCEDURE PENALE

La procédure pénale a pour outil de référence le code de procédure pénale. Il faut apprendre à l'utiliser et le manier. Ouvrages : Droit pénal et Procédure pénale publié en 2017 édition Sirey ; le Précis Dalloz de B. Bouloc.

Introduction

Définitions

LE PROCÈS PÉNAL

A partir du moment où une infraction a été commise, le processus judiciaire de poursuites peut être exercé car il convient de connaître les circonstances dans lesquelles les faits ont été commis donc identifier l'auteur, le juger et lui appliquer les peines prévues par le Code pénal. Les objectifs du procès pénal sont de découvrir l'auteur, regrouper les différents moyens de preuve et de le juger. Entre les faits commis et la sanction se situe ce qu'on appelle le procès pénal, intenté par la société, qui est représentée par le Ministère Public (le Procureur) à l'encontre de l'auteur de l'infraction et si bien évidemment sa responsabilité pénale est reconnue alors il s'exposera aux peines prévues par la loi pénale.

LA PROCÉDURE PÉNALE

Elle a pour objet la réglementation du procès pénal, c'est l'ensemble des règles d'OP qui régissent tout le procès pénal. Ces règles déterminent d'abord l'organisation et la compétence des jur⁺ pénales qui statuent sur les procès pénaux. Cette matière fixe également les règles qui doivent être suivies et les formes qui doivent être respectées pour la constatation et la poursuite des infractions, pour l'établissement des preuves et le jugement du délinquant à l'audience. La procédure pénale régit l'autorité et les effets des décisions rendues par les jur⁺ pénales ainsi que les voies de recours qui sont susceptibles d'être exercées. Quand il y a une décision rendue par le tribunal de police ou de tribunal correctionnel ce sont des jugements, en revanche les décisions rendues par la Cour d'assises et la C. cass ce sont des arrêts. En France, la PP a été régie pdt 150 ans par le Code d'instruction criminelle (code Napoléonien de 1808) et l'est actuellement par le Code de Procédure Pénale (loi du 31 décembre 1957) qui a été réformé à plusieurs reprises. La PP présente un très grand intérêt pour la société qui est atteinte par l'infraction, pour l'individu qui peut être considéré à tort ou à raison comme l'auteur de l'infraction. D'abord la PP est indispensable, nécessaire à l'application du droit pénal. Pour défendre d'une manière efficace la société, il ne suffit pas que le législateur prévienne et sanctionne les comportements délictueux, il faut encore qu'il établisse des règles qui permettent la découverte des infractions et la condamnation de ceux qui ont violé la loi pénale. L'intérêt de la société exige une répression certaine et rapide des infractions : il faut donc l'efficacité et la célérité. Par ailleurs, la PP doit avoir pour objectif d'assurer la certitude de la répression dans un délai raisonnable (art 6§1 CEDH). De plus, elle doit avoir pour but de garantir les libertés individuelles et en particulier les **droits de la défense**. C'est un combat permanent entre d'une part la première finalité de la PP qui est la répression, et d'une autre part la seconde finalité de la PP qui est de faire bénéficier des droits de la défense.

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