Droit processuel: Introduction

Le droit processuel est présent dans tous les domaines. La question de la suppression du juge d'instruction est une question de droit processuel. Le cours de droit processuel est la recherche des points de procédure communs à différentes procédures françaises. L'introduction sera construite en trois volets : le procès, la procédure dans sa notion et le droit processuel dans sa définition.

I – Le procès

L'histoire de notre pays est marquée par de grands procès, comme le procès de Jeanne d'Arc en 1431, le procès de Rawaillac en 1610, celui du capitaine Dreyfus en 1894, le procès d'Outreau en 2004. Ces procès font tous partie de la mémoire collective française. Le premier procès à en faire partie est très certainement le procès de Jésus, dont on tirera des éléments de droit processuel. Tenu en l'an 30, ce procès présente un intérêt capital sur le terrain de la théologie. Au-delà de cet aspect, le procès présente un intérêt juridique, car il a longtemps été associé à la notion d'erreur judiciaire : la loi, jusqu'en 1905, imposait à ce que, dans chaque juridiction française, soit placé un crucifix au dessus de la tête des magistrats, pour leur rappeler la plus grande erreur judiciaire de l'histoire du monde. Jésus a été crucifié en l'an 30, à 36 ans, sur le mont Golgotha. Le procès était premièrement religieux: Jésus prétendait être fils de Dieu, et s'octroyait une autonté supérieure à Moise, et défiait donc les autontés juives de l'époque, qui le qualifiaient de blasphème. Le procès était aussi politique: Jésus se prétendait roi des Juifs et portait ainsi atteinte à l'empereur romain, Hérode, ici représenté par le préfet Ponce Pilate, ce qui était un sacrilège.

Dès l'origine, de nombreuses personnes ont prétendu que ce procès était irrégulier dans sa forme, de nombreuses règles de procédure ayant été violées. Par exemple, le procès de Jésus s'est tenu en pleine nuit, alors que le droit romain imposait que ceux-ci se tiennent sur le forum, en journée. Jésus n'a eu aucune possibilité de se défendre, alors que le droit à un défenseur était dejà en vigueur. Plusieurs témoins auraient été subornés ; or, la subornation de témoin était délà interdite par le droit romain. Jesus n'aurait commis aucune faute, de telle sorte à mal fonder le jugement rendu à son égard de surcroît. La thèse de l'irrégularité du procès de Jésus continue encore à être soutenue : en 1948, un collectif de scientifiques américains déposa un recours en révision devant la Cour suprême d'Israel. Les règles les plus fondamentales du droit de la procédure auraient été bafouées. La Cour a déclaré, contre toute attente, la requête recevable : cette Cour suprême s'est considérée comme le successeur direct du tribunal qui avait condamné Jésus. De plus, elle a écarté le grief de la prescription car il n'était pas possible d'introduire un recours en révision avant 1948, l'Etat d'Israel n'existant que depuis cette date : « il a existé un obstacle objectif au dépôt du recours pendant 2000 ans » La Cour a nommé un groupe d'enquêteurs chargés de venifier si, oui ou non, le procès de Jésus a été rendu de façon irrégulière. Les experts, dans le doute, conclurent à la régularité de la procédure menée par Ponce Pilate, à défaut de preuve.

Anthologie Du 3me Procs Doutreau

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