Procédure pénale

Partie 2 : La phase préparatoire du procès pénal

Pdt la phase préparatoire du procès Pe, les autorités compétentes s'efforcent de **rassembler les preuves de l'infraction et d'en découvrir les auteurs**. But = **mettre l'affaire en état d'être jugée**. Cette phase préparatoire correspond à 2 procédures :
- d'un côté une procédure assez peu formaliste, qui intervient avant le déclenchement des poursuites -> **l'enquête de police**.
- de l'autre une procédure + formaliste, qui entraîne la mise en mvnt de l'action Pu et qui est **conduite par le juge d'instruction**. On nomme cette procédure **l'instruction**, l'instruction préparatoire, l'info/l'info J.

L'enquête de police et l'instruction sont 2 procédures juridiquement indépendantes l'une de l'autre. Il arrive que l'ouverture d'une info fasse suite à une enquête réalisée par la police. Mais il arrive aussi que l'affaire soit renvoyée devant le tribunal à l'issue de l'enquête de police (donc sans instruction) ou qu'une instruction préparatoire soit ouverte immédiatement (donc sans enquête de police à proprement parler). La **loi du 3 juin 2016** modif toutefois l'articulation entre enquête et instruction en admettant en matière de terrorisme, que les services de PJ, par décision spécialement motivée du procureur de la Rép, puissent poursuivre leurs investigations, ds un délai de 48h après l'ouverture d'une instruction (art. 706-24-2 CPP).

Chapitre 1 : L'enquête de police :

Section 1 : L'acteur de l'enquête : la police judiciaire :

Au sens organique du terme, PJ = **l'ensemble des fonctionnaires qui sont chargés d'accomplir les actes que le Code considère comme relevant de la PJ**. Ces actes sont définis à l'art. 14 CPP. Aux termes de ce texte, la PJ « *est chargée, suivant les distinctions établies au présent titre, de constater les infractions à la loi pe, d'en rassembler les preuves et d'en rechercher les auteurs tant qu'une info n'est pas ouverte* ». La PJ se compose de 2 types d'organes.

§ 1 : Les fonctionnaires exerçant à titre habituel des fctns de PJ :

A : Les fonctionnaires de police :

Les fonctionnaires de police au sens large regroupent les membres de la police et de la gendarmerie. Il existe en Fr, pour des raisons historiques, 2 types de police : la police nationale, placée sous l'autorité du **Ministre de l'Intérieur** et la gendarmerie nationale, qui est une arme placée jusque récemment sous l'autorité du **Ministre de la Défense**. Cette dualité de polices (une police civile, une police militaire) a toujours été considérée en Fr comme un élément important pour garantir l'indé de la magistrature et les droits et libertés des citoyens. Si cette dualité reste dans le principe, elle est atténuée par le **rattachement (fonctionnel) de la gendarmerie au ministère de l'Intérieur** qui a été opéré par la loi du 3

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