Titre III — les juges de l'administration

Chapitre 1. Le Juge administratif et le juge judiciaire, juges de l'administration

Le contentieux de l'administration nest pas qu'administratif. Une partie du contentieux de l'administration se passe devant le juge judiciaire classique.

On a des juridictions externes , en plus de la dualité de juridiction.

Pour la repartition des compétences entre l'interne et l'externe, par exemple, la CEDH ne peut être saisit que par épuisement des voies de recours interne.

Problème de répartition des compétences entre les juridictions ordinaires (administratif et judiciaire) et Conseil constitutionnel (S4).

Quid des problèmes de répartition des compétences entre juge **administratif** et juge **judiciaire** en temps **qu'ils sont tout deux** juge de l'administration.

Suivant le principe de séparation des autorités administratif et judiciaire, dès lors que la partie au litige est une personne publique, la compétence judiciaire est exclut.

Réalité : principes jurisprudentiels, dispositions législatives et règles constitutionnelles qui fixent des règles de répartition des compétences. C'est la répartition des compétences externe.

Il y'a aussi la répartition des compétences interne à chaque ordre juridictionnel. Au sein d'un ordre déterminé — en l'occurrence la juridiction administrative — on examine les règles de competences , à savoir quelle juridiction administrative il faut saisir. Il y'a parfois des exception : la première instance peut statuer en 1° et dernier ressort par ex.

Il faut aussi s'interroger quant à la compétence territoriale en fonction l'acte et la localisation des parties.

- 1" question que se pose le juge : compétence de la juridiction.
- 2" : la recevabilité du recours
 - ex. : le détai de 2 mois pour attaquer un acte
 - ex. : la capacité du requérant.
- 3º: le recours est fondé : est-ce que le requérant a raison au fond ?

Les régles de répartition des compétences sont d'ordre public — par ext en matière contractuelle auquei les parties ne peuvent pas déroger :

- contrat administratif : juge administratif
- contrat privé : juge judiciaire

Le moyen tiré de l'incompétence du juge saisit est d'ordre public — le moyen peut être soulevé d'office à tout moment de la procédure.

C'est au législateur de fixer les régles de répartition des competences. Il n'a quasiment jamais pris part, et quand elle l'a fait, cela a plutôt compliqué les choses.

Section 1. L'absence de critère fiable d'identification de la compétence de la juridiction administrative

TC, 8 Nevrier 1873, Blanco:

Ecole du service public , voit l'identification du droit administratif et la compétence du juge administratif à partir de l'arrêt Blanco.

Procdures Durgence Devant Juges Ladministration

Wolfgang Guggemos

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