

# 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 n'est 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 répartition des compétences entre l'interne et l'externe, par exemple, la CEDH ne peut être saisie que par **épuisement des voies de recours interne**.

**Problème de répartition des compétences** entre les juridictions ordinaires ( administratif et judiciaire ) et Conseil constitutionnel (54).

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 compétences** , à savoir **quelle juridiction administrative il faut saisir**. Il y'a parfois des exception : la première instance peut statuer en 1<sup>er</sup> 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<sup>er</sup> question que se pose le juge : **compétence de la juridiction**
- 2<sup>er</sup> : la **recevabilité du recours**
  - ex. : le **délai** de 2 mois pour attaquer un acte
  - ex. : la **capacité** du requérant
- 3<sup>er</sup> : le recours est **fondé** : *est-ce que le requérant a raison au fond ?*

Les règles de répartition des compétences sont d'**ordre public** → par ex. en matière contractuelle auquel les parties ne peuvent **pas déroger** :

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

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

C'est au législateur de fixer les règles de répartition des compétences. 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 février 1873, *Blanco* :

École 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

**Scott C. Dulebohn**



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