

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^{er} 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^{er} question que se pose le juge : **compétence de la juridiction**
- 2^{er} : la **recevabilité du recours**
 - ex. : le **délai** de 2 mois pour attaquer un acte
 - ex. : la **capacité** du requérant
- 3^{er} : 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

Nadine Dantonel-Cor



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Table of Contents Procdures Durgence Devant Juges Ladministration

1. Understanding the eBook Procdures Durgence Devant Juges Ladministration
 - The Rise of Digital Reading Procdures Durgence Devant Juges Ladministration
 - Advantages of eBooks Over Traditional Books
2. Identifying Procdures Durgence Devant Juges Ladministration
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Procdures Durgence Devant Juges Ladministration
 - User-Friendly Interface
4. Exploring eBook Recommendations from Procdures Durgence Devant Juges Ladministration
 - Personalized Recommendations
 - Procdures Durgence Devant Juges Ladministration User Reviews and Ratings
 - Procdures Durgence Devant Juges Ladministration and Bestseller Lists
5. Accessing Procdures Durgence Devant Juges Ladministration Free and Paid eBooks
 - Procdures Durgence Devant Juges Ladministration Public Domain eBooks
 - Procdures Durgence Devant Juges Ladministration eBook Subscription Services
 - Procdures Durgence Devant Juges Ladministration Budget-Friendly Options
6. Navigating Procdures Durgence Devant Juges Ladministration eBook Formats

- ePub, PDF, MOBI, and More
- Procedures Durgence Devant Juges Ladministration Compatibility with Devices
- Procedures Durgence Devant Juges Ladministration Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Procedures Durgence Devant Juges Ladministration
 - Highlighting and Note-Taking Procedures Durgence Devant Juges Ladministration
 - Interactive Elements Procedures Durgence Devant Juges Ladministration
- 8. Staying Engaged with Procedures Durgence Devant Juges Ladministration
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Procedures Durgence Devant Juges Ladministration
- 9. Balancing eBooks and Physical Books Procedures Durgence Devant Juges Ladministration
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Procedures Durgence Devant Juges Ladministration
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Procedures Durgence Devant Juges Ladministration
 - Setting Reading Goals Procedures Durgence Devant Juges Ladministration
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Procedures Durgence Devant Juges Ladministration
 - Fact-Checking eBook Content of Procedures Durgence Devant Juges Ladministration
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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