

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** (34).

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*.

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