



Droit administratif et contentieux (Commission Université-Palais (CUP)) (French Edition)

Durviaux Ann Lawrence, Pâques Michel

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Au cours des trois dernières années, plusieurs révisions de la Constitution ont modifié ou permis l'extension des compétences du Conseil d'État. C'est ainsi que, par l'effet combiné des nouveaux articles 144, alinéa 2, de la Constitution et 11bis des lois coordonnées du 12 juillet 1973, il peut à présent connaître des demandes « d'indemnité réparatrice » pour les dommages causés par les actes dont il a constaté l'illégalité. La compétence du juge ordinaire reste cependant ouverte. Mais *electa una via*... La question du choix du juge se pose donc une nouvelle fois dans le contentieux administratif belge. Ici sous l'angle de l'opportunité. Cette question continue aussi de se poser dans sa formulation plus classique : jusqu'où s'étend la compétence du Conseil d'État, quand cesse-t-il d'être compétent pour connaître des demandes d'annulation des actes administratifs portées devant lui ?

La loi du 20 janvier 2014 a modifié sous bien des aspects la compétence du Conseil d'État. Notons la réforme du référé administratif, la reconnaissance du contrôle de l'intérêt au moyen, l'indemnité de procédure ou l'allègement de la preuve du mandat ad litem de l'avocat ainsi que le perfectionnement ou l'introduction d'instruments destinés à étendre les moyens d'action du Conseil d'État et à sortir de la logique binaire annulation/rejet. Plusieurs aspects de cette réforme ont déjà été soumis au contrôle de la Cour constitutionnelle, tandis que la jurisprudence commence à se développer.

Enfin, le moyen pris de la violation de la loi du 29 juillet 1991 semble empiriquement le plus fréquent dans les requêtes. La motivation formelle des actes administratifs constitue un tel enjeu de droit matériel et contentieux qu'elle devait une nouvelle fois retenir l'attention.

Un ouvrage de la CUP consacré à ces sujets s'imposait.

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