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Droit administratif

Les actes de confirmation de l'administration

Si la théorie des « décisions confirmatives » s'appréhende dans une perspective contentieuse, il semble, plus largement, que la confirmation de ses actes par l'administration révèle une manière d'agir de sa part. Les actes de confirmation sont un mécanisme permettant de pérenniser la volonté de l'auteur d'un acte administratif. Un acte de confirmation se situe dans un rapport de stéré identité avec un acte initial. S'il ne modifie pas l'ordonnement juridique, il l'affecte toutefois. Le juge administratif intervient normalement au stade de la recevabilité des recours contre les actes de confirmation mais peut aussi avoir une influence sur leur existence.

La théorie dite des « décisions confirmatives » permet au juge de rejeter le recours contre une décision qui, succédant à une précédente devenue définitive, la confirme purement et simplement.

Il paraît logique que lesdites décisions ne soient appréhendées qu'à travers le prisme contentieux. Pourtant de manière positive, le fait pour l'administration de confirmer sa position correspond à un véritable agissement.

Les auteurs, dans le cadre de l'étude de l'acte administratif unilatéral évoquent parfois les décisions confirmatives mais se contentent soit de reprendre la théorie contentieuse, soit d'affirmer que « la mesure n'est pas normative car elle confirme une décision déjà prise » ou au mieux que « le maintien en l'état de l'ordonnement juridique est la résultante de décisions confirmatives ou de décisions de refus »⁽¹⁾. Dès lors, il nous paraît nécessaire, sans prétendre à l'exhaustivité, de s'interroger sur ce que recouvre la confirmation, de comprendre de manière globale ce mécanisme. C'est pourquoi nous avons choisi à dessein d'utiliser l'expression d'« actes » de confirmation plus large que celle de « décisions » afin de ne pas circoncrire *a priori* l'attitude de l'autorité administrative à une catégorie particulière.

Lorsque le juge rejette un recours intenté contre un acte, il confirme aussi indirectement ce dernier en donnant raison à l'administration. Cependant seules les hypothèses dans lesquelles cette dernière renouvelle elle-même sa position nous intéressent ici.

La confirmation n'est pas le simple rappel d'une manifestation de volonté, un simple acquiescement de l'administration à une prise de position antérieure. Les actes de confirmation consistent en une véritable réitération : l'administration reproduit à l'identique un acte déjà édicté ; elle répète sa volonté initiale. Ainsi, l'acte de confirmation s'appréhende d'emblée en termes de rapport. Il ne peut être saisi qu'à travers sa relation avec l'acte initial. L'acte « confirmé » est en quelque sorte sa raison d'être. Il n'a pas d'autonomie, pas de signification en tant que tel. Il est, et cela peut paraître pure tautologie de l'affirmer, similaire à l'acte confirmé.

Dans la mesure où ils tendent à la consolidation d'une position de l'administration, les actes de confirmation peuvent, selon le point de vue adopté, témoigner de deux logiques différentes. D'un côté en effet, l'administration conforte son autorité ; elle maintient une règle existante donc garantit la stabilité des situations créées et assure par là même une certaine sécurité juridique. Mais d'un autre côté, on peut considérer que l'administration fige un état de droit ; les actes de confirmation peuvent alors apparaître comme la manifestation d'une rigidité normative de la puissance publique.

Quoi qu'il en soit, il semble nécessaire de déterminer comment un acte manifeste une réelle réitération du point de vue de l'administration mais aussi de préciser son effectivité juridique. C'est donc d'abord au mécanisme de confirmation de ses actes par l'administration qu'il convient de s'attacher (§). Pour sa part, au-delà de la théorie particulière des « décisions confirmatives », le juge administratif a tendance à rejeter le recours exercé contre de tels actes de confirmation. C'est donc ensuite la conduite que le juge adopte à leur égard qu'il conviendra d'étudier (§§).

I. La confirmation de ses actes par l'administration

L'administration corrobore parfois une volonté initiale, déjà formalisée dans un acte, par un autre acte qui sera identique. Il est nécessaire d'identifier les actes de confirmation (A). Leur situation est particulière dans la mesure où ils n'ont d'existence qu'en rapport avec un acte original. Se pose alors la question des effets qu'ils sont susceptibles de produire par eux-mêmes (B).

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