

Human Rights Principles in Administrative Disputes

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This study examines the principles of administrative litigation within the framework of human rights protection, given the importance of these principles in ensuring the legality of administrative action and safeguarding individuals' rights and freedoms. The study focuses on the substantive and procedural principles governing administrative disputes. The substantive principles include the principle of legality and the principle of equality, while the procedural principles include the right of access to justice and the right to defense and confrontation. The research examines these principles in light of constitutional legislation and international human rights standards, highlighting their role in achieving a fair balance between the powers of the administration and the rights of individuals. The study adopts an analytical approach to identify the legal foundations of these principles and assess their effectiveness in protecting human rights during administrative litigation. It concludes that strengthening procedural and substantive safeguards contributes to ensuring administrative justice, preventing arbitrary exercise of public authority, and enhancing respect for human rights.

Keywords: *Administrative Litigation – Human Rights – Legality – Equality*

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1. Introduction

Administrative disputes are among the most important legal mechanisms for ensuring the protection of individuals' rights in their relations with public administration and for guaranteeing that administrative actions remain subject to the principle of legality. Such disputes acquire particular importance because of their direct connection with human rights and public freedoms. The substantive and procedural principles governing administrative disputes contribute to establishing a balance between the powers and privileges of public administration, on the one hand, and the rights and freedoms of individuals, on the other. The substantive principles governing administrative disputes primarily include the principle of legality and

the principle of equality, whereas the most significant procedural principles include the right of access to justice, the right of defence, and the principle of adversarial proceedings. Together, these principles establish a legal framework that enables individuals to seek judicial protection and defend their rights, while simultaneously subjecting administrative authorities to legal and judicial oversight.

The significance of this research stems from the role played by the principles governing administrative disputes in protecting human rights and strengthening the rule of law. These principles ensure that public administration remains subject to legal rules and provide individuals with effective judicial protection against unlawful or arbitrary administrative action.



The research problem lies in determining the extent to which the substantive and procedural principles governing administrative disputes are sufficient to provide effective protection for human rights and the extent to which such principles are consistent with constitutional and legal guarantees.

This research aims to identify and analyse the most important principles governing administrative disputes and to clarify their role in the protection of human rights, with particular emphasis on the principles of legality and equality, as well as the right of access to justice, the right of defence, and the principle of adversarial proceedings. The research is confined to an examination of the substantive and procedural principles governing administrative disputes from a human rights perspective. Particular attention is given to the principles of legality and equality and to the procedural guarantees represented by the right of access to justice, the right of defence, and the principle of adversarial proceedings.

2. Research Methodology

The research adopts an analytical methodology through the examination and analysis of the relevant constitutional and legal provisions, with a view to determining the extent to which they contribute to the protection of human rights and the achievement of administrative justice.

The research is divided into two main sections. The first section addresses the substantive principles governing administrative disputes, focusing on the principle of legality and the principle of equality. The second section examines the procedural principles governing administrative disputes, particularly the right of access to justice, the right of defence, and the principle of adversarial proceedings.

Administrative disputes constitute an independent and flexible branch of public law, characterised by a distinctive legal nature arising from the need to strike a balance between the privileges of public authority and the protection of individual rights. This section seeks to shed light on the fundamental foundations of administrative justice by examining the guiding principles governing administrative litigation and identifying the formal and interpretative sources upon which administrative judges rely in rendering judgments and developing legal rules.

Accordingly, this section is divided into two parts. The first part examines the substantive principles governing administrative disputes, while the second part addresses the procedural principles applicable to administrative disputes, as follows.

3. Substantive Principles Governing Administrative Disputes

Administrative disputes possess certain characteristics that require them to be governed by a set of legal principles suited to the particular nature of the relationship between public administration and individuals. Public authorities exercise their powers for the purpose of achieving the public interest, while at the same time being required to comply with the law and respect individual rights and freedoms. Consequently, the adjudication of administrative disputes is not confined merely to the application of procedural rules; rather, it also depends on substantive principles that form the foundation of the legality of administrative action and safeguard individuals against the arbitrary exercise of administrative powers.

The significance of these principles lies in the fact that they constitute essential standards through which administrative courts exercise judicial review over the actions of public administration. In this context, the administrative judiciary examines the extent to which administrative decisions and conduct conform to the applicable legal rules and general principles governing administrative activity. Among the most prominent of these principles is the principle of legality, which requires the administration to remain subject to the law and to act within its legal limits when exercising its powers. Accordingly, any administrative act that violates the law may be subject to judicial review, annulment, or other appropriate legal measures. Closely connected to this principle is the principle of equality, which requires the administration to treat individuals equally before the law whenever they occupy comparable legal positions. This principle prevents unlawful discrimination and strengthens the protection afforded to litigants.

This means that although public administration enjoys certain powers and privileges that enable it to perform its functions and pursue the public interest, it is not immune from judicial scrutiny. Its actions and decisions remain subject to the principle of legality. Where the administration adopts a decision or measure that

conflicts with the law, exceeds the limits of its jurisdiction, or constitutes an abuse of power, the affected person has the right to bring the matter before the competent court and challenge the administrative act. Such judicial proceedings may result in the annulment of the decision or in the adoption of other appropriate legal measures, depending on the nature of the violation and the applicable judicial system (Al-Tamawi, 1996).

Nevertheless, the principle of equality does not mean that the administration must always treat all persons identically in every circumstance. Rather, equality is required among persons who are situated in comparable legal positions. Where legal positions or objective circumstances differ, different treatment may be permissible, provided that such differentiation is based on an objective and lawful justification and does not become a means of arbitrary discrimination.

From this perspective, the close relationship between judicial review and the principle of equality becomes apparent. Administrative courts do not merely annul administrative decisions that are contrary to law; they also contribute to protecting individuals against unlawful forms of discrimination that may arise when the administration treats persons occupying similar legal positions differently. Judicial review therefore constitutes an effective means of ensuring respect for the principle of equality and promoting justice in the relationship between public administration and individuals.

Accordingly, subjecting administrative action to judicial review, together with adherence to the principle of equality, strengthens the protection of individuals' and litigants' rights and reinforces the rule of law. Administrative authority is therefore not absolute; rather, it is legally constrained and remains subject to judicial control whenever it exceeds the limits established by the legislature (Al-Tamawi, 1996).

This subject will therefore be examined through two subsections. The first subsection is devoted to the principle of legality, addressing its concept, legal basis, significance in administrative disputes, and its role in subjecting administrative actions to judicial review. The second subsection examines the principle of equality by clarifying its concept, content, and legal basis, as well as the extent of its application in administrative disputes

and its role in ensuring equality between the parties to proceedings before the administrative judiciary.

3.1. *The Principle of Legality*

Substantive principles constitute the fundamental basis upon which the administrative judiciary relies when assessing the conduct and actions of public administration. These principles are closely connected with the substance and content of administrative decisions and are intended to ensure that public authority is not exercised arbitrarily against individuals. In this respect, the substantive principles governing administrative disputes are primarily based on two fundamental pillars: the principle of legality and the principle of equality.

The principle of legality is one of the fundamental principles upon which administrative law and administrative disputes are based. It means that the administration is required to comply with the laws in force in all of its acts and conduct. Accordingly, it may exercise its powers only within the limits of the competences granted to it by law and in accordance with the procedures and objectives determined by the legislature. The principle of legality is of particular importance in the modern state and derives from the broader principle of the rule of law (Al-Tamawi, 1996).

The State itself is regarded as a legal person and is therefore subject to law. Consequently, the acts of public authorities and their final decisions may be considered valid, enforceable, and binding upon the persons concerned only when they are issued in conformity with the law and in accordance with its requirements. Where such acts or decisions are issued unlawfully, they become legally defective, and any interested party may seek their annulment or suspension of their enforcement, in addition to claiming compensation for any resulting damage where the applicable legal conditions are satisfied.

Public legal persons in contemporary states are therefore subject to the principle of legality. Their decisions and actions may be legally defective whenever they are not adopted in accordance with the law. Judicial review exercised by the administrative judge over the administration essentially consists of examining whether administrative authorities have respected the law and of providing appropriate legal remedies in

respect of unlawful administrative conduct (Al-Tamawi, 1996).

The Universal Declaration of Human Rights of 1948 confirms this approach in Article 8, which recognises the right of every person to an effective remedy before competent national tribunals for acts violating fundamental rights granted by the constitution or by law. This constitutes an important international guarantee supporting the principle of legality and the availability of judicial protection.

Modern states have developed on the basis of recognising public rights and freedoms as fundamental components of the legal state. This development has made the principle of legality one of the most important elements of contemporary legal and political thought. Although modern states are no longer confined to the traditional role of the “watchman state,” their public functions have expanded to encompass social, economic, and intellectual fields with a view to promoting development and public welfare.

In order to preserve the legitimacy of this expansion, the content of law must itself be capable of responding to social and institutional developments. The principle of legality therefore constitutes an essential point of departure for examining judicial and administrative control over public authorities, since the purpose of such control is to ascertain whether administrative actions remain within the boundaries prescribed by law. The underlying basis of such control is that the administration, like individuals and other institutions of the State, is subject to law (Al-Tamawi, 1996). Accordingly, the essential meaning of the principle of legality is the subjection of public administration to law (Al-Tamawi, 1996).

The principle of legality is also understood as the supremacy of law or the principle that public authorities are subject to legal rules. Since the contemporary state is regarded as a state governed by law, both rulers and the governed must remain subject to legal norms. In this sense, the principle of legality derives from the higher principle of the rule of law, which requires public bodies and their final decisions to comply with applicable legal rules (Al-Tamawi, 1996).

Abd al-Ghani Bassiouni distinguishes between the principle of legality and the broader principle of the subjection of the State to law. The latter implies that both rulers and the governed are subject to law and that

public authority, through all of its governing institutions, must comply with the legal rules in force in order for the State to qualify as a state governed by law (Al-Tamawi, 1996).

Consequently, the principle of legality constitutes a fundamental safeguard against the arbitrary or unlawful exercise of administrative power. Its underlying premise is that public administration is not above the law but is subject to it in the same general sense as individuals, while taking into consideration the particular nature of its functions and the public-law privileges granted to it for the purpose of achieving the public interest.

The existence of discretionary powers or certain privileges of public authority does not mean that the administration enjoys unrestricted freedom of action. Such powers must be exercised within the limits established by law. Legality, in its broad sense, therefore refers to the administration’s compliance with the body of legal rules governing its activities, whether those rules derive from the constitution, legislation, regulations, administrative rules, or the general principles of law developed and recognised by the judiciary.

Accordingly, an administrative decision cannot be considered lawful merely because it was issued by a competent administrative authority. It must also have a proper legal basis, comply with the procedures and conditions prescribed by law, and pursue the purpose for which the relevant power or competence was conferred (Al-Tamawi, 1996).

3.2. The Principle of Equality

The right to equality is one of the fundamental principles of human rights. It requires persons who occupy comparable legal positions to be treated equally and prohibits unjustified distinctions between them in the absence of an objective and lawful justification.

In the context of administrative disputes, public administration must comply with this principle when adopting decisions and exercising its powers. It may not discriminate between individuals who are in equivalent legal circumstances unless there is a legitimate reason capable of objectively justifying the difference in treatment.

With regard to whether a governmental authority itself may rely upon equality as a human right, a distinction must be drawn between the government being the holder of such a right and the government being under

an obligation to respect and apply the principle. Public administration may argue that equality does not necessarily require identical treatment of all persons under all circumstances. Different legal positions may justify different treatment where the distinction is based upon objective and reasonable criteria and pursues a legitimate aim.

The primary function of the right to equality is to protect individuals against discrimination and arbitrary administrative conduct. The administration therefore cannot invoke the right to equality as a justification for conduct that violates individual rights or conflicts with the law.

On the other hand, a governmental authority may invoke the principle of equality as a legal principle when it is a party to a dispute, particularly where the dispute concerns the uniform application of a legal rule to persons occupying comparable legal positions (["Constitution of the Republic of Iraq of 2005, Article 19," 2005](#)).

For example, suppose that the Ministry of Higher Education adopts a decision granting a specified financial allowance to all employees who have completed a particular period of service and satisfy the legally prescribed requirements. If the Ministry grants that allowance to some employees while refusing it to others who satisfy exactly the same legal conditions, the affected employees may challenge the decision before the competent judiciary and invoke the principle of equality.

Conversely, where the Ministry is a party to the dispute, it may defend its decision by demonstrating that the decision was not discriminatory and that the applicable legal rule was applied uniformly to all employees satisfying the relevant requirements. It may further demonstrate that any difference in treatment resulted from a genuine difference in the employees' legal positions or from the failure of certain employees to satisfy the prescribed conditions.

In such a case, the administration is not treated as a human being possessing a "human right to equality." Rather, it is regarded as a public authority that has complied with the principle of equality and has applied the law consistently to persons occupying equivalent legal positions.

Article 7 of the Universal Declaration of Human Rights of 1948 similarly establishes that all persons are equal

before the law and are entitled without discrimination to equal protection of the law. This represents a fundamental guarantee for human rights and public freedoms.

Another example can be found in disputes concerning administrative licences or authorisations. If two persons apply for the same administrative licence and both satisfy identical legal requirements, the administration may not lawfully grant the licence to one and refuse it to the other merely on the basis of a personal distinction between them.

If the second applicant challenges the refusal before the judiciary, the administration may defend its decision by showing that equality does not require identical treatment in all circumstances but requires equal treatment of persons occupying equivalent legal positions. Where the legal situations genuinely differ, different treatment may be permissible. Here again, the administration is not asserting an individual human right to equality, but rather demonstrating its compliance with the principle of equality through uniform application of the law to comparable legal positions ([Al-Tamawi, 1996](#)).

Accordingly, the principle of equality may influence the legal position of a governmental authority in an administrative dispute, although in a manner different from the way in which an individual invokes that principle. The individual relies upon equality as protection against administrative discrimination, whereas the administration may rely upon it to demonstrate that a general and abstract legal rule has been applied consistently or to defend the legality of a measure based upon objective criteria.

For this reason, describing the administration as a "holder of a human right" requires caution. It is more legally accurate to state that public administration is bound by the principle of equality and may rely upon it as a legal and rights-based principle governing the exercise of administrative authority.

In Iraq, this principle has a constitutional foundation in Article 14 of the Constitution of the Republic of Iraq of 2005, which establishes equality before the law and prohibits discrimination. The principle of equality therefore constitutes one of the constitutional rules that administrative authorities must observe when exercising their powers and that the judiciary may rely upon when reviewing the legality of administrative

action ("[Constitution of the Republic of Iraq of 2005, Article 19](#)," 2005).

For instance, where the administration adopts a decision depriving an employee of a legally recognised entitlement without legitimate justification, that employee may challenge the decision before the administrative judiciary on the ground that it conflicts with the law, violates the principle of equality, or unlawfully interferes with his or her legal position ([Al-Tamawi, 1996](#)).

Administrative disputes are not necessarily limited to disputes in which an individual is one of the parties. A dispute may also arise between two administrative authorities or between two public-law legal persons. Examples include disputes between a ministry and an independent public authority, between a central administrative authority and a local administrative unit, or between two public institutions, provided that the dispute relates to the exercise of administrative competence, the management of a public service, or the application of rules of public law.

Such disputes differ from disputes between individuals and the administration in terms of the identity of the parties, since both parties possess public legal personality and exercise powers conferred upon them by law. Consequently, the subject matter of the dispute may not concern the protection of an individual right against administrative authority. Instead, it may concern the determination of competence, the distribution of powers, the implementation of an administrative decision, or the identification of the authority legally responsible for managing a particular public service.

One of the most significant forms of such disputes is a conflict of competence between two administrative bodies. Each authority may claim that it possesses the legal competence to adopt a particular decision, or one authority may intervene in an area legally reserved to another. In such circumstances, the role of the judiciary, where it has jurisdiction, is to determine which authority legally possesses the relevant competence and to examine whether each authority has respected the limits imposed by law.

Nevertheless, the mere fact that both parties are governmental bodies does not automatically render the dispute administrative in nature. The dispute must have an administrative character, relate to an activity or competence governed by rules of public law, and fall

within the jurisdiction of the administrative judiciary under the applicable legal system.

From a human rights perspective, the absence of an individual as a direct party to the dispute does not necessarily eliminate its relevance to human rights. The outcome of a dispute between two administrative authorities may ultimately affect the rights or freedoms of individuals. Administrative authorities therefore remain bound by constitutional rules and human rights principles in the exercise of their powers, even where the immediate dispute is between one administrative body and another.

When an individual enters into a dispute with public administration, the parties are often not situated in an equal position. The administration is generally the stronger party because it possesses numerous legal powers and public-law privileges, as well as institutional resources, information, and documents that may strengthen its position in comparison with that of the individual.

Merely providing a formal right of access to a court is therefore insufficient to ensure justice in administrative proceedings unless procedural guarantees are available that enable the individual effectively to exercise the right of defence and to challenge the administration's case.

From a human rights perspective, addressing this imbalance does not necessarily require the abolition of the powers and privileges enjoyed by public administration. Rather, it requires ensuring that such powers do not become instruments that substantially weaken the individual's legal and procedural position before the judiciary ([Hassan, 2022](#)).

This illustrates the particular importance of equality before the courts, the right of defence, the adversarial principle, the right of access to documents and evidence, and the right to receive a reasoned judicial decision. These safeguards contribute to protecting individuals against arbitrary administrative conduct and to safeguarding human rights during administrative proceedings.

The independence and impartiality of the judiciary, as well as its ability to exercise effective review over administrative action, are equally important. These guarantees play a central role in creating an appropriate balance between the party exercising public authority and the party seeking to protect a right or legitimate interest against that authority.

It is in this context that the genuine role of administrative justice in the protection of human rights becomes evident. The function of the administrative judge is not confined to verifying the formal legality of an administrative decision. It extends to ensuring that administrative authorities do not abuse their powers and that they respect the rights and freedoms guaranteed by the constitution, legislation, and applicable international instruments.

The effectiveness of judicial protection is also linked to the individual's practical ability to gain access to justice without unjustified obstacles, to obtain a fair hearing within a reasonable period of time, and to have access to effective judicial remedies capable of addressing the consequences of unlawful administrative decisions (["Constitution of the Republic of Iraq of 2005, Article 19," 2005](#)).

Equality in this context does not mean that the administration and the individual must possess identical powers, resources, or institutional capacities. Rather, it requires judicial procedures that provide both parties with a genuine and balanced opportunity to present their positions, submit evidence, and defend their legal interests.

From this perspective, fair-trial guarantees become among the most important mechanisms through which the effects of the structural imbalance between individuals and public administration may be reduced and more effective protection of human rights and public freedoms may be achieved in administrative disputes.

The examination of constitutional and legislative experiences in Iraq, Algeria, and Lebanon should therefore go beyond merely identifying legal provisions concerning fair-trial rights. It should also assess the practical capacity of these constitutional guarantees and judicial safeguards to address the actual imbalance between individuals and public administration.

Comparison between these legal systems may consequently serve as a means of evaluating the effectiveness of the protection afforded to individuals, identifying strengths and deficiencies, and determining the mechanisms capable of establishing a fairer balance between the parties to administrative disputes within a human rights framework ([Al-Tamawi, 1996](#)).

Administrative disputes possess distinctive characteristics that differentiate them from ordinary disputes. One of the most significant of these

characteristics is the inherent inequality between their parties, particularly where the dispute is between public administration and an individual.

The administration does not participate in the dispute merely as an ordinary legal person. It participates as a public authority vested with statutory powers and privileges. Moreover, it may itself have issued the administrative decision being challenged and may retain possession of the documents and information relating to that decision. The individual, by contrast, confronts that authority while seeking judicial protection for a right or legitimate interest allegedly infringed by administrative action.

In our view, addressing the imbalance between the individual and public administration does not require the elimination of the privileges conferred upon administrative authorities by virtue of their functions, since some of those privileges are necessary for achieving the public interest. Rather, it requires the establishment of effective procedural and judicial limitations that prevent those administrative privileges from extending into judicial proceedings in such a manner as to place the individual in a substantially weaker procedural position.

4. Procedural Principles Governing Administrative Disputes

Administrative disputes are characterised by distinctive procedural features resulting from the particular nature of the relationship between public administration and individuals, especially because the administration enjoys certain privileges associated with public authority in specific fields. Accordingly, the importance of procedural rules is not limited merely to regulating the manner in which an action is instituted and adjudicated; rather, it extends to providing guarantees that ensure that proceedings are conducted in a fair and orderly manner and that an appropriate balance is maintained between the parties concerned.

The importance of these procedural rules is further reinforced by the relatively recent development and continuing evolution of administrative litigation procedures, as well as by the inadequacy, in certain legal systems, of legislative provisions regulating all procedural issues arising in administrative disputes. These principles play a fundamental role in ensuring that the administration remains subject to law by providing

litigants with the necessary means to challenge administrative acts and decisions that they believe adversely affect their rights or legitimate interests. They also enable the administrative judge to exercise judicial review over the legality of administrative conduct within a framework of procedural guarantees.

Consequently, procedural principles are not merely formal rules governing litigation; rather, they constitute genuine safeguards for achieving administrative justice and protecting the rights and legal positions of individuals (Al-Tamawi, 1996).

Procedural principles governing administrative disputes therefore establish a framework intended to ensure fairness in proceedings, safeguard the rights of litigants, and achieve an appropriate balance between the public interest and individual guarantees. In this way, they reinforce the subjection of public administration to law and prevent administrative privileges from being transformed into instruments capable of undermining individual rights and freedoms.

Among the most important of these principles are the right of access to justice, the right of defence, and the adversarial principle, which constitute essential guarantees for ensuring justice in administrative disputes, as follows.

4.1. The Right of Access to Justice

The right of access to justice is one of the fundamental principles upon which the rule of law is based. Effective legal protection of rights and freedoms cannot be conceived without enabling individuals to resort to the competent judiciary in order to claim their rights or defend themselves against infringements.

This right acquires particular importance in the field of administrative disputes, where an individual may find himself or herself confronted with an administrative decision or measure that affects his or her legal position or infringes upon legally protected rights or legitimate interests ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

The definition of litigation or access to justice varies in legal scholarship according to the different dimensions attributed to the concept. Some definitions describe it as "an individual right enjoyed by every human being as a member of society." Another definition considers litigation to mean "the right of a person to resort to the judiciary in order to seek protection for a right, interest,

or legal position, to request the cessation of an infringement thereof, or to recover that right where it has been unlawfully taken away" (Al-Tamawi, 1996).

According to legal scholarship, the right of access to justice is exercised through the judicial action itself. It represents the authority granted by law to a person to resort to the judiciary for the purpose of obtaining judicial protection arising from the legal protection afforded to a particular right. An individual may choose whether or not to pursue judicial proceedings. Once a judicial action is brought, however, it must proceed in accordance with legally prescribed procedures beginning with the institution of the case and continuing through the various stages of litigation (Al-Tamawi, 1996).

Some legal scholars define the right of access to justice as the principle according to which "every person whose right has been infringed is entitled to resort to the judiciary in order to put an end to that infringement and obtain redress against the person who has wronged him or deprived him of his right."

In Arabic terminology and Islamic jurisprudence, the concept of *kafalah* signifies guarantee or protection. Accordingly, guaranteeing the right of access to justice in law, as in Islamic jurisprudence, means ensuring the ability of individuals to resort to the judiciary while providing them with the necessary protection during judicial proceedings ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

The right of access to justice refers to enabling a person to resort to the competent court, bring a claim, present requests and legal arguments, and obtain a judicial determination of the dispute in accordance with law. Accordingly, this right is not limited merely to permitting an individual to file a lawsuit. It encompasses a number of related guarantees, including effective access to the competent court, the opportunity for each party to present its defence, and the requirement that the dispute be determined within a procedural framework capable of ensuring justice ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

The Iraqi Constitution of 2005 expressly guarantees this right. Article 19(Third) provides that: "The right to litigation is protected and guaranteed for all." This confirms that access to the judiciary is not a privilege granted by the administration or other public authorities, but rather a constitutional right that may not

be abolished or restricted except within the limits established by law and without impairing the essence of the right.

Legal studies concerning constitutional guarantees of litigation in Iraq have also emphasised that the right of access to justice constitutes one of the most important constitutional rights protected under Article 19(Third) ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

The importance of the right of access to justice becomes even more apparent in administrative disputes because of the distinctive nature of the relationship between the individual and public administration. When the administration issues an administrative decision, it exercises a legal competence that may directly affect the legal positions of individuals. Consequently, subjecting administrative action to judicial review constitutes one of the principal means of ensuring compliance with the principle of legality.

In this context, the administrative judiciary in Iraq has jurisdiction, within the limits established by applicable legislation, to examine the legality of individual and regulatory administrative orders and decisions issued by administrative authorities, upon an application submitted by a person possessing a direct, actual, and legally recognised interest.

Within Iraqi administrative law, one of the procedural restrictions that may arise is the requirement to submit an administrative grievance before resorting to the judiciary in those cases where the law expressly requires such a grievance. This procedure gives the administration an opportunity to reconsider its own decision before the dispute is transferred to the judicial stage.

The provisions governing the Iraqi Council of State demonstrate that challenges to administrative decisions may, in the cases regulated by law, be subject to specific procedures and statutory time limits. Decisions rendered by the Administrative Court may also be subject to appeal before the Supreme Administrative Court within the period prescribed by law.

Nevertheless, the effectiveness of the right of access to justice cannot be achieved merely by permitting the institution of legal proceedings. It also requires the judiciary to be capable of providing genuine and effective judicial protection to litigants.

Accordingly, the function of the administrative judiciary is not confined to declaring whether an administrative decision is lawful or unlawful. Subject to the applicable legal rules, it may also extend to annulling or modifying an administrative decision and awarding compensation where the legal conditions for compensation are satisfied and where such relief has been requested by the claimant ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

Respect for the right of access to justice constitutes an important guarantee for the protection of individual rights and freedoms. Where individuals possess legally protected rights, the effective safeguarding of those rights necessarily requires that they be able to resort to the judiciary whenever those rights are infringed.

Constitutions have therefore accorded considerable importance to the rights and freedoms of individuals, and the right of access to justice occupies a particularly prominent position among such rights. This is reflected in the constitutional provisions adopted in many states to guarantee effective judicial protection.

At the international level, Articles 8 and 10 of the Universal Declaration of Human Rights highlight the importance of judicial protection and access to fair and independent adjudication in safeguarding human rights and freedoms. Regional human rights instruments have similarly emphasised the right of individuals to resort to judicial bodies, and regional legal and administrative forums have repeatedly affirmed citizens' right to access the courts.

The right of access to justice is guaranteed equally to both men and women. International human rights law has also paid particular attention to the protection of women's rights, including through the Convention on the Elimination of All Forms of Discrimination against Women of 1979.

It may therefore be concluded that the right of access to justice in administrative disputes constitutes the principal judicial guarantee available to individuals in their relationship with public administration. It enables administrative activities to be subjected to independent judicial review, prevents the administration from unilaterally determining the legality of its own conduct, and entrusts an independent judiciary with the protection of individual rights and legal positions ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

4.2. *The Right of Defence and the Adversarial Principle*

The right of defence and the adversarial principle are among the fundamental procedural principles governing judicial proceedings. Justice cannot be achieved merely by allowing a person to resort to the courts; rather, the person must also be provided with effective means to present his or her position and defend his or her rights and interests. In addition, each party must be able to examine the claims, arguments, documents, and evidence submitted by the opposing party and must be afforded a genuine opportunity to respond to and challenge them.

The importance of this principle becomes particularly evident in administrative disputes because of the distinctive nature of the relationship between individuals and public administration and the public-law privileges enjoyed by the latter. Accordingly, this subsection examines, first, the right of defence and, second, the adversarial principle.

4.2.1. *The Right of Defence*

The right of defence means enabling the parties to proceedings to present their arguments, objections, claims, evidence, and documents in support of their respective legal positions, as well as to challenge and discuss the evidence and arguments submitted by the opposing party.

The adversarial principle, by contrast, requires that each party be informed of the claims, defences, documents, and evidence submitted by the other party and be afforded sufficient time to respond before the court relies upon such material in reaching its decision (Mahdi, 2019).

In the Iraqi legal system, this principle is supported by several constitutional and legislative guarantees. The Iraqi Constitution of 2005 guarantees the right of access to justice and provides in Article 19(Sixth) that "every individual shall have the right to be treated fairly in judicial and administrative proceedings" ("Constitution of the Republic of Iraq of 2005, Article 19," 2005). Article 19(Fifth) further confirms the right of the accused to a fair trial ("Constitution of the Republic of Iraq of 2005, Article 19," 2005).

At the international level, Article 10 of the Universal Declaration of Human Rights of 1948 provides that everyone is entitled, in full equality, to a fair and public

hearing by an independent and impartial tribunal in the determination of his or her rights and obligations or of any criminal charge. This constitutes an essential guarantee of the right of defence and, more broadly, of human rights in judicial proceedings.

The right of defence is also one of the fundamental safeguards guaranteed by Iraqi legislation. This is particularly evident in the amended Iraqi Code of Criminal Procedure No. 23 of 1971, which regulates the right of the accused to defend himself or herself and to obtain the assistance of legal counsel. In the cases prescribed by law, counsel must be provided where the accused is unable to appoint a lawyer or lacks legal representation. This regulation seeks to ensure that no accused person is subjected to judicial proceedings without a genuine opportunity to present his or her position and respond to the accusations made against him or her ("Iraqi Code of Criminal Procedure No. 23 of 1971, as Amended, Article 123," 1971).

In administrative disputes, the right of defence assumes particular importance because the individual often confronts an administrative authority that possesses the documents and information relating to the challenged administrative decision. Enabling the individual to understand the grounds upon which the administration relied, to examine the documents submitted before the court, and to respond to them constitutes an essential guarantee for establishing an appropriate balance between the parties to the proceedings (Hassan, 2022).

The adversarial principle is also reflected in the amended Iraqi Civil Procedure Law No. 83 of 1969 through rules governing the exchange of pleadings and documents between litigating parties. Article 59 allows the parties to submit pleadings and documents relating to the dispute and regulates the exchange of such materials. In this way, each party is enabled to know what the opposing party has submitted and to prepare its defence with full knowledge of the subject matter of the dispute ("Iraqi Civil Procedure Law No. 83 of 1969, as Amended, Article 157(1)," 1969).

Article 60 of the same law regulates the hearing of the parties before the court, thereby providing each party with an opportunity to present its statements and respond to the arguments raised by the other party ("Iraqi Civil Procedure Law No. 83 of 1969, as Amended, Article 60," 1969). This rule constitutes a clear application of the adversarial principle, since judicial

proceedings should not be based upon hearing only one side but must allow both parties to present their factual and legal positions before the court.

The importance of this principle is further demonstrated by the procedural rule applicable after the close of pleadings. Once the pleadings have been closed, the court should not hear explanations from one party or accept documents from that party in the absence of the other party, since the opposing party must not be confronted with evidence or documents that it has had no opportunity to examine, discuss, or rebut (Al-Jubouri, 2021).

This constitutes one of the most important practical applications of the adversarial principle. The right of defence is not satisfied merely by the physical presence of a party before the court. Defence must be genuine and effective. The litigant must therefore be given a reasonable opportunity to present arguments, challenge the opposing party's evidence, and submit documents supporting his or her own legal position.

Consequently, merely notifying a party of the date of a hearing is insufficient to satisfy the right of defence where that party is not afforded an actual and adequate opportunity to prepare and present a defence.

The adversarial principle is also connected with the requirement that a court should not base its judgment upon evidence that the parties have had no opportunity to discuss. Although the administrative judge may play an active role in managing administrative proceedings and investigating their factual and legal elements, that role must not result in the impairment of defence rights. The judge must continue to ensure that the parties are able to discuss the materials upon which the judgment may ultimately be based ("Iraqi Civil Procedure Law No. 83 of 1969, as Amended, Article 59," 1969).

This issue is particularly important in administrative proceedings, where the administrative judge may need to supplement the evidentiary elements of the case and independently verify the legality of the contested administrative decision. Nevertheless, any measures taken by the court for the purpose of establishing the facts and reaching a lawful result must be conducted in a manner that does not deprive either party of knowledge of those measures or of the opportunity to comment upon and challenge them.

Administrative justice therefore requires a balance between the positive and active role of the

administrative judge, on the one hand, and respect for the fundamental procedural rights of the parties, on the other.

For this reason, the court must provide each party with an appropriate opportunity to submit arguments and evidence and to respond to the submissions of the opposing party. The court should not base its judgment on material that the parties have not had an opportunity to discuss or upon which they have not been permitted to submit observations (Al-Uqaili, 2018).

The structural imbalance between individuals and public administration does not mean that the administration enjoys an absolute advantage before the judiciary. On the contrary, recourse to administrative justice is intended precisely to subject public administration to the principle of legality and to verify that it has neither exceeded the limits of its jurisdiction nor acted contrary to law.

The importance of procedural guarantees therefore lies in enabling individuals to confront the administration effectively before the courts, so that the powers enjoyed by public administration outside the judicial process do not themselves become a source of inequality within the proceedings.

The right of defence plays a central role in reducing the gap between individuals and the administration. It enables the individual to explain the grounds upon which the challenged administrative decision is alleged to be unlawful, to present legal and factual arguments, to challenge the reasons relied upon by the administration, to submit supporting documentation, and to respond to the arguments and evidence presented by the administrative authority.

At the same time, the administration also has the right to defend its decisions and explain the legal grounds upon which they were based, thereby ensuring an effective adversarial exchange between the parties before the judiciary (Al-Uqaili, 2018).

Respect for the right of defence also reduces the possibility that public administration may misuse its powers against individuals. Judicial proceedings provide the individual with a genuine opportunity to challenge an administrative decision and dispute its legality, thereby strengthening the effectiveness of judicial review.

The right of defence consequently becomes one of the mechanisms through which public administration is subjected to law and through which the privileges

associated with the performance of public functions are prevented from becoming instruments for infringing individual rights and freedoms (Al-Uqaili, 2018).

It may therefore be concluded that the right of defence and the adversarial principle constitute fundamental pillars of procedural justice in administrative disputes. They ensure that no judgment is rendered on the basis of procedures or evidence that the parties have not had an opportunity to discuss; guarantee each party a genuine opportunity to protect its rights and interests; help establish a more balanced relationship between the individual and public administration; and strengthen litigants' confidence in administrative justice.

4.2.2. *The Adversarial Principle*

The adversarial principle constitutes a fundamental guarantee in administrative investigations. Where the competent authority discovers conduct that may amount to a disciplinary violation and intends to investigate the accused employee, the employee should be informed of the allegation sufficiently in advance of the investigation so that he or she can prepare an effective defence and is not taken by surprise during the investigative process.

The employee should also be given an opportunity to examine the investigation file. The adversarial principle has developed into a fundamental procedural safeguard not only in criminal and disciplinary proceedings but also in relation to administrative sanctions generally. Before an administrative penalty is imposed, the person concerned should be informed of the allegation, enabled to defend himself or herself, and afforded adequate time to prepare a defence and submit written observations and arguments.

Given the importance of the adversarial principle, it is necessary to define its legal content with sufficient precision. Legal treatment of any principle requires that its meaning and scope be identified so that a judge dealing with a particular case may determine whether the principle is applicable to the facts before the court. A precise definition therefore assists in understanding the legal rules governing the principle and the reasons that led the legislature to recognise it as a safeguard for an accused employee (Thabit, 2015).

In general terms, the adversarial principle means enabling an employee or worker whose rights or interests may be affected by a particular measure to know the relevant details so that an effective defence can

be prepared. For defence to be effective, the person concerned must be informed of the violations attributed to him or her, granted sufficient time to present observations, and given full access to the documents contained in the relevant service or employment file (Barakat, 1979).

Article 11(1) of the Universal Declaration of Human Rights of 1948 further provides that every person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which all guarantees necessary for his or her defence have been provided. This represents an important guarantee of human rights and public freedoms.

The adversarial principle has also been defined generally as the requirement to inform an employee of the allegedly unlawful facts and of the various items of evidence establishing both the occurrence of those facts and their attribution to that employee.

From a legislative perspective, legal studies indicate that France played an important role in the early development of this principle. Since 1905, French legislation recognised the right of a public employee to obtain access to the allegations made against him or her. This development led the French Council of State to treat the adversarial principle as a general principle of law binding upon the administration, even in the absence of an express statutory provision, except where a clear legal rule provided otherwise.

In Egyptian legislation, no comprehensive statutory definition of the adversarial principle has been adopted. However, the Instructions of the Administrative Prosecution Authority refer to the principle in Article 120, which provides, in substance, that the member of the Administrative Prosecution should arrange a confrontation between the accused and witnesses where their statements differ or conflict with regard to a material fact and should record both the subject and the result of that confrontation (Abd al-Barr, 1979).

Legal scholarship has also attempted to formulate a precise definition of the principle. Some French legal scholars have defined it in relation to measures producing serious consequences affecting a material or moral interest, particularly measures adopted in consideration of the person concerned even where they do not formally constitute disciplinary sanctions.

Another strand of French scholarship considers the principle as encompassing procedures intended to reduce the risk of arbitrary decision-making and error, including measures that do not technically constitute penalties but which are nevertheless based upon considerations relating to a particular person and may produce serious consequences for that person (Abd al-Barr, 1979).

As regards administrative measures that do not involve a sanction or penalty, the adversarial principle is not necessarily applicable in an absolute manner. Compliance with the principle may instead depend upon the existence of an express statutory provision or upon the nature and effects of the administrative measure concerned.

French administrative law and scholarship, for example, have referred to certain measures concerning the organisation of an employee's administrative or professional status that are not intended as punishment, such as an automatic transfer that does not have a disciplinary purpose. In such situations, the adversarial principle may not constitute a general guarantee applicable under all circumstances unless an express legal provision requires its application or the nature of the measure itself makes such protection necessary.

Some French legal scholars have therefore argued that the administration is required to respect the adversarial principle primarily in situations that call for a genuine defence, namely where a person faces a measure that may adversely affect his or her rights, interests, or legal position.

This approach is based upon the view that defence rights acquire their greatest practical importance where the administration exercises punitive authority or adopts measures producing serious adverse consequences for the individual (Al-Tamawi, 1996).

Accordingly, the narrow scope of the adversarial principle is primarily associated with the punitive nature of an administrative measure and its effects upon the individual's legal position. Compliance with the principle is therefore particularly clear and compulsory in disciplinary matters and administrative sanctions.

The broader conception of the principle, however, extends beyond punitive procedures and treats adversarial participation as a wider procedural guarantee connected with an individual's right to know the facts and measures affecting his or her interests and

to present observations and a defence before an administrative decision capable of affecting those rights or interests is adopted.

This broader understanding reflects the gradual development of the adversarial principle from a safeguard primarily connected with punishment into a wider manifestation of respect for defence rights and procedural fairness in administrative action.

The broad scope of the adversarial principle is founded upon the requirement to hear the other side. Under this conception, the principle is not confined to situations in which the administration adopts punitive measures but extends to any procedure capable of affecting an individual's legal position where the nature of that procedure requires that the person be given an opportunity to express a view and defend his or her interests.

The adversarial principle is therefore not merely a safeguard connected with punishment; it is also an important instrument for achieving procedural fairness in the relationship between individuals and public administration (Al-Tamawi, 1996).

5. Conclusion

The study of the principles governing administrative disputes within the framework of human rights protection demonstrates that these principles constitute fundamental safeguards against administrative arbitrariness and play a central role in protecting individual rights and freedoms. The principles of legality and equality require public administration to comply with the law and refrain from unjustified discrimination among individuals, while the right of access to justice, the right of defence, and the adversarial principle provide effective procedural protection before the judiciary.

The effectiveness of these principles, however, cannot be achieved merely through their formal recognition in constitutional or legislative provisions. Rather, their effectiveness depends upon genuine judicial and legislative implementation capable of ensuring their practical exercise. Accordingly, strengthening the principles governing administrative disputes contributes to achieving an appropriate balance between the requirements of the public interest and the protection of human rights, while at the same time reinforcing the rule of law.

1. The principles governing administrative disputes constitute a fundamental legal framework for the protection of human rights against administrative action.
2. The principle of legality contributes to subjecting public administration to law and limiting arbitrariness in the exercise of administrative power.
3. The principle of equality constitutes an important guarantee against discrimination among individuals in the application of administrative rules.
4. The right of access to justice, the right of defence, and the adversarial principle are among the most important procedural safeguards for protecting individual rights before the administrative judiciary.
5. The existence of constitutional and legislative provisions is not, by itself, sufficient to ensure effective protection; rather, such protection requires effective judicial implementation in practice.

1. Recommendations

2. Constitutional and legislative provisions guaranteeing the protection of individual rights in administrative disputes should be strengthened.
3. Judicial procedures should be developed in a manner that facilitates the effective exercise of the right of access to justice and ensures the timely determination of administrative disputes.
4. Safeguards relating to the right of defence and the adversarial principle should be reinforced by enabling the parties to administrative disputes to present their arguments, evidence, and means of proof fully and effectively.
5. Judicial review of administrative action should be strengthened in order to reduce unlawful administrative decisions that violate the principle of legality or adversely affect individual rights.
6. National legislation should be brought into greater conformity with international human rights standards in order to strengthen the legal and judicial protection afforded to individuals.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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