

Human Rights Principles in Administrative Disputes

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1. Round 1

1.1. Reviewer 1

Reviewer:

The paragraph stating that “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” requires a stronger theoretical justification for this classification. The manuscript currently treats the distinction between substantive and procedural principles as self-evident, whereas it should explain the doctrinal criteria used to place legality and equality in the substantive category and access to justice, defence rights, and adversarial proceedings in the procedural category. This is particularly important because equality can operate both substantively and procedurally, especially as equality of arms, while legality can also have procedural dimensions. The authors should therefore explain whether this taxonomy is derived from Iraqi administrative-law doctrine, comparative administrative law, human-rights jurisprudence, or an analytical framework developed specifically for the article.

The research-problem paragraph—“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”—should be reformulated into a more analytically testable research question. The concept of “sufficient” protection is presently undefined and no evaluative criteria are identified. The authors should specify how effectiveness will be assessed, for example through accessibility of judicial remedies, scope of judicial review, procedural equality, enforceability of judgments, compliance with constitutional guarantees, or conformity with international fair-trial standards. Without explicit evaluative criteria, the article risks remaining descriptive rather than answering the central normative question that it formulates.

The methodology paragraph stating that “The research adopts an analytical methodology through the examination and analysis of the relevant constitutional and legal provisions” is insufficiently detailed for a scholarly legal article. The authors should identify the jurisdictions examined, the categories of primary legal materials analysed, and the method of comparative interpretation employed. Since Iraq, Algeria, Lebanon, Egypt, France, and international human-rights instruments appear at different points in the manuscript, the methodology should explain whether the study is doctrinal, comparative, constitutional, human-rights based, or a combination of these approaches. It should also explain the criteria for selecting comparative jurisdictions and sources; otherwise, references to foreign legal systems appear episodic rather than methodologically integrated.

In the paragraph stating that “Administrative disputes constitute an independent and flexible branch of public law,” the characterization requires doctrinal clarification. Administrative disputes are more accurately understood as a field of administrative litigation or administrative procedural law rather than necessarily an “independent branch of public law” in every legal system. The authors should either provide doctrinal authority supporting this classification in the Iraqi context or revise the formulation. In addition, the phrase “independent and flexible” should be analytically unpacked: independence from civil procedure, ordinary judicial jurisdiction, or substantive administrative law should be distinguished, and “flexibility” should be connected to specific features such as inquisitorial judicial powers, evidentiary rules, or judge-made principles.

The paragraph beginning “The significance of these principles lies in the fact that they constitute essential standards through which administrative courts exercise judicial review” should distinguish more carefully between review of legality and review based on general principles of law. The present formulation appears to merge statutory legality, constitutional legality, and judicially developed principles into a single standard. The manuscript would be strengthened by explaining the hierarchy and interaction of the relevant sources of administrative legality, including the Constitution, legislation, subordinate regulations, administrative rules, general principles of law, and potentially international human-rights obligations. Such differentiation is particularly necessary because later passages describe legality broadly but do not explain how conflicts between these normative sources are resolved.

In the First Subsection of the Second Section, the sentence “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” should be broadened to reflect contemporary access-to-justice doctrine. Effective access to justice normally involves not merely formal access to a court but also reasonable filing requirements, affordable procedures, adequate standing rules, access to legal assistance where necessary, reasonable time limits, enforceability of judgments, and effective remedies. The manuscript should therefore distinguish formal access from effective access and evaluate whether Iraqi administrative procedure satisfies the latter standard.

The discussion of the Iraqi Constitution in the paragraph stating that “Article 19(Third) provides that: ‘The right to litigation is protected and guaranteed for all’” should be supplemented by an analysis of constitutional restrictions on this right. The article currently states that the right may not be restricted except within legal limits, but it does not examine whether statutory requirements such as prior administrative grievance procedures, limitation periods, standing requirements, court fees, or exclusions from judicial review may disproportionately impair access to justice. This issue is directly relevant to the article’s research problem and should be examined through a proportionality or necessity framework rather than merely mentioned descriptively.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The sentence “Accordingly, any administrative act that violates the law may be subject to judicial review, annulment, or other appropriate legal measures” should be revised to account for jurisdictional and remedial limitations. Not every unlawful administrative act necessarily results in annulment, and the available remedy may depend on admissibility requirements, time limits, standing, the nature of the defect, the type of administrative act, and the powers of the competent court. The authors

should therefore distinguish between the existence of illegality and the judicial consequence of that illegality. A more technically accurate discussion should address whether defects relating to competence, form, procedure, factual basis, legal basis, purpose, or abuse of power produce identical or different remedial consequences under Iraqi administrative law.

The discussion of equality in the paragraph beginning “Nevertheless, the principle of equality does not mean that the administration must always treat all persons identically” is conceptually sound but should be developed by identifying the legal test for permissible differentiation. The manuscript refers to an “objective and lawful justification” but does not explain whether differentiation must satisfy legitimacy, rationality, proportionality, necessity, or another standard of review. A human-rights analysis of equality requires a clearer distinction between differential treatment and prohibited discrimination. The authors should also discuss whether certain grounds of differentiation attract stricter scrutiny under Article 14 of the Iraqi Constitution or applicable international human-rights instruments.

In the First Subsection, the sentence “The principle of legality is one of the fundamental principles upon which administrative law and administrative disputes are based” should be followed by a more systematic treatment of the elements of legality. The current discussion remains largely definitional and repetitive. The authors should differentiate external legality from internal legality and identify the conventional grounds of review, including lack of competence, procedural and formal defects, error of law, error of fact where reviewable, deviation or abuse of power, and improper purpose. This would substantially improve the scientific value of the section because it would demonstrate concretely how legality operates as a judicial standard rather than merely affirming that administration is subject to law.

The passage stating that “The Universal Declaration of Human Rights of 1948 confirms this approach in Article 8” should clarify the legal status and normative function of the Universal Declaration within the analysis. The manuscript frequently relies on the Declaration as though it operates directly as a binding source of domestic administrative-law obligations. The authors should distinguish between its normative significance as a foundational human-rights instrument and the binding force of treaty obligations, constitutional provisions, and domestic statutes. It would also be useful to explain whether Iraq’s obligations under binding instruments, particularly the International Covenant on Civil and Political Rights, provide a stronger juridical basis for the rights discussed in the article.

The paragraph stating that “Abd al-Ghani Bassiouni distinguishes between the principle of legality and the broader principle of the subjection of the State to law” raises an important conceptual distinction but does not adequately develop its implications. The authors should explain whether legality is treated as a principle regulating administrative action specifically, while the rule of law or subjection of the State to law governs all state institutions, and then show how this distinction affects administrative adjudication. The current text cites the distinction but immediately returns to a broad definition of legality, thereby diminishing its analytical usefulness. A concise doctrinal comparison among legality, rule of law, constitutional supremacy, and judicial review would make this section significantly more rigorous.

In the Second Subsection, the paragraph beginning “With regard to whether a governmental authority itself may rely upon equality as a human right” introduces a potentially important issue but is insufficiently connected to the article’s principal research question. The authors should clarify why determining whether a governmental authority is a bearer of the human right to equality is necessary for analysing human-rights protection in administrative disputes. The discussion should distinguish clearly between human-rights holders and public authorities invoking objective legal principles. Comparative or theoretical authority should be used to support the proposition that public-law entities generally bear obligations rather than human rights, while still being capable of invoking procedural guarantees or legality principles in judicial proceedings.

The paragraph beginning “Administrative disputes are not necessarily limited to disputes in which an individual is one of the parties” significantly expands the scope of the paper and therefore requires stronger integration into the analytical framework. If inter-administrative disputes are included, the authors should explain how their inclusion relates to the stated human-rights perspective, because such disputes often concern institutional competence rather than directly enforceable individual rights. The subsequent observation that their outcomes may indirectly affect individuals is plausible but remains too general. The manuscript should either delimit the study primarily to disputes affecting individuals or develop a specific analytical explanation of how institutional administrative disputes contribute to structural protection of human rights.

The paragraph stating that “When an individual enters into a dispute with public administration, the parties are often not situated in an equal position” should be substantially strengthened through the concept of equality of arms. The manuscript correctly identifies informational, institutional, and evidentiary asymmetries, but it does not translate these asymmetries into

concrete procedural safeguards. The authors should discuss access to the administrative file, disclosure obligations, burden of proof, the judge's inquisitorial or investigatory powers, legal representation, interim relief, and the obligation to give reasons. This would allow the article to move from a general claim of structural inequality to a more precise examination of how administrative procedural law compensates for that inequality.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.