

The Adversarial Principle in Algerian Administrative Justice as a Mechanism for Balancing the Positions of the Parties to Litigation

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Abstract

This study examines the adversarial principle as a fundamental safeguard available to judges to establish a balance between the parties to judicial proceedings and ensure justice between them. This is particularly important in administrative justice, where the distinctive nature of disputes lies in the unequal legal positions of the two parties. The principle therefore requires that each party be informed of the other party's claims, arguments and documents so that they can examine and respond to them.

This makes the principle an important mechanism for highlighting the active role of the administrative judge in clarifying any uncertainty or ambiguity surrounding an administrative action and helping to secure justice for the weaker party in a dispute with an administration vested with public-authority prerogatives. This is achieved by enabling access to the various documents and records that support or refute the claimant's allegations and inform the judge's assessment.

Keywords: adversarial principle; administrative judge; judicial proceedings; rights of the defence.

¹ Received: 24/05/2026 ; Accepted : 23/08/2026 ; Published : 30/09/2026

Introduction

The functions of the modern state are no longer confined, as they once were, to providing traditional public services, such as external defence, internal security, the settlement of disputes between citizens and the administration of justice. They now extend to all forms of economic, social and even cultural activities and services. This clearly demonstrates the expansion and spread of administrative activity, alongside the decline and diminishing scope of individual activity. This development has necessarily broadened the scope of administrative law, which regulates the administration's activities and development by conferring specific powers and prerogatives upon it.

This should not, however, be understood as granting the administration special prerogatives merely because of its superior position in its relations with individuals, thereby authorising it to infringe their rights and exceed its powers in disregard of the principle of legality. On the contrary, the prerogatives granted to it should serve solely to facilitate the discharge of its duties and functions, without domination or authoritarianism.

Nevertheless, the administration occupies an exceptionally privileged position in its disputes with private individuals because it routinely holds files and documents that may be decisive in resolving the case and tipping the balance in its favour against an individual claimant pursuing a private interest. The latter often stands before the court in a weak and helpless position, deprived of evidence and lacking the records and documents that clarify the relevant facts. This places the claimant at a disadvantage and makes the task of substantiating their allegations a difficult, onerous and sometimes insurmountable burden.

In response, both the legislature and the courts have sought to mitigate the consequences of granting the administration prerogatives and powers that may secure a favourable outcome at the expense of the weaker party. They have done so by allowing the administrative judge to investigate the alleged facts independently. At the evidentiary stage of administrative proceedings, the judge cannot remain passive and merely accept the evidence and documents submitted by the parties. Instead, the judge plays an active, interventionist role in investigating and obtaining evidence, thereby providing adequate protection for the weaker individual in the face of the administration's numerous prerogatives. The aim is to restore balance and equality between the parties to administrative proceedings and prevent the stronger administrative party from being favoured at the expense of private individuals.

Against this background, the study seeks to answer the following question:

To what extent can the administrative judge use the adversarial principle to restore balance between the parties to an administrative dispute and help guarantee the rights of the defence and a fair trial when one party is an administration vested with public-authority prerogatives?

To address this question, the study adopts an analytical approach to examine legal provisions and identify their meaning and implications. It also uses a descriptive approach to clarify legal facts and explain their significance accurately. The study is organised around two main parts. The first discusses the adversarial principle as a binding requirement for all parties to annulment proceedings. The second examines the administrative judge's role in rectifying the documents and records relating to the cases brought before the court.

Part One

The Conceptual Framework of the Adversarial Principle and Its Implementation

Under the procedures laid down by the legislature for bringing actions before the ordinary courts, pursuant to Articles 823 to 825 of the Code of Civil and Administrative Procedure, as amended and supplemented, administrative proceedings under Algerian law are not constituted and completed until the claimant files and registers the application with the competent court. The claimant's role ends once the originating application has been served on the opposing parties through a bailiff with territorial jurisdiction, who summons the defendant to attend the scheduled hearing and provides a copy of the application.¹

To examine the adversarial principle in greater detail, the first section defines the principle, while the second discusses service and notification as essential means of ensuring its practical implementation.

Section One The Conceptual and Legal Framework of the Adversarial Principle

First, the meaning of the adversarial principle. A comprehensive understanding of the principle requires, first, a definition and, second, an explanation of its legal basis. In general, the adversarial principle means that judicial proceedings must be conducted with the participation of all parties. Every procedural step must be brought to their attention in a manner that ensures they are informed of all procedural details. Appropriate means must therefore be used to notify them and ensure their participation throughout the proceedings, particularly when claims and defences are submitted or investigative measures are undertaken. They must also be able to examine and discuss these matters before the judge relies on them in assessing the case and deciding the dispute.² A party cannot effectively exercise the rights of the defence without knowing the substance of the case made against them. Those rights cannot meaningfully be exercised if a party is denied access to, or an opportunity to discuss, the material submitted by the other side. Accordingly, an administrative judge cannot decide a case on the basis of a document or record that either party has had no opportunity to inspect, discuss and comment upon.³ This gives effect to the rights of the defence, which require that everyone have the opportunity to discuss and respond to an opponent's allegations and claims, whether by denying and refuting them or by endorsing and accepting them. One party's right to bring a claim is matched by the other party's right to defend themselves and their interests. This is possible only if they can examine, discuss and respond to the allegations and claims submitted in the dispute. Each party also has the right to attend all procedures relating to proof and the collection of evidence, including inspections, expert examinations, witness hearings and other investigative measures.⁴

The adversarial requirement is therefore not confined to the initial claims. It also covers defences, legal grounds, documents, the findings of investigative measures and other case materials. It is an important procedural principle that enables a party to prepare an effective and sound defence. Knowledge of an opponent's allegations, documents and arguments is the necessary starting point for an appropriate response. Since the rights of the defence cannot be exercised effectively without knowledge of the opposing party's submissions, the adversarial principle is one of the most important procedural means of protecting those rights.

Although the adversarial principle may be regarded as a limitation on the administrative judge's role and powers in gathering evidence, it has become a fundamental principle of judicial procedure. It is compatible with the judge's active role in obtaining evidence through the search for, and examination of, documents and records. It allows the judge to scrutinise the evidence submitted by the

administration and uphold the rights of the defence, which most often benefit the weaker individual engaged in a direct dispute with the administration. Moreover, nothing in law or practice prevents the administrative judge from adopting an approach that reconciles the exercise of investigative powers with the obligation to ensure that both parties comply with the adversarial principle. The parties are generally best placed to understand the circumstances of their dispute, which occupies an important part of their daily lives. Presenting the case file to them and hearing their observations can therefore help the judge establish the facts and reach a fair legal resolution.⁵ This does not mean that the judge becomes a litigant's representative or takes their place in the proceedings. Rather, the power to manage the dispute must be exercised impartially and transparently, with respect for the rights of all parties and without favouring anyone, including the administration itself.

The adversarial principle and the rights of the defence are thus complementary and interdependent. The former provides the procedural means through which a party can exercise the legitimate right to defend themselves, while the latter constitutes the principal objective that the principle seeks to safeguard throughout the proceedings. Its importance is not limited to helping the judge establish the facts and background of the dispute; it may also facilitate the correct application of legal rules.⁶

Respect for the adversarial principle therefore strengthens public confidence in the administration of justice and prevents a party from being confronted unexpectedly with material or arguments that they have had no opportunity to discuss and answer.

Second, the legal basis of the adversarial principle. The principle is no longer merely a secondary procedural rule with little practical value. It has become a fundamental principle safeguarding the rights of the defence and ensuring a fair trial in which each party is aware of the other's allegations and claims.

The Algerian legislature has primarily enshrined this principle in the Code of Civil and Administrative Procedure through provisions governing service and notification, the exchange of written submissions, responses to claims and defences, investigative measures and expert examinations.

This is clearly reflected in Law No. 08/09 of 25 February 2008 establishing the Code of Civil and Administrative Procedure, as amended and supplemented. The Code treats respect for the rights of the defence, and the conduct of proceedings in a manner allowing each party to present observations and arguments with the other party's knowledge, as fundamental safeguards of judicial procedure. Article 3 expressly requires judges and parties to observe the adversarial principle, reflecting its importance within the rules governing judicial proceedings.

The legal basis of the principle is not confined to the Code of Civil and Administrative Procedure. It is also linked to the constitutional rules and principles concerning the rights of the defence and a fair trial contained in the Algerian Constitution, as well as the principles set out in international charters and instruments concerning the right to a fair trial.

Section Two Notification of the Parties as a Safeguard for the Adversarial Principle

Judicial notification is more than a formality: it is an essential means of implementing the adversarial principle in administrative justice. It informs a party of a procedural step or document submitted against them and gives them a real opportunity to prepare a defence and respond to the other side. This has prompted the legislature to require the judge to ensure that each party communicates to the other the documents and claims submitted to the court, allowing the recipient to examine the evidence with sufficient knowledge to refute, confirm or acknowledge it. Most legal systems agree that the adversarial process achieves its purpose only if the information is communicated sufficiently early for

the recipient to prepare and organise a defence.⁷ Notification is therefore the cornerstone of one of the most important guarantees of the rights of the defence.⁸

Judicial notification consequently plays a decisive role in strengthening the adversarial principle in administrative proceedings. It provides the means by which the parties acquire actual or legally deemed knowledge of the procedural steps, claims, defences and documents exchanged during the case. Valid and proper notification is therefore an important safeguard enabling each party to exercise the rights of the defence and respond to their opponent's allegations, thereby giving practical effect to the adversarial process.

The reporting judge responsible for preparing and investigating the case oversees all notifications to the parties, including notices to regularise procedural defects, formal notices, orders closing the investigation, hearing dates and other procedural steps. Copies of the documents attached to applications and written submissions must be communicated to all parties; where their volume or characteristics make copying impracticable, a detailed inventory must be provided. Each party must also be able to hear the opposing case, inspect the supporting documents, respond to them, hear the opposing witnesses and challenge their testimony with contrary evidence.⁹ The parties must receive adequate statutory periods to examine and discuss the material and respond to the allegations before judgment. Once the application is registered with the registry of the competent administrative court, the investigation falls within the remit of the reporting judge or reporting councillor. That judicial officer is responsible for conducting the investigation and ensuring that the persons concerned are informed of every procedural step, response submission and accompanying document. Notification is effected through the court registry under the reporting judge's supervision.¹⁰

First The Administrative Judge's Supervision of Notification

An administrative dispute is initiated when the claimant files the originating application with the administrative court registry. Subsequent steps, such as communicating the action and case file to the defendant, fall within the jurisdiction of the court hearing the case.¹¹ Once the claimant has applied to the competent court and filed the originating application, a complementary step is required: the defendant must be summoned to the hearing by a summons accompanied by a copy of that application. The application is formally served by a bailiff, while written submissions and responses are communicated to the parties through the court registry.¹²

Any judgment or judicial decision based on procedures, records or documents that the opposing party was unable to inspect and discuss is therefore invalid. Such reliance seriously infringes the rights of the defence, which are a matter of public policy and lie at the heart of procedural guarantees.¹³ Accordingly, the legislature requires the judge, when an expert examination or inspection is undertaken, to ensure that the parties are notified of the date and time of the expert's site visit.

Judicial notification is thus an essential procedural act intended to inform a party of the details of the legal steps taken against them and of the dates of hearings and oral proceedings, so that they can prepare their defence and organise their affairs on a clear and sound basis. Notification must follow the method prescribed by law, with strict observance of formal requirements. By requiring compliance with the rules on notification, the legislature seeks to ensure the proper administration of justice, protect the parties' interests and guarantee access to the courts. Notification takes effect on the day the recipient signs the notice of service, or on the day they refuse to sign it, in accordance with the applicable legal provisions.¹⁴

Second, methods of notification. The method varies according to the type and nature of the procedural act to be communicated. It may concern only the application, written submissions and accompanying documents, or extend to all procedural acts and investigative measures, including expert examinations that must be conducted in accordance with the adversarial principle. Notification may take the form of formal service by a bailiff, registered post with acknowledgement of receipt, administrative notification recorded by an administrative officer, or, in certain cases, consultation of the documents at the court registry.¹⁵

Despite the variety of available methods, service by a bailiff remains among the most important. It is performed by a public officer entrusted with service at the request of the persons concerned or their lawyers, following payment of the fees determined by the bailiff. This procedure is particularly important for safeguarding the opposing party's rights of defence and directly affects whether proceedings are duly constituted.¹⁶

As noted above, administrative proceedings consist of a series of procedural acts and formalities undertaken before a court to obtain a legal resolution of a dispute between the administration and individuals. They begin when an individual files the originating application electronically through the designated platform or registers it in person in the court's register. Under Algerian law, however, the proceedings are not duly constituted until service has been effected and the defendant summoned, or until the defendant appears voluntarily before the competent court.¹⁷ Filing alone does not automatically constitute the proceedings. Compliance with the essential information requirements prescribed by law must also be verified. In exercising an active role, the reporting judge supervises the progress of the case and prepares it for adjudication.¹⁸

The reporting judge therefore conducts the investigation by supervising notification of the originating application and all subsequent procedural steps, to the extent necessary for each party to defend their interests against the other's allegations.¹⁹ These notifications are handled by the registry, which communicates written submissions, responses and accompanying documents to the parties in compliance with the adversarial principle.²⁰

Part Two

Mechanisms for Implementing the Adversarial Principle and Their Effects

In civil and commercial proceedings, the parties generally control the litigation and exercise substantial influence over its stages and procedures, while the judge decides the dispute on the basis of the evidence and arguments presented. Administrative proceedings follow a different approach. The judge plays a strongly active role and bears procedural responsibility for ensuring compliance with the fundamental rules of litigation, including the adversarial principle. The judge controls the proceedings from the filing of the originating application until the case is assessed and decided. The judge may order service of the application on the party concerned, direct the communication of written submissions to both sides, set deadlines for producing documents and determine which procedural measures are necessary. This active role is intended to achieve the desired balance between parties whose positions in an administrative action are unequal from the outset.²¹

This part is divided into two sections. The first examines the mechanisms for implementing the adversarial principle, while the second considers the effects of adopting it as an important means of safeguarding the rights of the defence.

Section One Mechanisms for Implementing the Adversarial Principle

The exchange of pleadings ordered by the reporting councillor takes place within the periods and deadlines that the councillor sets in light of the circumstances of each case. If a party fails to comply, the councillor issues a formal notice to that party, whether it is the administration or its opponent. A further and final period may nevertheless be granted in the event of force majeure or an unforeseen event.²² If, despite formal notice, the claimant fails to produce the requested documents and records, the claimant is deemed to have withdrawn and abandoned the claim.²³ A corresponding consequence applies to a defendant who, despite formal notice, fails to submit a response: the defendant is deemed to have admitted the facts stated in the application and accepted its allegations.²⁴

The administrative judge thus takes the initiative and actively supervises the course of the proceedings, seeking to expedite the necessary procedural measures in order to establish the truth of the dispute.²⁵

First Implementing the Adversarial Principle by Requiring the Correction of Errors in Applications and Written Submissions

The administrative judge plays an important role in prompting the claimant to correct errors in the application before it is ruled inadmissible.²⁶ The Algerian legislature requires the competent court to grant the claimant time to remedy errors or omissions affecting the formalities and procedures applicable to the application and written submissions, and to complete missing formal requirements, provided that the proceedings have not yet entered the final preparatory stage.²⁷

An application contains a defect capable of rendering it inadmissible where the claimant fails to comply with prescribed procedures: for example, filing it without the signature of an authorised lawyer, omitting the administrative decision whose annulment is sought, or failing to include or correctly state mandatory information. Such defects may create uncertainty concerning the competent court, the hearing date, the subject matter of the action or even the identity of the parties. In exercising the powers associated with an active judicial role, the judge must verify compliance with these requirements and their accuracy. This important statutory function enables the judge to invite the claimant to rectify the application before declaring it inadmissible. It is exercised through directions requiring the claimant to correct defects before the close of the investigation.

The judge may invite the parties to regularise the application in two ways: by issuing either an order or a formal warning to the claimant.²⁸

1 Requesting the Claimant to Rectify the Application

Administrative judicial procedures are active and inquisitorial in nature, placing the judge in charge of the proceedings and their conduct. This does not negate the parties' role in initiating the action and requesting a judicial decision: as is well known, the judge intervenes only at the request of a party. The parties also play an important role in undertaking other procedural steps. Nevertheless, the administrative judge's authority over the proceedings remains greater than that of the parties.²⁹

This active role is particularly evident when the reporting councillor requests the claimant to correct the application. There is sufficient time to do so until the close of the investigation, provided that the statutory time limits for bringing proceedings are respected. Article 817 of the Code of Civil and Administrative Procedure states: "The claimant may rectify an application that sets out no ground by filing a supplementary submission within the time limit for bringing proceedings referred to in Articles 892 and 830."

This procedure therefore concerns cases in which the time limit for bringing proceedings remains open and has not expired. During that period, the applicant may rectify the application by filing a supplementary submission in the original action, or may bring a new action after the first has been definitively struck out, provided that the filing period remains open. The administrative judge may also request rectification without setting a specific deadline where the statutory filing period is still running.³⁰

Once the time limit for bringing proceedings has expired, the claimant can no longer file a supplementary submission to correct procedural errors in the originating submission. However, the judge may not raise inadmissibility or reject the action of the court's own motion without first inviting the persons concerned to remedy the defects.³¹ The order requiring rectification must grant the parties at least 15 days from notification of that order to comply. In urgent cases, however, the period may be shorter than the 15 days normally allowed.³²

2 Issuing a Formal Warning to Rectify the Application as a Means of Implementing the Adversarial Principle

The administrative judge may issue a formal warning inviting the applicant to rectify the application where it contains any of the following defects:

A. An application submitted in a foreign language. Where an application is filed in a language other than Arabic, the claimant must rectify it by providing an Arabic translation. This correction must take place within the statutory time limit for bringing proceedings. Consequently, if the defendant files the response after the expiry of that period, the right to correct the defect in this situation has been lost.³³

B. Failure to appoint a lawyer. Where a claimant brings an action personally without appointing a lawyer, this constitutes a formal defect contrary to the procedural rule requiring legal representation before the various administrative courts. It exposes the action to inadmissibility on formal grounds. Nevertheless, the administrative judge may give the applicant formal notice to remedy the defect, except in the situations provided for in Article 827 of the Code of Civil and Administrative Procedure.³⁴

C. Failure to affix the mandatory fiscal stamp. The Council of State's case law established that the stamp requirement was a condition of admissibility but not a matter of public policy, since the omission could be remedied within a period set by the judge.³⁵ Initially, the courts did not strictly enforce stamping on pain of nullity. They instead asked litigants to regularise the omission before the close of oral proceedings.³⁶ More recently, however, the Council of State departed from that approach and began strictly declaring unstamped applications inadmissible, without requiring the court to notify the claimant to remedy the omission.³⁷ Its current case law therefore treats stamping as a public-policy requirement that cannot be regularised after the claimant has omitted it. The mandatory stamp requirement nevertheless applies only to the originating application, rather than to all pleadings. Response submissions and other written submissions are not subject to the same requirement and may therefore be regularised where it has been omitted.³⁸

D. Failure to supply copies of the application or to identify its attachments. The Algerian legislature requires the application to be accompanied, on pain of inadmissibility, by as many copies as there are parties. Where the claimant fails to provide them, the judge may give formal notice requiring their subsequent production. Article 818 of the Code of Civil and Administrative Procedure states: "The application shall be filed with a copy of the case file. Where necessary, the presiding judge of the panel shall order the parties to provide additional copies." Article 820 adds: "Where the parties attach documents to their applications and written submissions, they shall prepare a detailed inventory,

unless the number, volume or characteristics of those documents prevent this; the inventory shall be endorsed by the registrar.” An initial reading of these provisions shows that the parties may attach the documents and records they consider necessary to support their claims. Since producing such material is optional rather than compulsory, failure to mention it in an application or written submission does not invalidate the application. Following the French approach, the Algerian legislature has instead empowered the administrative judge to issue formal notices, sent by registered letter with acknowledgement of receipt, directing the parties to file submissions, documents and supplementary submissions within specified periods. Documents or observations submitted after the deadline are inadmissible. A further period may be granted where a party fails to comply but establishes that force majeure or an unforeseen event prevented compliance.³⁹

Second Implementing the Adversarial Principle by Compelling the Administration to Produce the Records and Documents in Its Possession

When investigating a case, the administrative judge may need to inspect records and documents directly connected with the case file. These may be produced voluntarily by either party, at the request of one party to the other, or at the judge’s request. The judge’s active role in managing administrative litigation includes the power to require the administration to produce any papers, documents and registers considered relevant and useful to the dispute for inspection and examination.⁴⁰ This departs from the evidentiary rules familiar in civil law, under which the judge plays a passive role and merely examines the evidence submitted. The purpose of this departure is to restore the missing balance between the parties by requiring the administration to disclose what it holds, even when it is the defendant. Administrative procedural rules thus enable the judge to work towards a balance between parties whose positions are inherently unequal.⁴¹

Documents and records are therefore the principal means of proof in administrative law, given their conclusive force in establishing administrative facts and the conduct of administrative officials. They strongly influence the administrative judge’s assessment and the resolution of the dispute.⁴²

As guardian of the public interest and the body responsible for the proper operation of public services and administrative activities, the administration naturally holds documentary evidence, such as committee minutes and administrative reports, that comes into its possession in the ordinary course of its work. Individuals disputing with the administration, by contrast, lack these materials and are unaware of their contents. They do not clearly know the facts and information they contain or whether they are suitable as evidence. The administration’s possession of documents and records relating to the dispute is therefore a significant advantage in proving its assertions.⁴³

For an administrative judge’s investigation based on papers, documents and registers to be valid and have full evidentiary effect against all concerned, those materials must truthfully reflect the facts. If the judge doubts their authenticity, or a party disputes the authenticity of documents in the case file, their contents can be challenged only by bringing a claim of forgery.⁴⁴

Section Two The Effects of Implementing the Adversarial Principle

The principal purpose of implementing the adversarial principle is to encourage the administrative judge to assist the weaker individual confronting the administration in litigation. The aim is to facilitate access to the documents and records that substantiate the claimant’s case. To that end, the judge undertakes various measures safeguarding the rights of the defence, foremost among them the

supervision of most investigative procedures in order to facilitate individual access to documents held by the administrative authority.

The effects of the adversarial principle in administrative actions are not confined to the measures taken by the judge at the outset of proceedings. They also extend to procedures carried out by judicial auxiliaries, such as experts. For example, in a decision dated 23 October 2000, the Council of State set aside a decision of the Constantine Court approving an expert report despite non-compliance with the requirement to notify the parties under Article 53 of the Code of Civil and Administrative Procedure.⁴⁵

The adversarial principle is thus particularly important in administrative litigation compared with other types of proceedings. This stems from the distinctive imbalance between the parties and the administrative judge's investigative and case-management powers, as discussed above.

When individuals acquire the status of parties to an administrative dispute, they may undertake procedural acts and bear their consequences. This entails several important effects:

- The parties have the right to dispose of the proceedings and pursue them.
- Each party's rights of defence must be guaranteed.
- The parties must always conduct the proceedings in good faith.

Conclusion

This study demonstrates the important role of the adversarial principle in balancing the positions of the parties to an annulment action. Its purpose is to enable the claimant, as the weaker party, to inspect the documents and records held by the administration that relate to the dispute, thereby allowing the claimant to prepare a defence on sound grounds.

The study shows that the adversarial principle is a cornerstone of procedural justice, providing a practical safeguard for the rights of the defence and a balance between the parties to litigation. Its implementation goes beyond merely informing each party of the procedural steps taken against them. It also requires access to the opponent's claims, arguments and documents, together with an opportunity to discuss and respond to them at a time and in a manner that permit the effective exercise of the rights of the defence.

The study also identifies challenges facing the application of this principle in administrative litigation. Foremost is the need to reconcile adversarial guarantees with the speed and efficiency required to resolve administrative cases, particularly urgent matters. Compliance with the principle should not obstruct effective administrative justice, just as speed should not justify undermining the substance of the rights of the defence that it protects.

The implementation of the adversarial principle in Algerian administrative justice therefore depends on effective procedural rules, reliable means of notifying the parties and exchanging applications and written submissions, and the administrative judge's commitment to ensuring that parties can genuinely exercise their rights. These conditions are necessary to balance the proper administration of justice with fair-trial guarantees.

Strengthening the principle in practice requires the legislature to devote greater attention to regulating its procedures and improving the means of notifying parties and exchanging applications and submissions. Sustained efforts are also needed to use digitisation and electronic administration to manage the parties' access to documents and records, and to strengthen judicial supervision of respect

for the rights of the defence. This would contribute to more effective administrative justice while preserving the fundamental guarantees of judicial proceedings.

The ultimate aim of adjudication is to establish the truth and uphold justice between individuals. In pursuing that aim, judges rely on means and tools drawn largely from the practical implementation of the adversarial principle.

We acknowledge the important and effective role that the legislature has assigned to the administrative judge in implementing this principle, particularly by enabling the weaker claimant to obtain documents needed to substantiate the case, which are usually held by the administration as a party enjoying public-authority prerogatives. This undoubtedly helps bring the parties' positions closer to balance. Nevertheless, to reinforce the judge's ability to respond to administrative obstruction and reduce the burden on individuals litigating against the administration, we recommend granting further powers that would allow the judge to provide a firm safeguard against administrative abuses affecting rights and freedoms.

¹ Sabek, Hafidha, *Administrative Proceedings before Administrative Courts*, dissertation for the Magister degree in Public Law, specialisation in Public Administration Law, Faculty of Law and Political Science, Larbi Ben M'hidi University, Oum El Bouaghi, 2015, p. 54.

² Hamiche, Mohamed, *The Powers of the Administrative Judge in Administrative Proceedings: A Comparative Study*, doctoral thesis in Law, specialisation in Public Law, Faculty of Law and Political Science, Abou Bekr Belkaid University, Tlemcen, 2018, p. 110.

³ Meguimi, Rima, *Evidence in Administrative Disputes*, thesis submitted for the Doctorate of Sciences in Law, specialisation in Public Law, Faculty of Law and Political Science, Larbi Ben M'hidi University, Oum El Bouaghi, 2020, p. 161.

⁴ Hamiche, Mohamed, previously cited work, p. 110.

⁵ See Charles Debbasch and Jean-Claude Ricci, *Contentieux administratif [Administrative Litigation]*, 7th ed., Dalloz, 2001, p. 405.

⁶ Meguimi, Rima, previously cited work, p. 163.

⁷ Article 876 of the Code of Civil and Administrative Procedure provides: "All parties shall be notified of the date of the hearing at which the case will be called. Notification shall be effected by the registry at least ten (10) days before the hearing. In urgent cases, this period may be reduced to two (02) days by order of the presiding judge of the panel."

⁸ Hamiche, Mohamed, previously cited work, p. 110.

⁹ Ahmed Merabet and Guitaoui Abdelkader, "Enshrining the Adversarial Principle in the Code of Civil and Administrative Procedure," *Journal of Law and Local Development*, vol. 5, no. 1, 2023, p. 42.

¹⁰ Meguimi, Rima, previously cited work, p. 118.

¹¹ Sabek, Hafidha, *Administrative Proceedings before Administrative Courts*, dissertation for the Magister degree in Public Law, specialisation in Public Administration Law, Faculty of Law and Political Science, Larbi Ben M'hidi University, Oum El Bouaghi, 2015, pp. 54-55.

¹² See Article 838 of the Code of Civil and Administrative Procedure: "The originating application shall be formally served by a bailiff. Written submissions and responses, together with their accompanying documents, shall be communicated to the parties through the registry under the supervision of the reporting judge at the administrative court."

¹³ The French Council of State has accordingly held that a decision is liable to be set aside where it relies on a document that the case file does not establish was communicated to the opposing party, or of whose presence in the file that party was aware. For further details, see Meguimi, Rima, previously cited work, p. 162.

¹⁴ Sami El Wafi, previously cited work, p. 122.

¹⁵ Hamiche, Mohamed, previously cited work, p. 111.

¹⁶ Sami El Wafi, previously cited work, p. 59.

¹⁷ This differs from Egyptian legislation, under which proceedings are constituted upon the filing of the originating application with the registry of the competent court. Notification of the action is considered a separate procedural act performed by the registry to alert the opposing party to prepare a defence. For further details, see Hamiche, Mohamed, previously cited work, p. 108.

¹⁸ Hamiche, Mohamed, previously cited work, p. 109.

¹⁹ Hassan El Sayed Bassiouni, *The Role of the Judiciary in Administrative Disputes: A Comparative Applied Study of the Judicial Systems of Egypt, France and Algeria*, Part One, Alam Al-Kutub, Egypt, p. 197.

²⁰ Meguimi, Rima, previously cited work, p. 118.

²¹ Fares Ali Jangir, "Procedures for Bringing Annulment Actions before Administrative Courts: A Comparative Study," *Tikrit University Journal for Rights*, fourth year, vol. 4, no. 1, part 1, 2019, p. 118.

²² See Article 849 of the previously cited Code of Civil and Administrative Procedure, as amended and supplemented.

²³ See Article 850 of the previously cited Code of Civil and Administrative Procedure, as amended and supplemented.

²⁴ See Article 851 of the previously cited Code of Civil and Administrative Procedure, as amended and supplemented.

²⁵ Meguimi, Rima, previously cited work, p. 119.

²⁶ Boualchour, Wafa, previously cited work, p. 62.

²⁷ Hamiche, Mohamed, previously cited work, p. 116.

²⁸ *Ibid.*, p. 115.

²⁹ Hassan El Sayed Bassiouni, previously cited work, p. 198.

³⁰ Hamiche, Mohamed, previously cited work, p. 117.

³¹ See Article 848 of the previously cited Code of Civil and Administrative Procedure.

³² Hamiche, Mohamed, previously cited work, p. 117.

³³ Boualchour, Wafa, previously cited work, p. 64.

³⁴ Although Egyptian legislation makes a lawyer's signature on the originating application an essential statutory formality, where the litigant omits it but its purpose is fulfilled through the lawyer's attendance at the preparatory hearings held by the State Commissioner with the parties, the absence of the signature does not invalidate the application. For further details, see Hamiche, Mohamed, previously cited work, pp. 118-119.

³⁵ Boualchour, Wafa, previously cited work, p. 63.

³⁶ This was confirmed by the Administrative Chamber of the Supreme Court on 3 January 1993, when it held that the judge may invite the person concerned to remedy the omission during the proceedings. For further details, see Hamiche, Mohamed, previously cited work, p. 119.

³⁷ See the Council of State decision of 26 June 2000.

³⁸ See Article 848 of the previously cited Code of Civil and Administrative Procedure.

³⁹ Hamiche, Mohamed, previously cited work, p. 120.

⁴⁰ Hassan El Sayed Bassiouni, previously cited work, p. 209.

⁴¹ The inequality between the parties to administrative proceedings arises because one party is a public-law legal entity enjoying public-authority prerogatives, while the other is a weaker party that does not enjoy comparable powers. For further details, see Hassan El Sayed Bassiouni, previously cited work, p. 209.

⁴² Houcine Kemmouche, previously cited work, p. 215.

⁴³ *Ibid.*, p. 215.

⁴⁴ Meguimi, Rima, previously cited work, p. 121.

⁴⁵ One Council of State decision states that experts must notify the parties of the dates and times at which the expert examination will take place. The legislature requires experts to summon both parties to the dispute, and failure to observe this mandatory procedure exposes the expert report to invalidation. For further details, see Ahmed Merabet and Guitaoui Abdelkader, previously cited work, p. 44.