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**Summary of the doctoral thesis**

# A theory of the provisional in administrative law

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# CONTAINED

**Summary of the doctoral thesis**

**"A theory of the provisional in administrative law"**

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The climate of instability in recent decades has confirmed, more than ever, that the provisional specific to administrative law is a topical issue, which deserves to be subjected to an in-depth analysis. Although at the time of choosing this doctoral topic we visualized a much more restricted analysis of the subject matter of the provisional, limited to one of its components, namely the suspension of the administrative act (mainly for reasons of illegality), during the research we found it appropriate to outline a picture of the provisional in administrative law as a whole, thus opting for a global approach to this matter.

This approach was a difficult one to go through, precisely because the institutions, situations and measures we approached seemed, at first glance, incomparable, being characterized (apparently) by fundamentally different features. Precisely for this reason, in addition to the pragmatic approach, with which we are so accustomed in the legal sphere, we felt the need to research the subject also from a theoretical perspective, with references, where appropriate, to philosophical visions or concepts. However, philosophical references do not have the role of diminishing the importance of legal reasoning, but, on the contrary, they are meant to reinforce or confirm different solutions and orientations proposed during the doctoral thesis.

In relation to the proposed approach, which is intended to be a global, overall one, we have emphasized that the subject of our research has in the foreground **the provisional** specific to administrative law, and not only the provisional sphere, having as a premise the semantic distinction of the two terms. While the "provisional" refers rather to the period of time for which the provisional manifests itself, leading us to think in particular of those measures ordered in exceptional situations, the abstract nature of the term "provisional" allows us to explore both the foundations, the causes of the provisional measures, and the effects produced after the cessation of the provisional situations/states. Therefore, in the content of the paper we have analyzed those situations, measures or states that are characterized by dual causes: a generating factor, doubled by urgency – which justifies the ordering of temporary measures, in exceptional or atypical

situations, at the disappearance of which they will be replaced by definitive measures, or will lead to the return to the previous situation.

Structurally, our doctoral thesis is divided into **five chapters**. In the first two chapters we had a predominantly theoretical perspective, so we identified the foundations and fundamental characteristics of the provisional measure (Chapter I), an analysis followed by the research of the causes of the provisional measures (Chapter II). Without claiming an exhaustive approach, in relation to the common features specific to the provisional, we have researched what is its concrete object (Chapter III), followed by the analysis of this phenomenon from the perspective of its typology, but also of some characteristic procedural rules (Chapter IV). Last but not least, in the last part of the research we analyzed both the cases of termination of provisional measures and the effects produced during the period of the institution of the provisional measure, but also after the disappearance of its causes (Chapter V).

**I. In the first chapter** of this thesis, we found it useful to make both a **conceptual and legal distinction between the terms provisional and temporary**, in order to avoid confusions that could arise including in the field of administrative law. We concluded that provisional measures differ from temporary measures in terms of **the context** in which they are ordered, which, in the case of provisional measures, imply an **exceptional or at least atypical situation**, which determines the derogation from the natural legal order, or which leads to the temporary suppression of the effects produced by administrative acts, or to the temporary application of obligations of a positive or negative nature. At the same time, the **effects** produced by the two categories of measures are different, as only the provisional measures are to be replaced by definitive ones. However, the scope of temporary measures is much broader, as they have the ability to be ordered even in normal situations, the period for which they operate being determinable from an early stage, without necessarily requiring their replacement by other measures of a definitive nature.

On the premise that interim measures are ordered either for the protection of the public interest or for the protection of particular interests, we have pointed out that they **derive**, at least in part, **from natural law**, which protects values immanent to the human being. In essence, both at the individual and collective level, the provisional measures capitalize on the instinct of self-preservation, which characterizes both each individual and the state organizations, whose desire is to maintain their leadership structures, including in critical situations.

One of the most important foundations of the provisional is, without a doubt, **the public interest**. Often, it is the public interest that dictates the establishment of the provisional, especially if we refer to those critical, exceptional situations, in which the aim is to protect the public interest as a whole, in the light of all the components that characterize it. In other situations, even when interim measures are ordered for the purpose of individual protection, the importance of this foundation cannot be minimized, which is capitalized on, either **in order to protect fundamental rights and freedoms** (regarded as a component of the public interest) or by guaranteeing compliance with **the principle of legality** (a goal that must be pursued also from the perspective of the pre-eminence of the public interest), but also by the fact that, in some situations, it is the legislator himself who confirms that the measures ordered (apparently) for the purpose of individual protection must take into account the priority of the public interest to the detriment of the private one.

Accordingly, interim measures are based on **the principle of proportionality**, which can be viewed from two perspectives: **a) legislative proportionality**; and **b) administrative or judicial proportionality**. As regards the component of legislative proportionality, it implies the establishment a priori of abstract limits by the legislator, which must be respected at the time of the introduction of the provisional. At the same time, in some situations, in terms of legislative proportionality, it is the legislator himself who carries out an abstract proportionality control, establishing that some provisional measures will operate as a matter of law, as a result of the appearance of a triggering factor. The analysis of the second component, of administrative or judicial proportionality, is the prerogative of the knowing subject (which can be the administration or the court), having a concrete character, since the proportionality control is carried out *a posteriori*, even at the time of ordering the provisional measures. This approach involves (or should involve) a comparative analysis of the competing interests at stake, and interim measures are to be ordered only if they add value, or if, as has been shown in some common law systems, the measures bring more good than harm. In practice, at this stage, the public interest can be assessed positively or negatively, as there may be situations in which the identification of a public interest justifies the ordering of interim measures, as well as cases in which, although the causes of interim measures are met, the imposition of the provisional measure is not possible because it would significantly affect the public interest. Similarly, this "balance sheet analysis" can also concern conflicting private interests.

A fundamental feature of provisional measures is their **preventive nature**, which is based on the philosophical concept of prudence, analyzed in the writings of Aristotle. While prudence is an intellectual value, which allows any person to choose the "middle way", more precisely to visualize those balanced solutions, prevention can be seen as an effect of the former. In other words, following the approach of some risk factors with caution, the need for caution may arise, by establishing a regulatory framework consistent with the imposition of provisional measures. In other situations, the precautionary principle, as broadly understood at EU level, may also influence the scope of provisionality, by minimising the emphasis placed on the imminence of damage, if there is a risk that it will occur in certain specific areas, such as environmental protection, even in the more distant future. Also, the preventive nature of provisional measures cannot be denied, sometimes this is also underlined by the legislator, since it is often the legal provisions themselves that emphasize that provisional measures are ordered to prevent various states of danger.

The fact that interim measures are ordered in exceptional or atypical situations, following a proportionality review, which involves the analysis of the public interest but also a general attitude of prudence, confirms **the exceptional nature** of the provisional. Although provisional measures cannot be transformed into general rules of government, the uncertainty that characterizes society today confirms the fact that we periodically encounter different forms of the provisional, which seem to repeat themselves in a "cyclical" way, without each provisional state losing its particularities. For example, the recent experience of the Covid-19 pandemic does not confirm that a future health crisis will generate the same effects, that it will be managed by the same measures or that the response to the risk factor will be the same from the population or from the authorities, as there will always be different elements, specific to each exceptional situation. Finally, in order to guarantee (as far as possible) the exceptional nature of interim measures, we have concluded that they must be **temporary**, a desire that is most often respected by setting deadlines (certain or uncertain) for which interim measures are ordered. However, the temporary nature should not be viewed restrictively, as it is often interpreted in national case-law, which is why we have concluded that interim measures comply with that requirement where it is possible to restore them to their previous situation when they are terminated, even if the intervention of the administrative authorities is necessary to do so (through the adoption of administrative acts).

Last but not least, especially in relation to the provisional measures ordered by judicial means, we have shown that they are based **on ensuring access to justice**, a goal that, in some situations, could not be achieved, if the danger were to occur until a final solution is ordered.

**II. In the second chapter**, we analyzed **the binomial of causes** that justify the ordering of interim measures: **the generating factor and the urgency**.

**A.** As for **the generating factor**, we have shown that it can consist of **events, phenomena or actions dependent or not on human activity**. In practice, especially when the protection of the public interest (viewed as a whole) is pursued, certain states of affairs (such as health crises, natural disasters, social crises, or, in certain situations, even certain antisocial acts) lead to the ordering of provisional measures, even if this effect was not necessarily intended. At other times, the generating factor may be based on **the appearance of illegality of an administrative act or of an administrative conduct**, a context in which we have chosen to use throughout the thesis the Latin adage "*fumus boni iuris*", which translates into Romanian as "*the smoke of good law*". In the sphere of provisionality, this adage, used both by the courts at the level of the European Union and in various systems of comparative law, represents a standard of appreciation of factual or legal elements, which determines the knowledgeable subject to consider that the requirement of appearance is met.

From this perspective, by resorting to an interdisciplinary approach, we have tried to outline a theory of appearance in the sphere of the provisional in administrative law, having as premises the way in which the theory is widely used and capitalized in civil law, international law and even in administrative law. Following the application of some processes of adaptation and calibration of the criteria of the theory of appearance, we have come to the conclusion that in the sphere of the provisional specific to administrative law, the theory is also characterized by two elements: **a)** the material element; and **b)** the subjective element.

**a) The material element** is based on objective circumstances, which may be factual or legal in nature (regardless of whether the latter are associated with a state of affairs or not), and which may be "known" at a summary level by the subject in the know. These elements are part of reality, however, since the process of knowledge is limited from a temporal perspective (due to urgency), the elements can be assessed and interpreted in a positive way (if they reflect reality), or, on the contrary, in a negative way (when they create a misleading representation of reality), in which case the final solution is to be discordant with the provisional measures ordered. For the sake of clarity,

we propose the following example: in order to order the measure of suspension of the effects of an administrative act, it is sufficient to have the appearance of its illegality, which, in a specific case, could be generated by the apparent lack of competence of the issuing body, which could result from the mere verification of the signatory of the act. However, although this objective element is part of reality, as it can be easily verified in the content of the act who is its signatory, it is possible that it does not faithfully render the observance of the legal rigors for the issuance of administrative acts. Thus, after the order of the provisional measure, extrinsic elements could be identified, revealing that there was an act of delegation of signature/powers in favor of the issuing body, which comes from the competent body (but which for various reasons was not submitted in the suspension file). From this extremely simplistic example, I have been able to infer that, sometimes, the objective elements leading to the imposition of interim measures do not accurately reflect reality. However, most often, in the matter of the provisional, the positive component of appearance is capitalized.

**b) The second element**, namely the **subjective** one, was analyzed from a dual perspective: **(i)** through the prism of the knowing subject; **(ii)** in relation to the subjective attitude of the applicant for the measure. **(i)** As regards **the perspective of the knowing subject**, we have shown that the same objective elements can be viewed and perceived differently, depending on the knowing subject through whose filter they are passed. Thus, at the hypothetical level, it is possible that exactly the same circumstances, analyzed from different perspectives, lead to diametrically opposite solutions. At the same time, we have shown that in the matter of the provisional in the field of administrative law, the knowledgeable subject carries out the process of knowledge by resorting to empirical knowledge, given that he has the quality of a legal professional, and not of a layman, not being limited to observational knowledge. For this reason, the elements analyzed by the knowing subject (from the perspective of appearance) can be legal ones, without the need to always be associated with factual states. **(ii)** At the same time, **the subjective attitude of the applicant** for an interim measure may also influence the decision-making process of interim measures. More specifically, bad faith, long passivity or abuse of rights manifested by the applicant may lead: either to the rejection of the request for the provisional measure, or to the incurrence of the applicant's tort liability, if the requested measures have been ordered.

In relation to these theoretical conclusions, we have continued our approach by identifying and classifying the various factual or legal circumstances that have led or could lead to the ordering of interim measures in our legal system.

**B. The second cause** of the provisional measures – **urgency** – was transposed into our research by using the Latin phrase "*periculum in mora*", whose translation into Romanian is that of "danger in delay". From a theoretical perspective, the source of urgency is necessity, which, depending on different philosophical and doctrinal orientations, can be seen as a form of coercion, determining an immediate intervention, so as to capitalize on the preventive nature of provisional measures. At the same time, in the matter of interim measures, urgency brings implications both of a material nature, since it represents a cause of provisionality, but also of a procedural nature, being transposed through the imperative of regulating accelerated procedures, the expeditious completion of which must be a goal to ensure the efficiency of interim measures.

**1.** Our approach was followed by a dual analysis **of the dimension of the emergency**, according to whether it predominantly threatens the public interest or certain particular interests.

**(a) Where urgency is determined by a threat to the public interest**, the effects produced from the perspective of interim measures are different, depending on whether we refer to exceptional situations, or to certain situations characterised by different atypical components. **(i)** In exceptional situations, the emergency most often determines **the establishment of states of exception**, by which the natural legal order is temporarily derogated, a derogation that in a democratic state is allowed by the constitutional provisions themselves. However, the provision of these regimes cannot be arbitrary, and it is necessary to ensure certain guarantees both for the establishment and for the management of derogatory regimes. From the perspective of the procedure, we have developed in the thesis that, most often, three criteria/stages can be identified: **(i.1)** the existence of a formal law, through which the rules and principles applicable during the period of the states of exception are transposed; **(i.2)** the formal act establishing the exceptional regime; and **(i.3)** the substantive acts, which are in the nature of administrative acts, by which the vast majority of provisional measures are instituted and adapted to concrete needs. **(ii)** In cases where the urgency does not lead to the establishment of exceptional regimes, most of the time it is the premise for the ordering of measures with an individualized object (not limited to them), which aim to protect public health, the environment or the preservation of cultural heritage. For example, a large part of these measures is found in the field of contravention law, when the performance of

certain activities contravenes the authorizations or legal provisions, so that the suspension of the performance of the respective activity is ordered as a complementary measure.

**b.** It is possible that **the urgency is generated by certain states of danger directed against the fundamental rights and freedoms of citizens**, thus leading to the ordering of interim measures of an individualized nature. In our legal system there is no special procedure that confers provisional protection on this category of rights, through which an intervention is allowed (or even imposed) more quickly than in the general procedure, as we find, for example, in the French system. However, due to its general nature, the injunction procedure is the one that can most effectively respond to these needs at present.

**c.** At the same time, when **the emergency affects other rights or private interests**, a big minus of our system is that it does not establish that the state of danger created can also lead to **moral damages**, and not only to material damages, as stated in the definition of imminent damage, the meeting of which is verified for the order of the judicial suspension measure. Obviously, moral damages can often be more extensive, being most often difficult or impossible to repair, hence the anomaly in our legal system, which does not regulate adequate means of protection.

**2.** The next step of our research activity was to establish what **the imminence of danger component** entails. The conclusion drawn is that a time frame that justifies the provisional intervention cannot be mechanically established, the analysis being made concretely, in each situation. As a general rule, however, it can be held that the order of interim measures is considered necessary if damage could occur before a final decision is ordered. However, the danger must be present or future, and there is no justification for interim measures to be ordered in the case of acts which have exhausted their effects or which have caused harm to the applicant for the measure. From this perspective, it is relevant to distinguish between different concepts, such as the "material effects" and the "legal effects" of administrative acts, the former being immanent only to certain categories of acts, having the ability to exhaust themselves before all legal effects are produced. Thus, in certain cases, interim measures may be ordered even after the material effects of the administrative act have been produced, if the legal effects have not been fully exhausted.

**3.** Last but not least, it was necessary to analyze whether any kind of potential damage has the ability to lead to the imposition of the provisional measure, or whether, on the contrary, it must have a certain magnitude. We have shown that, as it has been established (in some proceedings) by praetorian and doctrinal means, it is necessary that the damage be difficult **or impossible to**

**remove**, in the absence of the provisional measure, a condition that derives from the exceptional nature of the matter of the provisional measure.

**III. In the third chapter,** we have focused our attention on **the specific subject matter of interim measures**, which, due to the dynamism of this matter, I do not believe can be classified or viewed exhaustively. Thus, the range of provisional measures is infinite, as each exceptional situation can lead to the ordering of provisional measures adapted to the identified social needs. It is precisely for this reason that we would not have been able to identify a way of categorising interim measures. However, in our research we wanted to establish the criteria according to which provisional measures can be classified and identified.

**A first** (general) classification concerns **the determinability of interim measures**, in which sense we have shown that two categories of measures can be encountered – those with an individualized object and those with a regulatory object.

**A. The** first category, that of **interim measures with an individualized object**, refers to that method of punctual intervention, such as the one that leads to the suspension of an administrative act or contract. In turn, measures with an individualized object can be subclassified into measures ordered to: **a)** avoid the danger of delay; or **b)** avoid the danger of ineffectiveness.

**A.1.** In the first classification of **the measures ordered to avoid the danger of delay**, we have included all those measures with **an individualized object**, which are ordered to **avoid the occurrence of a damage before taking a definitive measure**, a category in which we have included: suspension of the administrative act and contract; ordering obligations to do or not to do on the part of the administration, but also the measures that have as their object the (temporary) restoration to the previous situation. We then carried out a systematic analysis of each of these sub-classifications.

**1.** As regards **the measure of suspension of the effects of the administrative act**, **a)** we started from the distinction between the suspension *lato sensu* and the suspension *stricto sensu*, reaching the conclusion that only the latter can be regarded as a genuine provisional measure, since it is characterized by the two causes common to the provisional measure. In the case of acts that have not yet entered into force, the possibility of "postponing" the entry into force could rather be considered, if there is urgency, this "compromise" solution being found in French case-law. **b)** Another controversial aspect that was the subject of our research was the **enforceability** of the administrative act and the way in which it is "affected" by the ordering of provisional measures.

Taking into account the guidelines of the French doctrine, but also of a minority of the local literature, we concluded that the suspension measure does not affect the enforceability of administrative acts, since, at this point, such an exorbitant prerogative of the administration can only be recognized for a restricted category of administrative acts of an individual nature. On the other hand, the measure of suspension rather affects the mandatory nature, which is immanent to all administrative acts. **(c)** In the light of the confusion sometimes encountered in the national case-law, we have examined whether the subject-matter of interim measures may also concern the material-technical operations, which form the basis of an administrative act. The (natural) conclusion was that only the manifestations of will producing legal effects can be subject to the suspension measure, including in those situations where the name of the act is misleading. **d)** Last but not least, taking as a premise the regulation of the French system, from which our legislator has often been inspired, according to which it is possible to suspend a refusal decision, we investigated whether such a solution could also be applied in our legal system. In this regard, we have identified two impediments that prevent the suspension of the effects of the refusal decisions, one of which is of a material nature and the other of a procedural nature. First, such a measure would not bring any benefit to the applicant, who would be in the same situation as that which he had before the negative decision was issued. On the other hand, from a procedural perspective, at least in the context of the judicial suspension procedure, the possibility of the court establishing positive obligations on the administration is not regulated. Such a legal provision can be found in the French system, thus ensuring the effectiveness of the provisional measure.

**2.** With regard to the **suspension of administrative contracts or of the documents attached and detachable to them**, the main problem in the matter of provisionality is given by the lack of a coherent regulation, respectively of a common procedure (at least at the principle level), which would be applicable to any administrative contract. For this reason, a major deficiency is given by the fact that for administrative contracts whose regulation is found in the Administrative Code, there is no procedure for ordering interim measures, which is why, not infrequently, national courts hold that interim measures could not be applicable. Certainly, such a categorical conclusion is not in accordance with one of the foundations of interim measures, namely ensuring access to justice. In short, in order to comply with this desideratum, our conclusion was to apply the general procedures that lead to the ordering of provisional measures, more precisely, either the procedure for suspending the effects of administrative acts (Articles 14-

15 LCA) or the injunction procedure. Various problematic aspects can also be identified with regard to contracts falling under Law no. 101/2016, whose frequent (and often unjustified) amendments generate insecurity including in the provisional sphere. Equally questionable are sometimes the interpretations given by the supreme court, whose orientation tends to exclude the applicability of the injunction procedure in the matter of administrative contracts, as long as there is a special regulation that establishes the legal regime of those contracts, without taking into account concrete elements, such as: the object of the requested measure and the cause of urgency, which could justify following a faster procedure.

**3.** At the same time, we have also analyzed those measures that are ordered through the injunction procedure, which establish **obligations to do or not to do for the administration**. Most of the time, by taking these measures, the aim is to ensure the protection of fundamental rights and freedoms, which are often found in judicial practice, in situations concerning the protection of individual health, by establishing in charge of the administration the temporary obligation to provide treatments in a compensated regime, in favor of individuals suffering from serious diseases.

**4.** A final category of measures that are ordered to avoid the risk of lateness aims **to (provisionally) restore** the applicant for the measure to its previous situation. Such measures are necessary in particular in contravention matters, where, for example, the suspension of the effects of the report does not automatically lead to the return of the property that has been subject to the confiscation measure.

**A.2.** The second category of measures with an individualized object concerns **the provisional measures ordered to avoid the risk of ineffectiveness**, with the purpose of preventing situations in which the final solution would be ineffective, in the absence of provisional intervention. This includes precautionary measures, which are part of the larger 'family' of interim measures. They can be ordered both by the administration and in order to protect the public interest, in which case the state or another legal person governed by public law has at least one pre-visualized claim against an individual. However, although less common, we have also identified precautionary measures that are ordered in private interest, therefore against the administration, when the quality of creditor (at least apparently) belongs to a private individual.

**B. Provisional measures with a regulatory role** may be ordered both in atypical situations, when a derogation from the natural legal order is not necessary, and in exceptional situations,

which also involve the establishment of special regimes, by which a temporary derogation from the normal legal order is made. The specificity of these measures is that they are generally applicable, establishing rules of conduct, and deviation from them can attract different forms of liability, such as contravention, disciplinary or even criminal. Within this classification, we have also referred to the measures ordered following the establishment of various exceptional regimes, such as the state of emergency and siege, the state of war and mobilization, as well as the state of alert. Last but not least, we also analyzed the measure of the requisition, which, although it has an individualized object, most often derives from the measures with a regulatory role, being ordered in critical situations.

With some disappointment, we found that we do not have a coherent legal framework for ordering provisional measures with a regulatory role, the legal provisions not being adapted to current social needs. For this reason, including during the Covid-19 pandemic, insecurity was not only generated by the emergence and spread of a virus about which there was not much scientific data, but also by the inability of the system to manage the crisis situation, an aspect that could also be attributed to the outdated legal framework. As a perspective, our conclusions were directed towards the need that our system feels for the active application of an attitude based on prevention, so that in normal times, the legislator does not forget the regulations applicable in exceptional situations, which he has the possibility to constantly improve.

**IV. Chapter IV** of our thesis addresses two essential elements: the **typology of interim measures**, as well as **the way in which** some of **the grounds and causes of interim measures are transposed to the procedural level**.

**A. From the perspective of typology**, we have shown that there are two categories of provisional measures: **those that are ordered by the administration**, for the protection of the public interest, respectively **those that are ordered against the administration**, either for the protection of the public interest, or for the protection of private rights and interests.

**1.** In the process of analyzing **the measures ordered by the administration**, although we concluded that they may have an unnamed object, classifiable in terms of the categories identified in the previous chapter, we found it necessary to identify certain rules common to these measures, in order to avoid their excessive power. The main rules identified include: **a) the need for a legal basis** for ordering any provisional measures, a rule that derives from the exceptional nature of the provisional measure. A deficiency of the current legislative framework is represented by the lack

of an express legal provision that would allow the suspension of the effects of individual administrative acts, a gap that will most likely be covered with the adoption of the Code of Administrative Procedure; **b)** compliance with the requirements of competence for the ordering of provisional measures, which, as is generally the case in the field of administrative law, may belong to the issuing/competent body, and in certain situations to the hierarchically superior one. However, in exceptional situations, the competence may be extended in favor of other public authorities, in accordance with the provisions of the special legislation. At the same time, situations can be identified in which the competence to order provisional measures belongs to administrative bodies with control attributions; **c) the reasons justifying the interim intervention**, a requirement that derives both from the exceptional nature of the interim measures, but also from the imperative of compliance with the two grounds of the provisional measure; **d) the statement of reasons for the act**, which outlines the reasons justifying the ordering of interim measures; and **e) the duration of the interim measures**, so as to ensure compliance with the temporary nature of the provisional intervention.

**B.** With regard to the provisional measures that are ordered **against the administration**, we have identified a subclassification, which includes: **a)** measures ordered by judicial means; **(b)** measures that operate by law.

**B.1.** The analysis **of the measures ordered by judicial means** was not a classic one, since in the first phase we highlighted the interference of the various procedures leading to the ordering of interim measures, and in the second phase, we analyzed from a procedural perspective the way in which the grounds and causes of the provisional measures make their presence felt.

**1.** More specifically, with regard to the interference of various judicial proceedings, we have pointed out that in many cases, the judicial suspension procedure is ineffective, as it is constrained by multiple procedural rules and deadlines. For this reason, in order to effectively ensure access to justice, including in the light of the recommendations coming from the European Union, it is possible to identify the need to order this measure through the procedure of provisional suspension of enforcement, respectively through the injunction. **a)** The procedure for the provisional suspension of enforcement could, however, have an extremely limited impact, and there are premises for its continuation only if a forced execution procedure has been initiated and the claims that are the subject of it are not of a fiscal nature. At the same time, from the perspective of the temporal factor, the procedure could be followed only between the moment of filing a request for

judicial suspension (based on the provisions of Articles 14-15 LCA) and that of its resolution at first instance. **b)** On the other hand, a broader applicability can be attributed to the injunction procedure, which can prove to be extremely useful, either for the expeditious ordering of the provisional measure of suspension, since, in exceptional cases, it can be followed without summoning the parties, or for ordering the suspension measure after the procedures found in Art. 14-15 LCA become inapplicable, due to the fulfillment of the limitation periods within which they can be followed.

**2.** From the perspective **of transposing the grounds and causes into the scope of the proceedings** by which interim measures are ordered, our analysis has focused in particular on those rules that may derive from the applicability of the principle of the priority of the public interest, but also on the way in which the cause of urgency influences the resolution of the proceedings, since they must be marked by speed.

**B.2.** A final step taken in this chapter was to identify and deepen the criteria that determine the incidence of interim measures *ope legis*. In this regard, we have used a tripartite classification, the scope of which concerns: **a)** the hypothesis in which **the national public interest is given precedence to the detriment of the local one**, for situations in which the suspension measure operates as a result of the actions introduced by the prefect; **(b)the** situation in which there is an **(absolute) presumption of urgency**, the most common example being that of the legal suspension of the return decision from the territory of Romania; **c) the hypothesis in which a presumption of the appearance of illegality is outlined**, in the event of the issuance of an administrative act with the same content as the one suspended by judicial means.

**V. In the last chapter of our thesis (Chapter V),** we turned our attention to the causes that determine **the termination of the interim measures**, as well as to **the effects produced**, on the one hand, during the period of incidence of the interim measures, and on the other hand, after their termination.

**A.** With regard to the causes that determine the termination of interim measures, we have referred to a classification found in the national doctrine, which considers: **a)** the termination of interim measures when the causes that led to their disposition no longer exist; **b)** the cessation of provisional measures when their causes did not exist from the early stage; and **c)** the cessation of measures with a sanctioning purpose.

**1.** The hypothesis of termination of interim measures as a result of the disappearance of the causes that led to their dismissal also supports two classifications. **(a)** The situation in which **the purpose of the measures has been achieved**, in which case they will cease at the time of exhaustion of the period for which they were ordered, a term that can be both a certain one (which can turn into an uncertain one, by successively extending the provisional measures) and an uncertain one. **(b)** If the causes of the measures disappear before the expiry of the deadline for which they were ordered. From this perspective, a shortcoming of our legal system is that it does not regulate effective mechanisms to order the reassessment of the judicial suspension measure, which could cease if the requirement of appearance or cause of urgency no longer exists, even before the deadlines pre-established by the provisions of art. 14-15 LCA.

**2.** In the second situation, the measures cease if, after their order, it is established that, in reality, the causes that led to the provisional intervention were not justified, which leads to the illegality of the administrative act or of the judicial decision by which the measures were imposed.

**3.** The last cause for termination of provisional measures, which has a predominantly sanctioning role, may be relevant in our legal system: **a)** either in the situation in which the applicant for the measure does not bring the action for annulment within 60 days from the filing of the request for suspension; **(b)** or in the event that an abusive conduct of the individual is identified, which tries to maintain (unjustifiably) the effects of the provisional measure for as long as possible.

**B.** As we have already mentioned, in the second part of the chapter we focused our attention on **the effects** produced during the period of incidence of the provisional measures, as well as after that moment, namely at the end of the measures ordered, the emphasis being also placed on the possibility of attracting liability for the damages caused while the measures were operative, a subject that was not addressed, to our knowledge, in the national literature.

**1.** If we refer to the effects produced during the period of incidence of the interim measures, the main conclusions we have drawn were that **a)** the national legislation is insufficient when it may prove useful to establish ancillary obligations, related to the suspension measure, in which case the subject hearing may resort to the application of the general rules of civil procedure. **b)** Another point raised concerns the use of inappropriate terminology in relation to the enforceable nature of the suspension decision, which is not subject to direct enforcement, since it establishes an obligation not to act. **c)** Moreover, we have not been able to identify an accelerated procedure

to sanction the non-compliance with the obligations to do, ordered by way of provisional measures. **(d)** Last but not least, we have emphasised that once an interim measure has been ordered, that aspect must also lead to the resolution of the dispute in the main proceedings expeditiously (for example, by setting shorter time limits), so as to emphasise the exceptional and temporary nature of interim measures.

**2. On the termination of interim measures**, the transition is likely to be a steep one, since, in particular in the event that they have been ordered in favour of an individual, if the action for annulment is dismissed, that individual could be 'threatened' by the immediate applicability of the effects of the act which was suspended. On that basis, on the basis of French case-law, I wondered whether certain transitional measures could not be ordered, operating immediately after the termination of the interim measures. Although we do not have a special regulation in this regard, we have concluded that the possibility of the knowledgeable subject to grant a grace period cannot be denied, in accordance with the general provisions in the field of procedural law.

**3.** Finally, from the perspective of the liability that could be incurred following the termination of the interim measures, we have concluded that, in most cases, it is subjective in nature, being based on fault. However, hypotheses can also be identified in which the liability of an objective nature, especially in situations where provisional measures have been ordered following a judicial error. The pecuniary liability could also be incurred by the applicant for the provisional measure, if it can be proven that he acted with abuse of rights, or with exceeding the limits of the subjective and procedural rights that he has.

As a **general conclusion**, at the end of the research we were able to find that it is difficult to outline a picture of the provisional in this matter, especially because the orientation of our legislator is most often an "isolated" one, focused on individual measures or procedures, which, at least in appearance, would seem to have no common features. In order to ensure the effectiveness of this dynamic area, which is often characterised by unpredictability, we believe that a first step is to establish a general framework, highlighting the principles and causes common to interim measures. At the same time, a balanced approach may be that of regulating common procedures and rules applicable, on the one hand, to measures ordered by administrative means (a coherent system being found in Spanish law) and, on the other hand, to measures ordered by judicial means, which cannot be limited to the suspension of the effects of the administrative act (a much more complex system can be found in French law).