

PROTECTION OF LEGITIMATE EXPECTATIONS IN THE CONTEXT OF REVOCATION OF UNLAWFUL ADMINISTRATIVE ACTS

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Abstract. This article examines the issues related to the annulment of unlawful administrative acts in administrative law, within the context of balancing the protection of legitimate expectations and the principle of legality. The article establishes the main criteria that administrative authorities and courts should follow when deciding on the annulment of unlawful favorable administrative acts, both *ex nunc* and *ex tunc*. Specifically, in the case of *ex nunc* annulment, emphasis is placed on maintaining a proper balance between the protection of legitimate expectations and the principle of legality, the time elapsed between the adoption and annulment of the unlawful favorable administrative act, and the need to establish a transitional period when annulling an unlawful administrative act in order to prevent disproportionate harm to the addressee. When considering the *ex tunc* annulment of an unlawful favorable administrative act, attention is given to the degree of reliance and engagement of the addressee on the act's legality, the extent of violation of the principle of legality, the interests of third parties, and the time elapsed between the adoption and annulment of the administrative act.

Keywords - *legitimate expectation, legality, favorable administrative act, ex nunc annulment, ex tunc annulment, proper balance, EU case law.*

Introduction

Issues related to unlawful administrative acts in administrative law represent a field of significant importance both in legal theory and in practical application. The balance between the legality of administrative acts and the protection of legitimate expectations creates complex legal and factual situations, in which individuals may rely on decisions without fully understanding their legality. Moreover, the

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annulment of unlawful favorable administrative acts can be carried out *ex nunc* or *ex tunc*, with differing effects on the rights of the addressee and the public interest.

The purpose of this study is to substantiate, through a comprehensive examination of comparative experience, national practice, and the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), that the annulment of unlawful administrative acts must be addressed in a balanced manner, ensuring legal certainty and the protection of individual legitimate expectations, while minimizing unjust impacts on third parties and the public interest. To this end, the article develops criteria that administrative authorities and administrative courts should follow when resolving the *ex nunc* or *ex tunc* annulment of unlawful favorable administrative acts.

Research

Legal norms applied in administrative law are often complex. The precise boundaries of lawful administrative action may not always be fully clear, even to specialists in the field. Lawyers themselves may debate where the line between legality and illegality lies, and judges may hold differing views on which side of the line a particular administrative act falls. In this context, given the complexity of contemporary administrative legislation, individuals are often unable to clearly understand that an administrative act or action is unlawful.

Naturally, the principles of legality and lawful administration require that if a public authority issues an unlawful decision, it must be annulled—especially where the illegality may have serious effects on third parties. However, it is clear that the revocation of unlawful decisions can have significant consequences for those who relied on them, trusting in their legality. The absence of any protection for legitimate expectations can therefore create substantial difficulties and undermine trust in public authorities, as individuals plan their lives and make financial or personal decisions based on these acts¹.

This issue presents a fundamental tension: fairness to the individual may conflict with the principle of lawful administration, which requires authorities to act only within powers explicitly granted and within the legal limits. The fact that unlawful decisions can generate expectations that authorities are then obliged to respect challenges this principle. By making unlawful declarations, authorities

¹ **Bradley AW**, 'Administrative Justice and the Binding Effect of Official Acts' (1981) *Current Legal Problems*, p. 3, **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), pp. 257–298:

may, intentionally or unintentionally, extend their powers beyond the limits prescribed by law². Different legal systems address this problem in varying ways.

In this context, it is of practical interest to consider the criteria that an administrative court or authority should apply when deciding whether to annul an unlawful administrative act with *ex tunc* or *ex nunc* effect. The rich case law of EU courts provides particularly useful guidance in this regard. The EU judicial practice on the annulment of unlawful decisions developed in the decisions of the European Coal and Steel Community (ECSC)³.

For research purposes, the detailed analysis of EU courts' case law is especially relevant for drawing conclusions on the protection of legitimate expectations when unlawful administrative acts are annulled. Relying on French and German judicial practice, EU courts have developed a complex public-law principle designed to balance the requirements of legality and fairness for individuals who plan their lives and rely on unlawful decisions⁴. Within this framework, a clear distinction is drawn between *ex tunc* and *ex nunc* annulments.

With regard to domestic regulations, Article 64(1) of the Law On Fundamentals of Administration and Administrative Proceedings⁵ (hereinafter Law) provides that an unlawful administrative act loses its legal effect either from the moment a decision declaring it invalid is adopted or from the moment the administrative act was originally adopted, subject to the exceptions set out in the second paragraph of the same subsection and in Article 64(2). The second paragraph of this subsection specifies that, in cases provided for in Article 63(4), an unlawful administrative act is deemed invalid from the moment it was adopted, unless otherwise provided by law. Article 63(4) identifies the circumstances in which an individual has no right to rely on an administrative act; in other words, these are cases in which the protection of legitimate expectations does not arise.

Thus, Article 64(1) shows that the legislature has, on one hand, granted the administrative authority discretion in determining the moment at which an administrative act loses its legal effect, and on the other hand, has identified specific cases in which an unlawful administrative act must be deemed invalid from the moment of adoption (where the individual has no right to rely on the act), and cases in which the act loses legal effect from the moment it is declared invalid.

² Minister of Agriculture and Fisheries v Mathews [1950] 1 KB 148.

³ **Craig P**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp. 613-618 **Schwarze J**, *European Administrative Law* (revised edn, Sweet & Maxwell 2006), pp. 991-1025.

⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 281-285:

⁵ Adopted on 18 February 2004.

According to Article 64(2), a favorable unlawful administrative act, which gives rise to simultaneous or ongoing property obligations or serves as a prerequisite for such obligations, may only lose its effect from the moment it is declared invalid if the beneficiary has already obtained the conferred benefits or disposed of the property in reliance on the act, and returning these benefits would cause substantial harm to the beneficiary.

Regarding the *ex nunc* annulment of unlawful decisions, the approach of the EU courts appears to be clear. Some rulings indicate that *ex nunc* annulment is, in principle, always possible⁶. In the recent case of *ZF*⁷, the EU Court reaffirmed that, according to established case law, any EU institution that finds an adopted act to be unlawful has the right to annul it within a reasonable period, with prospective effect. This right may, however, be limited by the need to respect the legitimate expectations of the act's beneficiary if they have relied on the act's legality⁸. The Court emphasized that an EU institution can annul an unlawful act only within a reasonable timeframe. Accordingly, the Court summarized that the annulment of a favorable unlawful act for the addressee is subject to two legal conditions: first, the legitimate expectations of the concerned party must be preserved, and second, the annulment must be carried out within a reasonable period⁹.

Similar criteria have been formulated by the European Court of Human Rights (ECtHR). In *Moskal v Poland*, the Court noted that, considering the importance of social justice, public authorities should not be deprived of the opportunity to correct their errors, even if these errors result from their own negligence. A contrary approach would conflict with the doctrine of unjust enrichment and would also be unfair to other participants in the social security system, particularly those who were denied benefits due to non-compliance with legal requirements. Finally, it would sanction the improper allocation of limited public resources, which would contradict the public interest¹⁰.

The Court has also emphasized that, despite the important considerations mentioned above, this general principle cannot prevail in situations where an individual is required to bear an excessively heavy burden as a result of being deprived of a benefit. If the error originates from the authorities themselves and no third party is at fault, a different approach must be applied in the proportionality

⁶ Case 15/60 *Simon v High Authority* [1961] ECR 115, 123.

⁷ Case T-605/18 *ZF v Commission* [2020] ECR, 148.

⁸ Case C-248/89 *Cargill v Commission* [1991] ECR, 20, Case T-233/16 *P Ruiz Molina v EUIPO* [2017] ECR, 27, Case T-365/24 *LU v EIB* [2026] ECR 100.

⁹ Case T-605/18 *ZF v Commission* [2020] ECR, 150.

¹⁰ ECtHR judgment *Moskal v. Poland* (10373/05) 15 September 2009, 73: See also ECtHR, judgement *Beinarovič and Others v Lithuania* (70520/10, 21920/10, 41876/11) 12 June 2018.

assessment to determine whether the burden imposed on the applicant is indeed excessive¹¹.

The case concerned the suspension of a previously awarded pension by a social security authority following the discovery of an administrative error. In this context, the Court highlighted two additional important factors relevant to the annulment of unlawful administrative acts: the applicant's good faith, the timing of the declaration of invalidity, and the provision for transitional arrangements¹².

The European Court of Human Rights (ECtHR) has recently reaffirmed that the principle of "good administration" requires public authorities, when a matter of public interest is involved—especially if it concerns fundamental rights such as property—to act promptly, properly, and with maximum consistency. As a general rule, the principle of good administration should not prevent authorities from correcting inadvertent errors, even if they arise from their own negligence. However, the need to correct "old errors" should not disproportionately interfere with new rights acquired by an individual who has reasonably relied on the legitimacy of the public authority's actions. In other words, public authorities that fail to comply with or observe their own established procedures should not benefit from their unlawful conduct or evade their obligations. Any risk arising from an error by a public authority must be borne by the state, and errors should not be remedied at the expense of the individuals concerned¹³.

Therefore, it can be concluded that *ex nunc* annulment is generally less intrusive for the beneficiary of an administrative act than *ex tunc* annulment. Both the ECtHR and EU courts typically consider it acceptable to annul a favorable unlawful administrative act from the moment it is declared invalid. However, two important factors must be considered by the administrative authority or court when examining the annulment of an administrative act.

Thus, in each case, the administrative authority or the court must consider the specific facts of the case, ensuring, through consistent application of the proportionality principle, an appropriate balance between the protection of legitimate expectations and the principles of legality. In this context, it is necessary to assess whether the initial measure created legitimate expectations and whether the *ex nunc* annulment occurs within a reasonable period. Thirdly, if the immediate entry into force of the *ex nunc* annulment would, by undermining legitimate

¹¹ *ibid.*

¹² ECtHR judgment *Moskal v. Poland* (10373/05) 15 September 2009, 67-76.

¹³ ECtHR, judgement *Eka Mikeladze and Others v. Georgia* (29385/11, 19372/12, 29533/13, and 73699/13) 25 November 2021, 49, ECtHR, judgement *Văleanu and Others v Romania* (59012/17 and 29 others) 8 November 2022, 247.

expectations, impose a disproportionately heavy burden on the addressee of the administrative act, a transitional period should be established, meaning that the administrative act would lose its effect at a later date.

Until now, the discussion has focused on the *ex nunc* annulment of favorable unlawful administrative acts. We will now turn to the criteria that a court or administrative authority should apply when considering the *ex tunc* annulment of administrative acts. As with *ex nunc* annulment, the starting point remains the need to balance the principle of legality with the protection of legitimate expectations¹⁴. However, because *ex tunc* annulment constitutes a more severe interference with legitimate expectations, the criteria in this context are significantly stricter¹⁵.

In examining this issue, it is practically important to identify the factors that should be considered when deciding whether to annul favorable unlawful administrative acts *ex tunc*. These criteria are based on an analysis of the case law of the European Court of Human Rights, the Court of Justice of the European Union, and the judicial practices of Germany, France, and the United Kingdom.

First, the annulment of a favorable unlawful administrative act should only be considered if the individual in whose favor the decision was made could not have reasonably held a legitimate expectation that the decision would finally resolve the matter in question. The issue is whether a person with general knowledge and experience could reasonably expect that the decision definitively settled the matter¹⁶. A legitimate expectation is more likely to be protected when it is difficult to establish that the act is unlawful, rather than when it clearly violates specific statutory provisions or fundamental procedural or substantive principles¹⁷.

The importance of reliance on the legality of the measure was emphasized in the *Lagardère and Canal* cases¹⁸. The EU General Court found that the initial decision was, in fact, lawful and therefore should not be annulled retroactively. Moreover, the Court noted that even if the initial decision had been unlawful due to additional restrictions, this would not justify retroactive annulment. The discrepancy with the additional restrictions was not so evident as to give the applicants, who were *bona fide* commercial enterprises, any reason to doubt the lawfulness of the decision at

¹⁴ Cases 7/56 and 3-7/57 *Algera v Common Assembly* [1957] ECR 39, 15/85 *Consorzio Cooperative d'Abruzzo v Commission*. [1987] ECR 1005 10-11.

¹⁵ Case 54/77 *Herpels v Commission* [1978] ECR, 38.

¹⁶ Case 112/77 *Töpfer v Commission* [1978] ECR 1019.

¹⁷ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 257–298.

¹⁸ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 616, Case T-251/00 *Lagardère SCA and Canal+ SA v Commission* [2002] ECR II-4825.

the time it was received. Thus, retroactive annulment would have conflicted with the applicants' legitimate expectations¹⁹.

Second, if it is established that an individual holds legitimate expectations, the administrative authority must take into account the extent to which the person has relied on the decision. Of particular importance is whether the individual has relied financially on the decision²⁰. However, financial reliance is neither necessary nor sufficient. The key question is the broader impact of retroactively annulling the decision.

The likelihood of the applicant's success will be lower if they cannot demonstrate reliance on the lawfulness of the measure that was subsequently annulled, particularly if they cannot show any negative consequences arising from the passage of time between the initial measure and its annulment or modification.

This reasoning is illustrated in the Alpha Steel case²¹. The applicant company had been allocated a steel quota for a specified period, which it challenged. During judicial review, the Commission replaced the contested decision, arguing that the previous decision was flawed. Nevertheless, the new decision established a lower quota than the previous one. The applicant argued that the Commission could not annul the decision under judicial review and replace it with a less favorable one. The CJEU rejected this argument²².

This reasoning aligns with Article 64(2) of the Law, which provides that a favorable unlawful administrative act that gives rise to simultaneous or ongoing property obligations, or serves as a precondition for such obligations, may only lose legal effect from the moment it is declared null and void if the beneficiary has, by virtue of their right to trust in the administrative act, already received the conferred benefits or disposed of the property in such a way that it cannot be returned, or that returning it would cause significant harm to the beneficiary.

Third, the importance or weight of the principle of legality must be taken into account. The more serious the violation, the more likely it is that the decision may be annulled. A decision that infringes fundamental rights is more likely to be revoked than a decision taken with procedural irregularities or based on an ambiguous misinterpretation of legislative provisions²³.

¹⁹ *ibid.*

²⁰ **Lord Mackenzie Stuart**, 'Legitimate Expectations and Estoppel in Community Law and English Administrative Law' (1983) LIEI 53, ¶ 60.; Cases 42 and 49/59 SNUPAT v High Authority [1961] ECR 53, 14/81 Alpha Steel v Commission [1982] ECR 749:

²¹ Case 14/81 Alpha Steel v Commission [1982] ECR 749:

²² **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 617.

²³ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 281–285:

In the *De Compte* case, the European Court ruled that compensation granted on the basis of a misinterpretation of the concept of “work-related” illness could not be annulled. Apparently, this was considered a relatively minor legal error that did not justify revocation of the decision to the detriment of the individual who had already suffered significant reliance²⁴.

However, an applicant is unlikely to succeed in cases where the measure is manifestly unlawful, leaving no room for any legitimate expectation of its validity. In the *Cargill* case²⁵, the CJEU reaffirmed the principle that the right to annul a manifestly unlawful measure retroactively is limited by the beneficiary’s legitimate expectation based on the measure’s apparent lawfulness. Nevertheless, the Court found that the contested measure had been annulled *ex tunc* within three months of the violation being identified. Moreover, the defect in the measure was so obvious that several traders had contacted the Commission to seek correction at the time of its publication. Consequently, a diligent trader could not reasonably rely on the lawfulness of such a flawed measure²⁶.

The CJEU applies this criterion even where the wording, purpose, or overall structure of the legal framework clearly indicates that annulment should operate retroactively. In particular, this refers to situations where overriding public interest can only be achieved if the administrative act is annulled from the moment it was adopted²⁷.

Fourth, it is necessary to consider how third parties would be affected if an unlawful decision were to remain in force. For example, in the *Hugovens* case, the European Court held that a tax advantage granted for scrap metal could be annulled retroactively, in particular because no other steel producers benefited from this advantage. Maintaining the benefit would have had a distorting effect on competition²⁸.

²⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), p. 292, Case C-90/95P *Henri de Compte v EP* [1997] ECR I-1999.

²⁵ Case C-365/89 *Cargill BV v Produktschap voor Margarine, Vetten en Olie* [1991] ECR I-3045, [18],

Case C-248/89 *Cargill BV v Commission* [1991] ECR I-2987, 20.

²⁶ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 617.

²⁷ Case 14/61: *Koninklijke Nederlandsche Hoogovens en Staalfabrieken NV v High Authority of the European Coal and Steel Community* [1962], Joined Cases C-74/00 P and C-75/00 P: *Falck SpA and Acciaierie di Bolzano SpA v Commission of the European Communities* [2002], Case C-611/17: *Republic of Italy v Council of the European Union (Fishing quota for Mediterranean swordfish)* [2019].

²⁸ Case 14/61 *Hoogovens v High Authority* [1962] ECR 253, 269-70.

However, for the consequences to third parties to carry significant weight in the balancing exercise, they must be relatively direct. De Compte provides a clear example²⁹: who could suffer harm from the unlawful decision to pay or not pay compensation to Mr. De Compte for his work-related illness? Only the community's finances, i.e., the totality of European taxpayers³⁰. There was no partner or individual subject to direct "harm" or discrimination as a result of the unlawful compensation³¹. Therefore, the Court's position is that when considering the annulment of a favorable unlawful administrative act affecting third parties, it is not a matter of automatically excluding the protection of legitimate expectations; rather, the legitimate expectations must be balanced against competing rights and interests³².

In this context, the recent decision of the Armenian Court of Cassation appears problematic. The Court stated: "...the right of the addressee of an administrative act to rely on its existence is not, by itself, sufficient to prevent the act from being annulled. It is necessary that, under Article 63(3) of the Law on the Principles of Administration and Administrative Procedure, another legislative prerequisite exists, namely that the continued operation of the administrative act does not harm the rights of any person, the Republic of Armenia, or any community.

According to the Court, the prerequisite that 'the operation of the administrative act does not harm the rights of any person' can only be considered fulfilled if the operation of the administrative act cannot reasonably affect or relate to the rights of third parties. Otherwise, when the operation of the act can reasonably impact the rights of others, the prerequisite for applying the legislative regulation to avoid annulment of an unlawful administrative act cannot be considered satisfied.³³

We consider that the protection of the addressee's reliance cannot be automatically subordinated to the interests of other individuals, the state, or the community, thereby excluding the first's protection in all cases. Whenever the addressee has a legitimate expectation of the administrative act, yet the act affects the rights or interests of others, the state, or the community, the proper approach is not to exclude the protection of legitimate expectations outright. Rather, the principle of proportionality should be applied rigorously to ensure a fair balance between the addressee's right to rely on the act and the protection of legality and

²⁹ Case C-90/95P *Henri de Compte v EP* [1997] ECR I-1999.

³⁰ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), p 292.

³¹ Case 15/85 *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005.

³² Case 111/63 *Lemmerz-Werke v High Authority* [1965] ECR 677.

³³ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 616.

³³ Decision of the Court of Cassation in administrative case No. VD/8615/05/20.

the prevention of harm to others. This approach is justified because it would be unfair to leave the full burden of administrative errors on the addressee, even if the actual harm to third-party interests is minimal.

Finally, it is necessary to take into account the period of time between the adoption of the decision and its annulment. Retroactive annulment must always be carried out within a reasonable timeframe. The duration of this period particularly depends on how difficult it was for the administrative body and the interested party to ascertain that the decision was unlawful, as well as how promptly the interested party was informed that the administrative body might annul the decision³⁴.

These criteria are rarely precisely defined in case law, and it is difficult to determine exactly what constitutes a “reasonable” period, although a period of several weeks is almost always considered acceptable. For example, in recent cases, the European Court has taken a stricter approach. In *Consorzio Cooperative d’Abruzzo*³⁵, the applicant requested the annulment of a decision by the European Agricultural Guidance and Guarantee Fund (EAGGF), which reduced the aid by approximately one billion lire. The reduction decision was adopted two years after an earlier decision granting the applicant a higher amount of aid. The Commission argued that the retroactive annulment was justified because the previous decision had been legally incorrect³⁶.

The European Court disagreed and held that the retroactive annulment of an unlawful measure is acceptable only if it is carried out within a reasonable timeframe and if the Commission pays sufficient attention to the extent to which the applicant could have relied on the legality of the measure. In this case, the retroactive annulment failed for two reasons. First, the reduction decision was made two years later, which was not a reasonable period because the Commission could have discovered and corrected its error earlier. Second, the applicant had reasonably relied on the legality of the initial decision, as the errors were not obvious.

The European Court of Justice (ECJ) also ruled in favor of the applicant in *de Compte*³⁷. Recall that the respondent attempted to justify the retroactive annulment of the previous decision on the basis that it was unlawful, as it had been adopted due to a misinterpretation of work-related illness provisions. The ECJ rejected this

³⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), pp. 296–297.

³⁵ Case 15/85 *Consorzio Cooperative d’Abruzzo v Commission* [1987] ECR 1005.

³⁶ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp 615-616.

³⁷ Case C-90/95 P *Henri de Compte*, Case T-416/04 *Kontouli 161–170*, Case F-51/07 *Philippe Bui Van v Commission*, EU:F:2010:108.

argument. The Court affirmed that an unlawful measure may be annulled retroactively within a reasonable timeframe; however, this right is limited by the requirement to respect the legitimate expectations of the measure's addressee, who relied on its legality. In this case, the applicant was entitled to rely on the legality of the measure that the respondent sought to annul. Moreover, there was no evidence that the applicant had been misled or had received incomplete or false information regarding the prior decision. Additionally, no overriding public interest existed that would outweigh the beneficiary's justified reliance on a stable and maintained situation³⁸.

These rulings demonstrate that the concept of a "reasonable delay" is inextricably linked to the balance between legitimate expectations and legality. As discussed above, the *de Compte* case involved significant interests in favor of the applicant, weak arguments in favor of legality, and no risk of harm to third parties³⁹. Consequently, to ensure an overall fair outcome, the European Court substantially curtailed the "reasonable" timeframe⁴⁰.

In summary, regarding the retroactive (*ex tunc*) annulment of unlawful favorable administrative acts, annulment from the date of adoption should be applied only in exceptional circumstances, in light of the need to preserve legal certainty and protect legitimate expectations. When addressing the retroactive annulment of unlawful favorable administrative acts, the administrative body or court must take into account: the degree to which the addressee relied on the legality of the administrative act and the extent of their interest in it; the weight of legality; the interests of third parties; and the period of time elapsed between the adoption of the administrative act and its annulment.

Conclusion

In summary of the research, it can be noted that the *ex nunc* annulment of unlawful administrative acts is generally, all else being equal, less intrusive for the addressee of the administrative act than *ex tunc* annulment. This is explained by the fact that both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) generally consider it acceptable to annul unlawful favorable administrative acts from the moment they are declared invalid. However,

³⁸ Craig P, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp. 616, 618.

³⁹ Søren J. Schönberg, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), p. 292:

⁴⁰ Case 14/61 *Hoogovens v High Authority* [1962] ECR 253, 5.

two aspects must be emphasized, which the administrative authority or the court must take into account when examining the annulment of an administrative act.

Thus, in each case, the administrative authority or the court must consider the specific facts of the case, applying the principle of proportionality consistently, to ensure an appropriate balance between the protection of legitimate expectations and the principle of legality. In this context, it is necessary to assess whether the initial measure gave rise to legitimate expectations, and whether the *ex nunc* annulment occurs within a reasonable period. Thirdly, if the immediate entry into force of the *ex nunc* annulment would, by disrupting legitimate expectations, impose a disproportionately heavy burden on the addressee of the administrative act, a transitional period should be established, meaning that the administrative act would lose its legal effect at a later date.

With regard to the *ex tunc* annulment of unlawful favorable administrative acts, it can be noted that, due to the need to ensure legal certainty and the protection of legitimate expectations, such annulment from the moment of adoption should only be applied in exceptional cases. When resolving the *ex tunc* annulment of unlawful favorable administrative acts, it is necessary to take into account the addressee's degree of reliance on the legality of the administrative act, their level of involvement, the weight of the principle of legality, the interests of third parties, and the period between the adoption of the administrative act and its annulment.

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

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29. Minister of Agriculture and Fisheries v. Mathews [1950] 1 KB 148.
30. Decision of the Court of Cassation, administrative case No. VD/8615/05/20