

PROVISIONAL MEASURES IN ADMINISTRATIVE ADJUDICATION:
PREVENTIVE JUDICIAL POWER PROPORTIONALITY,
AND THE RULE OF LAW

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Abstract

Provisional measures prior to judgment are essential to ensuring effective judicial protection in administrative adjudication. In disputes involving public authorities, the enforcement of administrative acts during pending proceedings may cause irreparable or disproportionate harm that cannot be remedied by a final judgment. Focusing on the practice of the Administrative Court of First Instance within a civil-law administrative justice system, this article examines the operation of interim judicial intervention under conditions of legal and factual uncertainty. Using a doctrinal legal research methodology combined with qualitative analysis of administrative case law, the study analyzes judicial reasoning on the prevention of irreparable harm, the application of proportionality, the balancing of competing interests, and the exercise of ex officio powers. The findings show that provisional measures do not constitute premature adjudication on the merits, but rather function as an expression of preventive judicial power aimed at preserving the practical effectiveness of judicial review. Proportionality is identified as the governing logic of interim intervention, enabling courts to balance individual rights protection with the legitimate functioning of public administration. By conceptualizing provisional measures as a structural safeguard within administrative justice, this article contributes to international administrative law scholarship and offers insights relevant to comparative public law and the rule of law.

Keywords: Preventive judicial power; Provisional measures; Administrative adjudication; Proportionality; Effective judicial protection

Introduction

Effective judicial protection constitutes a foundational principle of administrative justice and a core requirement of the rule of law (Khabirpour, 2023). In administrative disputes, however, judicial review often unfolds over extended periods, during which administrative acts may continue to produce immediate, irreversible, or disproportionate effects (Abouyounes, 2025). Where such effects materialize before a final judgment is rendered, the availability of post hoc remedies alone may be insufficient to secure meaningful legal protection (Queenan, 2020). Provisional measures prior to judgment therefore play a critical role in ensuring that judicial protection is not rendered illusory (Lando, 2025).

In administrative adjudication, provisional measures enable courts to intervene at an interim stage in order to prevent irreparable harm, preserve the effectiveness of judicial review, and maintain the practical utility of future judgments (Polymenopoulou, 2025). Despite their functional importance, provisional measures raise persistent doctrinal tensions. They require courts to act under conditions of legal and factual uncertainty, to assess risks rather than established violations, and to intervene before adjudicative certainty is achieved (Lando, 2025). This has generated long-standing concerns regarding judicial overreach, premature interference with administrative discretion, and potential encroachment upon the separation of powers (Squitieri, 2024).

Existing scholarship has addressed provisional measures primarily through the lens of interim relief doctrine, focusing on admissibility requirements, urgency thresholds, and balancing techniques. In European Union law, interim judicial protection has been conceptualized largely in relation to the principle of effectiveness and the duty of national courts to safeguard EU rights pending final adjudication (Samuilyte-Mamontove, 2014). German administrative law has developed a structured approach to provisional measures through the concepts of Anordnungsanspruch and Anordnungsgrund, emphasizing plausibility and urgency, while French administrative jurisprudence has refined expedited interim procedures such as référé suspension to enable rapid judicial intervention based on urgency and serious doubt as to legality. At the supranational level, the case law of the European Court of Human Rights has framed interim measures as instruments necessary to prevent irreversible violations of Convention rights (Isa Daniel & Ní Ghráinne, 2024).

While these bodies of scholarship and jurisprudence provide sophisticated accounts of when and how interim relief may be granted, they largely treat provisional measures as derivative procedural tools, ancillary to merits adjudication or constitutional review (Pretelli,

2020). The deeper doctrinal significance of provisional measures as a distinct mode of judicial power within administrative adjudication particularly their preventive orientation under conditions of uncertainty has received comparatively limited systematic attention.

This article addresses that gap by examining provisional measures as a structural component of administrative adjudication rather than as a merely auxiliary procedural device. It argues that provisional measures perform a preventive function that is qualitatively distinct from both procedural interim relief and substantive adjudication on the merits. Operating before full evidentiary development and final legal determination, provisional measures reflect a mode of judicial intervention oriented toward risk prevention and the avoidance of irreversible harm, rather than retrospective assessment of legality alone.

No existing scholarship has conceptualized provisional measures as an autonomous doctrinal category of preventive judicial power in administrative adjudication. By advancing this conceptualization, the article moves beyond descriptive accounts of interim relief and offers a theoretical framework capable of explaining how administrative courts legitimately exercise interim authority without prejudging the merits, while remaining faithful to the principles of proportionality, legality, and the rule of law.

Research Objectives

1. To examine the function of provisional measures in preventing irreparable harm and ensuring effective judicial protection in administrative adjudication.
2. To conceptualize provisional measures as preventive judicial power and to analyze the role of proportionality in structuring interim judicial intervention.

Methodology

This study employs a doctrinal legal research methodology, supplemented by qualitative analysis of administrative case law, to examine the legal nature, function, and judicial application of provisional measures prior to judgment in administrative adjudication. The methodology is designed to ensure analytical rigor, transparency, and reproducibility in line with international standards for methodologically rigorous legal scholarship.

1. Research Design and Approach

The research adopts a qualitative, interpretive approach grounded in public and administrative law theory. The study focuses on the examination of legal norms governing

provisional measures, judicial reasoning applied by the Administrative Court of First Instance, and the underlying principles guiding interim judicial intervention.

Rather than relying on empirical or quantitative data, the research emphasizes normative coherence and doctrinal consistency, which are central to methodologically rigorous legal scholarship (Taekema, 2021). This approach enables the identification of legal patterns and principles that transcend individual cases and inform the systemic operation of administrative adjudication (Theil, 2025).

2. Doctrinal Analysis

Doctrinal analysis constitutes the primary methodological component of this study. Relevant constitutional provisions, administrative procedural laws, court regulations, and judicial guidelines concerning provisional measures are systematically examined in order to clarify their legal foundations, scope, and limitations. The analysis addresses the legal objectives pursued by provisional measures, the conditions under which such measures may be ordered, and their relationship to final adjudication on the merits. Particular attention is also given to the principles of proportionality and legality as governing standards of judicial discretion in the ordering of provisional measures

3. Case Law Selection and Analysis

This study undertakes a qualitative examination of selected decisions and orders of the Administrative Court of First Instance concerning the application of provisional measures prior to judgment. Cases are selected on the basis of their relevance to interim relief, the suspension of administrative enforcement, and the provision of preventive judicial protection. Judicial reasoning is analyzed in order to identify the criteria applied by the Court in assessing irreparable harm, the methods used to balance individual and public interests, and the exercise of *ex officio* powers. Particular attention is also given to judicial statements emphasizing the non-prejudicial nature of provisional measures in relation to final adjudication on the merits. The analysis prioritizes reasoned judicial orders that articulate substantive legal reasoning rather than merely procedural outcomes.

4. Analytical Framework

The findings are interpreted through an analytical framework derived from administrative law theory, with particular emphasis on the principle of proportionality, the concept of effective judicial protection, the inquisitorial model of administrative adjudication, and rule-of-law theory (Al-Hamshari & Faghihi, 2023). This framework enables the study to

move beyond purely descriptive analysis and to situate judicial practice within broader doctrinal and theoretical contexts.

5. Limitations of the Methodology

The study is limited to doctrinal and qualitative case-law analysis and does not incorporate empirical data such as statistical trends or interviews with judges or litigants. While this approach is consistent with established methods in administrative law scholarship, the findings should be understood as analytical and normative insights, rather than empirical generalizations.

Future research may complement this approach with comparative or empirical methods to further explore the practical operation and impact of provisional measures across different administrative law systems.

Results

1. General Patterns in the Use of Provisional Measures

The analysis of decisions of the Administrative Court of First Instance reveals that provisional measures are applied through context sensitive judicial reasoning rather than fixed procedural formulas. Across the examined case law, courts consistently emphasize that interim intervention is justified only where the continuation of administrative enforcement during pending proceedings would risk rendering judicial review ineffective.

In multiple decisions concerning the suspension of administrative enforcement, the Court expressly reasoned that provisional measures are warranted where “the execution of the challenged administrative act may cause damage of such a nature that subsequent annulment would no longer provide effective relief” At the same time, the Court repeatedly affirmed that interim relief must not amount to an advance determination of legality, stressing that “the ordering of provisional measures does not prejudge the merits of the case, which remain subject to full adjudication” (Aghababyan, 2012).

Judicial practice thus reflects a consistent effort to reconcile urgency and restraint. While courts acknowledge the necessity of rapid intervention to prevent irreparable harm, they simultaneously frame provisional measures as temporary and reversible instruments designed solely to preserve the effectiveness of future judgments. This dual orientation forms the empirical foundation for understanding provisional measures as an exercise of preventive judicial power.

2. A Functional Typology of Provisional Measures

Based on the qualitative analysis of judicial reasoning, this study identifies a functional typology of provisional measures implicitly employed by the Administrative Court of First Instance. The typology captures how courts calibrate interim intervention in response to differing configurations of harm, urgency, and proportionality.

2.1 Protective Measures

Protective measures constitute the most frequently observed form of provisional intervention. They are typically ordered where immediate enforcement of an administrative act would result in irreversible or irreparable harm, such as the demolition of property, termination of essential social benefits, or environmental degradation.

In several cases concerning demolition orders, the Court reasoned that “once the factual consequences of enforcement have materialized, restoration through a final judgment would no longer be possible”, thereby justifying suspension pending adjudication. The urgency assessment in such cases focuses on the imminence and severity of harm rather than on a definitive assessment of legality.

Proportionality reasoning in protective measures is characterized by minimal judicial intrusion. Courts limit intervention strictly to what is necessary to avert irreversible harm, often emphasizing that suspension of enforcement preserves the status quo without imposing positive obligations on the administration. This restraint-oriented approach underscores the preventive, rather than corrective, nature of such measures.

2.2 Stabilizing Measures

Stabilizing measures are employed where the primary judicial concern is not immediate physical harm, but the risk that evolving legal or factual conditions may undermine the effectiveness of judicial review. These measures aim to maintain the status quo during the pendency of proceedings.

In cases involving administrative restructuring or regulatory changes, the Court has ordered temporary suspension to prevent alterations that would “create legal consequences difficult to reverse even if the claimant ultimately prevails”. Urgency in these cases is assessed in relation to institutional or procedural disruption rather than immediate material damage.

Proportionality plays a central role in stabilizing measures by guiding courts to balance the need for institutional continuity against the public interest in administrative efficiency. Judicial reasoning frequently emphasizes that stabilization is justified only where

the risk to effective judicial protection outweighs the temporary inconvenience imposed on administrative authorities.

2.3 Corrective Measures

Corrective measures represent the most intensive form of provisional intervention and are ordered in exceptional circumstances. These measures involve temporary rebalancing of legal positions, such as ordering provisional payments, reinstatement, or access to public services pending final judgment.

In cases concerning suspension from public office or termination of essential benefits, the Court has reasoned that “requiring the applicant to bear the full consequences of enforcement while awaiting judgment would impose a disproportionate burden incompatible with effective judicial protection”. Urgency in such cases is closely linked to the claimant’s vulnerability and the severity of interim deprivation.

Given their intrusive nature, corrective measures are subject to heightened proportionality scrutiny. Courts carefully delimit their scope and duration, explicitly noting that such measures are justified only where less intrusive alternatives would be insufficient to prevent disproportionate harm. Judicial language consistently reiterates that corrective measures are provisional, conditional, and reversible.

2.4 Doctrinal Significance of the Typology

The identified typology demonstrates that provisional measures are not applied as a monolithic procedural instrument, but rather as a graduated set of preventive judicial responses calibrated to varying levels of risk and urgency. The differentiation between protective, stabilizing, and corrective measures reflects increasing degrees of judicial engagement corresponding to the severity and irreversibility of potential harm.

Crucially, the case-law confirms that courts structure this graduated intervention through proportionality reasoning rather than through premature determinations on the merits. By explicitly acknowledging uncertainty and emphasizing reversibility, judicial practice supports the conclusion that provisional measures function as an expression of preventive judicial power a mode of intervention aimed at safeguarding effective judicial protection while respecting the boundaries of adjudicative authority.

Discussion

1. Preventive Judicial Power as a Distinct Doctrinal Category

The findings support a reconceptualization of provisional measures that moves beyond their conventional characterization as ancillary or auxiliary procedural tools. Preventive judicial power emerges as a distinct doctrinal category within administrative adjudication, differentiating provisional measures from both procedural interim relief and substantive adjudication on the merits. Unlike interim measures in private law litigation, which primarily serve party-centered procedural convenience, preventive judicial power is exercised as an institutional function oriented toward safeguarding the effectiveness of judicial review under conditions of uncertainty and potential irreversibility.

Preventive judicial power is marked by three defining features. First, it is exercised prior to adjudicative certainty and without definitive findings of legality. Second, it is justified not by retrospective assessment of unlawful conduct, but by prospective evaluation of risk and potential harm. Third, it operates within a constitutionally constrained framework that seeks to preserve the balance between judicial protection and administrative autonomy (Yu, 2025). Framing provisional measures in this way shifts the analysis from descriptive case application to doctrinal theory building and clarifies the systemic role of interim judicial intervention in administrative justice.

2. Typology of Provisional Measures and Graduated Judicial Intervention

The results further indicate that preventive judicial power is not exercised uniformly, but manifests through a differentiated typology of provisional measures reflecting varying degrees of judicial engagement. The typology comprising protective, stabilizing, and corrective measures provides an analytical framework for understanding how courts calibrate interim intervention in response to differing risk profiles.

Protective measures represent the most restraint-oriented form of intervention, aimed solely at preventing irreversible harm. Stabilizing measures focus on maintaining the status quo to preserve the effectiveness of judicial review. Corrective measures, by contrast, involve a temporary rebalancing of legal positions and constitute the most intensive form of preventive judicial action. The existence of this typology underscores that provisional measures function as graduated responses rather than as a binary choice between intervention and non-intervention.

By articulating these categories, the analysis demonstrates that preventive judicial power is structured and internally differentiated rather than discretionary in an unprincipled

sense. The typology thus enhances doctrinal clarity and provides a transferable analytical tool for comparative and theoretical scholarship.

3. Ex Officio Provisional Measures as a Structural Response to Power Asymmetry

A central finding concerns the role of ex officio judicial powers in the ordering of provisional measures. Rather than treating such powers as marginal or exceptional, they are more convincingly understood as a structural response to power asymmetry in administrative justice.

The ex officio ordering of provisional measures functions as an institutional correction mechanism addressing structural inequality between administrative authorities and individuals. In administrative proceedings, public authorities typically possess informational, procedural, and resource advantages that may impede effective access to justice. Ex officio intervention enables courts to counteract these asymmetries where individuals may be unable, due to urgency or lack of resources, to articulate or substantiate interim relief requests adequately.

This perspective situates provisional measures within broader constitutional values, including equality of arms, access to justice, and effective judicial protection (de Benito et al., 2025). Preventive judicial power thus appears not as judicial activism, but as an institutional safeguard embedded within the design of administrative adjudication.

4. Proportionality as a Procedural Doctrine at the Provisional Stage

The findings also support a refined understanding of proportionality in the context of provisional measures. While proportionality is traditionally conceptualized as a substantive balancing principle, at the provisional stage it operates as a procedural doctrine structuring judicial discretion under conditions of uncertainty.

In circumstances of incomplete evidence and unresolved legality, proportionality functions as a procedural filter that calibrates the intensity, scope, and duration of preventive intervention. Courts rely on proportionality not to resolve the merits of the dispute, but to ensure that interim measures remain temporary, reversible, and strictly necessary to prevent irreparable harm. This procedural understanding explains how courts can intervene preventively without prejudging legality, thereby maintaining judicial impartiality while ensuring effective protection.

5. Comparative Reflections: Preventive Judicial Power in Civil Law Systems

Although grounded in a specific administrative court context, the concept of preventive judicial power resonates beyond a single jurisdiction. Comparable forms of interim

judicial intervention can be identified across civil law systems, indicating a shared doctrinal response to uncertainty, irreversibility, and the demands of effective judicial protection.

In European Union law, interim relief is closely linked to the principle of effectiveness, requiring national courts to adopt provisional measures necessary to safeguard EU rights pending final adjudication. German administrative adjudication structures provisional measures around the requirements of Anordnungsanspruch and Anordnungsgrund under the Verwaltungsgerichtsordnung, emphasizing plausibility and urgency rather than definitive legality. In French administrative law, the référé suspension procedure permits expedited intervention based on urgency and serious doubt as to legality, expressly without prejudging the merits (Zvyagintsev, 2021).

These comparative examples reinforce the view that preventive judicial power is not jurisdiction-specific, but reflects a transsystemic doctrinal pattern within contemporary administrative governance.

6. Implications for Administrative Justice Design

Reconceptualizing provisional measures as preventive judicial power carries important normative implications for the design of administrative justice systems. First, it enhances judicial legitimacy by clarifying the rationale and limits of interim intervention. Second, it reinforces the separation of powers by situating preventive judicial action within a proportionality-based and temporally constrained framework. Third, it contributes to public trust in administration by ensuring that individuals are not exposed to irreversible harm while awaiting judicial review.

Recognizing preventive judicial power as a doctrinal category enables legislators and courts to formulate clearer standards governing interim intervention, thereby strengthening both the effectiveness and the constitutional integrity of administrative adjudication.

Conclusion

This study has examined the role of provisional measures prior to judgment within administrative adjudication, with particular attention to the practice of the Administrative Court of First Instance. The analysis demonstrates that provisional measures function as a central judicial mechanism for ensuring the practical effectiveness of legal protection, rather than as a preliminary or anticipatory adjudication on the merits. By intervening at an interim stage, the

Court is able to prevent irreparable or disproportionate harm that would otherwise undermine the value of subsequent judicial review.

The findings confirm that the application of provisional measures is governed by a structured exercise of judicial discretion grounded in the principle of proportionality. Through the careful balancing of individual harm against public interest considerations, administrative courts reconcile the protection of fundamental rights with the legitimate functioning of public administration. This proportionality-based approach enhances judicial legitimacy and mitigates concerns regarding undue interference with executive authority.

A further contribution of the study lies in elucidating the proactive role of administrative courts operating under an inquisitorial adjudicative model. The capacity to order provisional measures *ex officio* reflects an institutional responsibility to ensure effective justice in contexts characterized by structural power asymmetries between public authorities and individuals. When exercised within clearly defined legal limits, such proactive intervention strengthens access to justice without compromising procedural fairness.

Importantly, the analysis also confirms that provisional measures do not prejudice the Court's final determination on the merits. By maintaining a clear doctrinal separation between interim protection and substantive adjudication, administrative courts safeguard judicial impartiality and preserve confidence in the adjudicative process. Provisional measures thus remain temporary, conditional, and reversible instruments serving a protective rather than determinative function.

At a systemic level, the study underscores the significance of provisional measures as a structural element of the rule of law in administrative governance. By controlling the immediate effects of administrative action, courts ensure that legality is not rendered ineffective by irreversible consequences or procedural delay. Provisional measures thereby operate as a bridge between the authority of public administration and the protection of individual rights.

Recognizing preventive judicial power as an autonomous doctrinal category invites a rethinking of interim judicial review in administrative governance beyond individual jurisdictions. It provides a coherent framework for understanding how courts may legitimately intervene under conditions of uncertainty while respecting constitutional limits, and it offers a foundation for future comparative and theoretical research on the evolving role of interim judicial protection in contemporary administrative justice.

Suggestions

1. administrative courts should provide more explicit and structured reasoning when ordering provisional measures, particularly by clearly articulating assessments of irreparable harm, urgency, and proportionality. Explicitly stating that such measures do not prejudice the merits would enhance legal certainty, strengthen judicial legitimacy, and improve the transparency of interim judicial intervention.

2. legislators and court administrators should consider developing clearer procedural guidelines on the scope, duration, and review of provisional measures. Such guidance would promote consistency in judicial practice while preserving the flexibility necessary for courts to respond effectively to situations involving legal uncertainty and power asymmetry between public authorities and individuals.

3. judicial training and continuing legal education programs should emphasize the doctrinal understanding of provisional measures as an expression of preventive judicial power. Strengthening judicial awareness of this concept would support a more principled and proportionate use of interim measures, ensuring effective judicial protection without encroaching upon administrative autonomy.

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