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Nullity of administrative acts

The *sui generis* nature and cross-cutting application of grounds for invalidity in administrative law

Dissertation - theses

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1. Research objectives and significance

Twenty years ago, while still a law student, I began my professional career in public administration at the Constitutional Law Department of the Ministry of Justice. Although my interest in constitutional law has remained undiminished ever since, administrative law—and, more specifically, administrative procedure and administrative litigation—has, in a sense, consistently accompanied every stage of my professional career. Around that time, work began on the first major amendment of the 2004 Administrative Procedure Act ("Ket."). While serving as Head of Department, I had the privilege of participating in the preparation of Act CXI of 2008 amending Act CXL of 2004 on the general rules of administrative procedures and services, as well as Act LVI of 2009 on legislative amendments transposing Directive 2006/123/EC on services in the internal market – a so-called "omnibus statute" – which involved an exceptionally intensive workload. It was also at this time that two colleagues and I were entrusted, for the first time in Hungarian administrative law, with preparing a draft bill on the general framework governing administrative contracts. My involvement was perhaps justified by the fact that my paper on administrative contracts had won first prize at the National Scientific Students' Associations Conference (OTDK) in 2006, when a more in-depth doctrinal analysis of this legal institution was still considered innovative at the time. It was also during this period that Pál Sonnevend observed in a constitutional law seminar that **constitutional law defines the limits of public power, while the practical problems of public authority emerge in concrete administrative cases.** Thanks to Marianna Nagy, I was also able to study French administrative law—often regarded as the cradle of administrative law—first as an Erasmus student in Paris and later as a recipient of a French Government scholarship in Aix-en-Provence.

My search for a professional path was further reinforced in 2012, when Complex Publishing entrusted us—then young, relatively unknown but highly motivated lawyers—with preparing, editing, and substantially authoring a structured "two-level" case-law commentary on the "Ket." (later extended to the 2016 General Administrative Procedure Act ["Ákr."] and the 2017 Administrative Court Procedure Act ["Kp."]), based on a renewed methodological approach grounded in case law. It was while working on the commentary to the rules on nullity in Section 121 of the "Ket." that I began to develop a deeper interest in the theory and practice of unlawful (defective) administrative acts. This interest was further strengthened by my work as a judicial clerk at the Administrative College of the Curia of Hungary, made possible by then-President Péter Darák, where I gained direct insight into the judicial ethos of administrative judges under the guidance of Judge András György Kovács.

In my various roles – as a judicial clerk, court secretary, administrative judge, solicitor, and, for more than half a decade, as a chamber legal adviser reviewing individual administrative acts of the Hungarian data protection authority – the core of my professional activity has consisted of analysing administrative acts issued by public authorities, identifying their defects, and—depending on my role—either annulling or amending them, or ensuring at an earlier stage that their preparation complied with legal requirements. As a solicitor, I identified grounds of challenge on which administrative decisions could be annulled by courts. In practice, I encountered a wide spectrum of defects: minor procedural irregularities; defects curable through clarification of facts; and serious defects requiring reopening or termination of proceedings, including cases of lack of jurisdiction.

In light of the above, **it became evident that I should choose the doctrine of defective or unlawful individual administrative acts and procedural irregularities as the subject of my doctoral thesis**, taking as a starting point – but also moving beyond – the concept of nullity as developed in the general codes of administrative procedure. The analysis further extended to the "generally applicable provisions applied in individual cases" and "administrative

contracts", both of which were transformed into distinct legal concepts by the "Kp.", in the codification of which I had the privilege of participating on the judicial side.

In my doctoral thesis, I examined how substantive and procedural defects have been assessed in Hungarian administrative law across historical and theoretical sources, statutory frameworks, and judicial practice; what qualifies as an unlawful and/or invalid administrative act; and, in particular, what nullity signifies – and continues to signify- as a specific form of administrative invalidity. **The thesis therefore focuses on the administrative acts (individual, generally applicable provisions applied in individual cases, contracts) affected by nullity.**

However, defects in administrative acts cannot be analysed in isolation, since they form part of a coherent system of administrative remedies. Accordingly, I also examined other categories of defects and systematised them along a continuum. This raised the question of the appropriate overarching conceptual framework, variously described as defects in administrative acts, general requirements of legality, or conditions of validity. Because Sections 85(3) and 92(1) of the "Kp." systematise defects irrespective of the type of act, I most frequently used the term "the theory of invalidity in administrative law", while I was aware that "Kp." establishes a coherent doctrinal structure including non-existent acts, nullity, other statutory grounds for invalidity, breaches of essential procedural rules, and acts based on inapplicable legal provisions. With the exception of non-existent acts, these categories may be understood as failures to meet validity requirements and thus as forms of invalidity. From a doctrinal perspective, however, I treated this as a working concept, extendable so as to include non-existent acts.

Within this framework, I examined how the legislature, administrative legal theory, and Hungarian administrative and civil courts have addressed **the question of when a defective administrative act must be removed from the legal order.** I also explored whether administrative invalidity and nullity—despite their conceptual proximity (compared to other branches of law as well) —**can be regarded as autonomous, *sui generis* legal institutions with distinct normative content, function, and purpose, and whether this conceptual framework can be applied uniformly across different types of administrative acts.**

The subject of the research is therefore the doctrine of unlawful (defective) administrative acts, structured along two dimensions: determining when an act is lawful or unlawful, and identifying the legal consequences of unlawfulness (invalidity).

Although the "Kp." formally extends to all administrative acts, discussions of nullity and procedural defects remain centred on individual administrative acts issued by public authorities. **One of the aims of the thesis was therefore to examine whether Hungarian administrative procedural law is moving towards a paradigm shift beyond administrative authority proceedings, and whether the doctrine – originally developed for individual administrative acts – can or should be extended to all types of administrative acts, with the exception of rules inherently linked to the "Ákr.".**

By emphasising the cross-cutting (transversal) nature of the topic, I sought to capture a regulatory duality: a highly developed doctrinal system governing traditional individual administrative acts, including nullity, on the one hand; and an expanded regulatory environment in which other administrative acts are included without equivalent doctrinal elaboration, despite being equally affected by defects requiring principled treatment.

By "cross-cutting nature", I also mean that administrative law should assess the extent to which doctrines of defects developed for one category of administrative act may be transferred to others. This includes the question of whether doctrines of invalidity developed in other branches of law may be appropriately received within the autonomous

conceptual framework of administrative law. This does not imply harmonisation, but rather selective reception and adaptation.

The topic is timeless and universal. The legal treatment of defects in administrative decisions—whether attributable to the administration or to other actors—has remained a persistent concern in administrative law since the emergence of the modern rule-of-law administrative state and systems of administrative adjudication. This persistence reflects the need to reconcile a set of constitutional principles that are not always easily aligned. Any theory of defective administrative decisions must accommodate legality and legal certainty, including the protection of legitimate expectations, while also taking into account the interests of the parties, the functional efficiency of public administration, the effectiveness of legal remedies, and the balance between objective and subjective forms of legal protection. Procedural requirements cannot be reduced to merely formal administrative constraints; at the same time, minor defects should not be elevated into disproportionate grounds for annulment that trigger unnecessary repetition of proceedings, thereby imposing avoidable burdens on public authorities, courts, and affected parties alike, and delaying substantive resolution of cases.

A coherent doctrine of defective administrative decisions should reflect the normative commitments of the rule of law without turning legality into an end in itself. It must avoid both the trivialisation of infringements of individual rights and the instrumentalisation of annulment as a form of abstract legal formalism or punitive control over administrative action.

The doctrine of defective administrative acts thus simultaneously examines the values and the fallibility of public administration, including its improprieties, errors, and sins. This dissertation therefore examines whether Hungarian administrative law theory and practice have attributed substantive normative content to grounds for invalidity, moving beyond a narrowly procedural understanding of legality and nullity. A purely formal conception of invalidity risks reducing administrative law to a **technocratic system of defect classification**, detached from any normative expectations regarding public authority and its relationship with individuals and economic actors. **In this context, the analysis also addresses whether doctrines of invalidity may contribute to addressing administrative anomie and whether they can be understood as an integral component of "good administration."**

Contemporary administrative law is characterised by increasing normative complexity. The expansion and fragmentation of legislation, the growing influence of EU law and its principle-based regulatory techniques, and the structural interaction between EU and domestic legal orders have contributed to heightened legal uncertainty in administrative decision-making. In Hungary, despite my generally positive assessment of the "Ákr." and the "Kp.", particularly in relation to the subject of this research, these developments have required substantial revision of the analytical framework underlying this dissertation. Further uncertainty arises from the expansive interpretative use of Article 28 of the Fundamental Law of Hungary, as well as from interpretative practices that supplement or occasionally displace statutory text on the basis of references to legislative intent. In administrative practice, the recurrent question of "what the legislator intended" has, in certain contexts, begun to compete with the text-based application of law itself. From a practical perspective, a general principle-based judicial approach—characterised by flexibility but also by a degree of unpredictability—coexists with a highly detailed, casuistic legislative style that regulates individual situations with increasing specificity. This combination generates significant interpretative tension and complicates the identification of the applicable legal basis. Unlike the notion of an "invisible Constitution" developed in the Hungarian constitutional theory and practice, administrative authorities are required to operate within a legal environment in which the content of statutory norms must remain sufficiently determinate to ensure lawful, efficient, and timely decision-making, without excessive litigation costs or procedural delay.

It is a structural feature of public administration that errors occur. Mass administration, workforce mobility, and the fact that administrative decisions are first shaped within the executive branch itself—often under conditions of rapid regulatory change—mean that full compliance with all legal requirements remains an aspirational standard rather than an empirical reality. Against this background, the question of the legal consequences of defective (unlawful) administrative decisions remains of enduring relevance.

Finally, **the increasing deployment of artificial intelligence in public decision-making** further reinforces the contemporary significance of this topic. This dissertation therefore also considers whether traditional doctrines of invalidity are capable of accommodating algorithmic forms of administrative decision-making, and if so, through what doctrinal adjustments or extensions.

2. Methodology

2.1. Overview of the research process

During the research, I considered that the subject is inherently perennial and universal, since administrative law in a rule-of-law state – and indeed supranational administrative law – faces broadly similar problems and recurring questions concerning defects in administrative acts. I first reviewed **the principal general theories on defective administrative acts** in Hungarian, German, French, and broader European administrative law scholarship. I examined doctrinal analyses concerning the general legal requirements applicable to administrative acts, with particular attention to the terminology, conceptual definitions, and legal consequences used to describe potential defects in such acts.

The research was structured along three complementary perspectives: first, a diachronic (chronological) perspective; second, a classification based on types of defects; and third, an analysis according to the type of administrative act concerned.

My primary focus was the **diachronic analysis** of Hungarian administrative legal scholarship, which allowed me to systematise doctrinal positions and clearly trace the temporal development and diversity of the concept of procedural defects, particularly the evolving terminology of nullity.

In defining the temporal scope, I sought to identify a starting point from which conclusions relevant to contemporary practice could be drawn. In the context of the development of Hungarian administrative adjudication, I identified doctrinal descriptions and terminology that may already be regarded as modern in nature, the content of which continues to provide valuable insights for the theoretical and practical analysis of procedural defects, nullity, and substantive defects.

The delimitation of these periods was determined partly by major historical transformations in Hungary and partly by the evolution of Hungarian administrative procedural law codification. On this basis**, I identified three main periods**. **From the beginnings of Hungarian administrative adjudication until the end of the Second World War**, scarcely any major administrative law scholar failed to address defects in administrative acts or develop some form of doctrine of administrative invalidity broadly consistent with later conceptual frameworks. The second phase of the research concerned the **socialist period following the Second World War, including the development of two major codifications**, the "Et." (1957 General Administrative Procedure Act) and the "Áe." (1981 General Administrative Procedure Act), which also served as internal sub-period markers. **The third period, extending to the present day**, covers the post-transition era, including doctrinal analyses and codification efforts undertaken during this time.

This methodology was necessary because **authors writing in different periods operated under distinct contextual conditions**; they therefore had to justify theories of administrative invalidity within differing social, political, and legal environments. In this respect, particular importance was attached not only to the degree of political exposure characteristic of each period, but also to whether a coherent normative framework existed against which defects in administrative acts could be assessed, whether foreign models could be relied upon, and, if so, which jurisdictions exerted the greatest influence on doctrinal development. An additional factor was whether, even where a formal legal framework existed, it contained express provisions on nullity, and if so, how these were formulated, since this could not be assumed.

I sought to demonstrate what considerations authors of each period took into account, how they understood the concept of nullity, and what legal effects they attributed to defects in administrative acts. **I analysed the principal doctrinal categories (such as nullity and non-**

existence), as well as the so-called auxiliary concepts upon which theories of invalidity were constructed (including the presumption of legality, self-remedy, validation, acquiescence, and the distinction between objective and subjective legal protection).

From the entry into force of the "Áe.", I shifted the analytical focus to the temporal development of specific legal solutions, as nullity from that point onwards became a legally regulated institution with defined legal effects, capable of precise doctrinal and judicial interpretation. I examined the most significant doctrinal writings and commentaries on the "Áe.", the "Ket.", and the "Ákr.", taking into account those aspects that earlier authors had identified as relevant for analytical purposes.

The second stage of the research involved the examination of administrative case law relating to nullity as defined in the codes of administrative procedure, including case law from the earliest available periods, including under the "Áe".

Since cases of nullity now fall within the scope of administrative procedural law—primarily concerning individual administrative acts under the "Kp.", and in certain instances specific categories thereof—I separately analysed case law relating to generally applicable provisions in individual cases, and, with respect to administrative contracts, the relevant case law, including pertinent civil court jurisprudence.

In the final stage of the research, I evaluated the findings of judicial practice in light of nearly 150 years of doctrinal development, and provided a synthetic account of the contemporary statutory concept of nullity.

2.2. Research methods

It is clear from the above that I employed a combination of legal-historical analysis, conceptual and doctrinal examination, and case-law methodology, as well as an analysis of the interplay between these approaches.

I was also fortunate to have had the opportunity to conduct personal discussions with Sándor Berényi and Éva Szalai, whose insights proved particularly valuable in relation to the "Et." and the "Áe.", given the contextual information, practical experience, and background knowledge not available in formal written sources.

I further made use of preparatory materials from the relevant ministry concerning the "Ket." and the draft legislation on the general rules of public contracts. In addition, I submitted a request for access to information of public interest to the Ministry of Justice in relation to the "Ákr.".

3. The historical development of the doctrine of administrative nullity

The concept of procedural defects in Hungarian administrative law dates back to the emergence of domestic administrative adjudication and the modern system of administrative remedies. In this sense, it is a topic that **inevitably arises** whenever administrative adjudication and remedies are discussed. For this reason, I began my research in the Dualist period and extended it up to the end of the Second World War, also because the first significant doctrinal analyses emerged during this time. From the outset, the central question was who was entitled to annul an administrative act and under what conditions, particularly with regard to compliance with procedural requirements. Both legal practice and legal scholarship have long recognised that procedural breaches are not of equal seriousness, and that not all procedural rules carry the same weight in determining whether a defect affects the substantive outcome of a case and justifies annulment. Early case law also addressed whether material procedural defects should be exhaustively defined or left to judicial development, and whether priority should be given to substantive resolution or procedural fairness, even at the cost of delay. The question of whether courts are required to identify material procedural defects *ex officio* was already present in this early period.

Until the adoption of the "Áe.", one of the recurring features of Hungarian administrative legal scholarship was that, even in the absence of or in the face of the partial nature of positive legal regulation, administrative legal theory continuously referred to nullity, grounds of nullity, and cases of nullity, consistently using this concept. This indicates that nullity was regarded as a sufficiently serious issue to remain central in both theory and practice, accompanied by persistent demands for its statutory codification.

Although early procedural statutes did not refer to nullity, legal doctrine developed the conceptual foundations of administrative invalidity. The prevailing view was that certain fundamental requirements of legality—such as competence and jurisdiction—constitute essential conditions of validity, the absence of which renders an administrative act defective. **At this stage, the categories of non-existence, invalidity, and nullity had not yet acquired clearly defined doctrinal boundaries. Nevertheless, they were already in use.** Nullity was generally understood as a defect precluding legal effect, often conceptually linked to non-existent acts, while invalidity was more closely associated with grounds for challenge. Doctrinal development also addressed whether a "quasi-act" (the concept of non-existent act) exists, how such acts relate to administrative *res iudicata*, whether appellate bodies are required to expressly declare nullity, and whether self-remedy is permissible. A further issue concerned the classification of defects according to severity, particularly with regard to remediability and limitation periods. These discussions were underpinned by the shared assumption that defects in administrative acts vary in seriousness, ranging from minor irregularities to fundamental defects that may render an act incapable of producing legal effects or call its legal nature into question. At this stage, Hungarian legal literature also articulated the principle of the legal validity of administrative acts and the corresponding obligation of compliance, which constitutes a key structural foundation of this doctrine.

While lack of competence and jurisdiction was consistently regarded as one of the most serious defects, doctrinal analysis soon expanded to include fraudulent conduct by parties, impossibility or unenforceability of administrative acts, and conflicts with criminal law or fundamental moral standards. Broader grounds of annulment, such as good administration and abuse of power, also appeared in doctrinal reasoning.

The absence of detailed statutory regulation was perceived as both a limitation and an opportunity. It hindered the identification of a uniform normative framework, but at the same time allowed doctrinal reasoning to develop without being constrained by rigid statutory

categories or material scope limitations. This enabled scholars to formulate theories applicable across different types of administrative acts.

The 1925 *Allgemeines Verwaltungsverfahrensgesetz* (Austrian General Administrative Procedure Act) appears to have exerted a significant influence on subsequent doctrinal development, particularly through the structured articulation of grounds for annulment in Section 68(4).

In the later phase of this period, nullity increasingly came to be understood as a guarantee of individual protection, anticipating later developments in subjective legal protection.

In the post-Second World War period up to the political transition, doctrinal development continued alongside two major legislative reforms. However, engagement with pre-war scholarship remained limited, resulting in a partial break in doctrinal continuity. The "Et." and the "Áe." introduced a new statutory framework, with the latter expressly establishing nullity as a legal institution in Hungarian administrative procedural law.

Despite political and systemic changes, the conceptual foundations of administrative invalidity remained stable. Doctrinal analysis continued to focus on core categories such as non-existence of acts, quasi-acts, the presumption of legality, self-remedy, obligation of compliance, differentiation of defects by severity, remediability, and remedies.

Although the "Et." did not contain express provisions on nullity, doctrinal debate nevertheless sought to derive implicit distinctions within the concept of unlawfulness. Some authors distinguished between decisions subject to mandatory annulment and those subject to discretionary annulment. The former category included decisions incapable of producing legal effects, conceptualised as cases of nullity and regarded as void *ab initio*, excluding any possibility of validation. In contrast, other unlawful decisions remained subject to annulment based on procedural or substantive defects.

Even in the presence of this doctrinal structure, leading scholars called for express statutory regulation of nullity. Following the adoption of the "Et.", academic literature increasingly advocated codification at the legislative level.

The debate further expanded to issues such as validation and acquiescence of administrative acts, the relationship between good faith acquisition of rights and invalidity, and the temporal effects of void decisions under the presumption of legality and the obligation to comply with final administrative decisions. Comparative analysis of socialist legal systems also became influential, particularly in relation to codification techniques. During this period, the necessity of distinction between civil law and administrative law invalidity emerged as a central doctrinal issue.

The "Áe." introduced a compromise model between legality and legal certainty, although it was criticised in doctrine as overly restrictive. It provided an exhaustive list of irremediable defects and prescribed nullity with *ex tunc* effect, subject to procedural time limits within administrative remedies. This structure forms the direct precursor of the contemporary doctrinal understanding of administrative nullity, and post-transition administrative law theory has largely developed within this inherited framework.

Following the political transition, this doctrinal model has essentially persisted. Scholarly commentary has typically focused on individual categories of nullity, often advocating their expansion, which was later reflected in the "Ket.", while the "Ákr." further refined the system, particularly in response to issues of validation arising in Curia case law.

What unifies these three periods is that Hungarian administrative law theory has consistently analysed administrative invalidity, nullity, and procedural defects primarily in relation to individual unilateral administrative acts of public authorities.

4. The concept of nullity and the findings of the research

In this thesis, I identified 1 January 2018 as a turning point, as from that date the term "individual administrative act" can no longer be understood solely as referring to administrative acts under the General Administrative Procedure Act, and both "generally applicable provisions applied in individual cases" and "administrative contracts" have become distinct legal concepts with autonomous legal consequences. Pursuant to **Section 4(1) and (3), as well as Sections 85(3) and 92(1) of the "Kp."**, the court must take into account *ex officio*, as grounds for annulment: **a) the administrative act is void or invalid on any other statutory ground, or suffers from such a material procedural defect that it must be regarded as non-existent; b) the infringement of rights caused by a breach of essential rules of the preceding procedure cannot be remedied in the proceedings; c) the administrative body based its act solely on a statutory provision that is not applicable to the case**. In addition, **Section 94 of the "Kp."** lays down specific rules on nullity in relation to administrative contracts. The concept of nullity, and more generally the system of procedural defects—including non-existence, invalidity (including nullity), breaches of essential procedural rules, and acts based on inapplicable legal provisions—cannot be analysed solely on the basis of nullity as defined in Section 123 of the "Ákr.". However, given its doctrinal elaboration, depth, and systemic coherence, it must nevertheless be accepted as a starting point, and its analytical insights must be taken into account when assessing similar defects in other types of administrative acts under the "Kp.".

It must also be borne in mind that there are **public law acts outside the scope of the "Kp."** which, in respect of their public law invalidity—bearing a high degree of similarity to the doctrinal framework of nullity (serious unlawfulness, differentiation of defects by gravity, annulment with ex tunc effect, and irremediability)—are subject to general requirements of legality comparable to the validity requirements of individual administrative acts.

In this thesis, based on Hungarian and European legal theory, legislation, and case law, I have identified the following conceptual characteristics of individual administrative acts, in line with the way nullity has been understood in the "Áe.", the "Ket.", and the "Ákr.".

A void administrative act is an act that exists in law and is capable of producing legal effects until annulled, but is vitiated by such a fundamental defect that it must be annulled with *ex tunc* effect in the appropriate remedial proceedings. Nullity constitutes the most serious and irremediable defect, the consequence of which is the total or partial annulment of the administrative act, subject only to statutory instances of validation. Nullity does not constitute a separate legal remedy, and the competent court must raise and assess it of its own motion. Void administrative acts, and the cases in which they may be validated, form a closed statutory category.

These conceptual elements describe the doctrine of nullity as regulated within the general administrative procedure acts. However, in light of the provisions of the "Kp.", it is necessary to go further and examine how nullity under the "Kp.", as well as other statutory grounds of invalidity, operate in relation to the other types of administrative acts specified in Section 4(3) of the "Kp.".

In the thesis, I also pointed out that these provisions of the "Kp." establish concepts with autonomous content, independent of the type of administrative act concerned. Even within the system of the general administrative procedure acts, it is not specified which administrative acts are to be regarded as non-existent acts vitiated by material procedural defects, just as there is no exhaustive list of breaches of essential procedural rules.

I further argued that, **in the case of generally applicable provisions applied in individual cases, the doctrinal framework of invalidity developed in relation to administrative acts can be applied in a transversal manner.** In my view, Section 92(1)(a) already provides a legal basis for deriving grounds of invalidity through judicial interpretation in relation to such acts, including cases where acts are void or non-existent in individual applications, by appropriately transposing established doctrines developed for individual administrative acts, thereby strengthening both objective and subjective legal protection.

As regards administrative contracts, I concluded that their doctrinal treatment within Hungarian administrative law has so far been underdeveloped. Following 1989, both administrative law and private law doctrine tended to externalise the issue: administrative law tended to defer to private law, while private law excluded public law contracts from its analytical framework. As a result, administrative contracts fell into a doctrinal gap, which contributed to persistent misunderstandings and a lack of coherent conceptualisation. This neglect was partly due to the political sensitivity of public administration and the controversies often surrounding public contracts, from which Hungarian legal scholarship tended to remain distant. However, this also prevented the development of a coherent doctrinal framework for lawful **contractual public administration**, leaving space for persistent misconceptions and, in extreme cases, for an inherently suspect view not only of public administration but also of the judiciary. By contrast, civil court case law concerning **contracts contrary to good morals** demonstrates that the judiciary has consistently excluded any tolerance of corruption. The development of public policy-based invalidity has proven suitable for the protection of public funds and public assets, and for addressing corruption-related risks. The inclusion of manifest breaches of good morals (or public policy) as grounds for invalidity within administrative law is therefore not only permissible but reflects a legal requirement consistently affirmed in civil case law. In certain cases, it may provide a more flexible and effective mechanism for restoring the infringed legal order than other grounds for invalidity.

In the thesis, I further argued, with reference to Sections 4(1) and 4(3)(d) of the "Kp.", that **an administrative contract qualifies as an administrative act "governed by administrative law".** While it is theoretically conceivable to analyse such contracts through private law categories, substantive law has clearly moved away from this approach. **An administrative contract is not a private law act but an administrative law act subject to the administrative law regime.** Accordingly, the relevant question is not whether civil law concepts of invalidity are applicable, but which specific rules govern administrative contracts, and which provisions of civil law may, due to their general character, be transposed into administrative contract law. In this respect**, I argued that the logical foundations of the two systems are sufficiently distinct to justify the development of a sui generis doctrine of administrative invalidity, rather than its assimilation into civil law concepts.** While comparative inspiration and borrowing cannot be excluded—indeed, Section 93(5) of the Administrative Procedure Act explicitly allows for the application of general contract law rules—validity in administrative contracts must ultimately be defined autonomously.

As an administrative act, the administrative contract follows the general logic applicable to other individual administrative acts. Section 94 of the "Kp." was not introduced because administrative contracts require fundamentally different invalidity rules, but because no unified procedural code on contract formation exists in Hungarian law comparable to the "Ákr.", nor is there a dedicated code governing administrative contracts. Accordingly, there is, and should be, no fundamental divergence in the assessment of defects giving rise to nullity or invalidity across different types of administrative acts.

In the context of administrative contract procedures, I concluded that the same conceptual dilemmas arise as in cases of nullity in administrative acts. While the principle of *pacta sunt*

servanda, reflecting **the stability of administrative decisions**, must be respected, there remain defects which, notwithstanding the principle of continuity of public services, may justify the termination or non-performance of administrative contracts. Such grounds may arise not only from the conduct of the public authority but also, as case law demonstrates, from the conduct of the contracting party. A defining feature of administrative law is that such contracts are concluded within a mandatory public law framework governing both procedure and substance. Defects in the award procedure may therefore affect the validity of the contract itself and may lead, where appropriate, to its annulment in whole or in part.

For substantive and procedural reasons, I do not share the view that the concept of an "unlawful contract" as a ground of invalidity can be directly transposed into administrative invalidity doctrine. An administrative contract is unlawful if it fails to comply with the relevant statutory provisions; however, unlawfulness does not automatically entail nullity.

Moreover, under Section 94(1) of the "Kp.", even unlawful administrative contracts are not necessarily invalidated, as the Act provides a distinct and structured regime governing such consequences.

Finally, I share the view already present in Hungarian administrative law scholarship that the doctrines of invalidity developed for individual administrative acts should be applied in a transversal manner, and that Hungarian law already provides a legal basis for such an approach under Sections 4(3), 92(1)(a), and 94(1) of the Code of Administrative Procedure. Conversely, it is also possible to examine the extent to which the regime of nullity and unlawfulness under Section 94 may be transposed to other types of administrative acts.

5. Conclusions

1. Within the system of Hungarian administrative law governing administrative acts, the classification of legal defects according to their degree of seriousness—distinguishing between minor and serious defects—has never been fundamentally challenged and is regarded as a central axis of legal interpretation. It has never been suggested that this approach undermines the rule of law. Rather, Hungarian administrative legal scholarship has consistently adopted a balanced, rational and pragmatic approach, which simultaneously seeks to reconcile the requirements of the rule of law, legality, and administrative efficiency, as well as the practical reality that public administration inevitably makes mistakes. In mass administration, errors are unavoidable and cannot sensibly be treated as if they were of equal significance, neither in the interest of the individual nor of the administration itself.

2. Based on Hungarian administrative legal theory and doctrinal developments, it can be established that from the earliest stages of administrative adjudication, Hungarian law has accepted as a foundational principle that, within the system of legal rules governing public administration, a balance must be struck between legal certainty, the protection of individual rights, and administrative functionality. Accordingly, defects affecting administrative will-formation and procedure must be differentiated according to their gravity.

3. Such differentiation of defects, and the assignment of distinct legal consequences to them, is not contrary to the rule of law; rather, it serves constitutional objectives that are rational, proportionate, and consistent with legal certainty.

4. The "Ákr." and the "Kp.", which entered into force on 1 January 2018, introduced a more structured and differentiated system of administrative defects than previously existed in Hungarian administrative procedural law. While the "Ákr." continues to regulate the legal institution of nullity, the "Kp." further systematises the various categories of defects that may affect administrative acts.

5. Under the general system of administrative procedural law, grounds for nullity constitute the most serious category of defects: they are irreparable, result *in ex tunc* annulment, and are defined by statute in a closed list. In certain instances, judicial interpretation has refined these doctrinal boundaries (for example, through the principles governing irremediability), occasionally even in tension with strict textual interpretation. Decision No. 1/2019 KMPJE, with its authoritative interpretative guidance, reaffirmed a restrictive approach to nullity and re-aligned judicial practice with the doctrinal framework developed in administrative legal theory and codified procedural law.

6. Administrative law has developed increasingly dense interrelations with other branches of law – most notably criminal law, from which it has borrowed principles, and civil law, from which it has adopted certain legal techniques. As a result, Section 123 of the "Ákr." cannot be regarded as either conceptually exhaustive or fully coherent. This lack of coherence is also observable within the administrative procedural law itself.

7. One of the aims of the "Kp." was to move Hungarian administrative adjudication away from the formalistic expectation that the legislature must exhaustively define every category of challengeable administrative act and every type of defect. Nevertheless, judicial practice continues to be strongly influenced by the conceptual framework of the "Ákr.", which is primarily constructed around unilateral administrative acts of public authorities, thereby making it more difficult to develop a truly transversal doctrine applicable across different types of administrative acts.

8. Sections 4(1) and 4(3) of the "Kp." define which acts qualify as administrative acts and establish the framework within which questions of non-existence, nullity, and other defects

must be assessed where the aim is to develop a unified doctrine of unlawful administrative acts extending beyond the scope of the "Ákr".

9. The "Kp." introduced a significant paradigm shift in the conceptualisation of defective administrative acts. Section 92(1) of the "Kp." provides that courts must consider *ex officio* not only statutorily defined grounds for nullity, non-existence, or serious procedural defects, but also other statutory grounds for invalidity, thereby reinforcing the active interpretative role of the judiciary under Section 85(3) of the "Kp.".

10. The "Kp." thus departs from the earlier approach that confined judicial review to those administrative acts explicitly defined by statute as void. Where the "Ákr." provides specific rules, its framework must of course be respected; however, where it is silent, Section 92(1)(a) of the "Kp." requires judicial interpretation to determine whether a defect qualifies as a ground for invalidity.

11. I have not encountered any judicial decision or doctrinal argument that excludes particular grounds for invalidity or non-existence solely on the basis of the type of administrative act concerned. On the contrary, the transferability and transversal applicability of grounds for invalidity follow from the general structure of the system of administrative defects.

12. Administrative acts are presumed to be lawful and valid. Accordingly, an administrative act, once adopted, is presumed valid and enforceable until it is annulled through the legal remedies prescribed by law. This presumption may only be rebutted through a formal decision of the competent authority or court.

13. By contrast, a non-existent administrative act does not benefit from any presumption of validity, even temporarily. A non-existent act is one that suffers from such a fundamental and manifest defect that it cannot be regarded as an administrative act at all. It is a legal fiction lacking even the appearance of administrative decision-making, and its existence falls outside the system of validity altogether.

14. It follows that no rights or obligations can be derived from a non-existent act, and no legal consequences may lawfully be attached to it. Both the addressee and the public authority are entitled—and in certain cases obliged—to disregard it. Such an act is incapable of forming the basis of any further legal act.

15. Within the system of the "Kp.", non-existence and nullity are distinct legal categories. A void administrative act and a non-existent administrative act are therefore conceptually and functionally separate. I propose recognising a category of "non-existent administrative act affected by a manifest and substantial defect".

16. Since a non-existent administrative act cannot be annulled—precisely because it does not legally exist—it would be more appropriate to channel its procedural treatment under Section 93 of the Kp., by providing for a declaratory form of judicial protection.

17. Given the urgency of legal certainty in such cases, consideration should be given to introducing an expedited declaratory procedure, or even a simplified non-contentious judicial mechanism, enabling swift judicial determination of non-existence, even in conjunction with other claims.

18. In cases of non-existent administrative acts, interim legal protection may also extend to the merits of the case, since the very existence of an administrative act is in question. In such cases, the application of the *fumus boni iuris* standard may be justified.

19. The statutory grounds for nullity set out in Section 123 of the "Ákr." are formally exhaustive in the sense that only those cases expressly defined by statute may be classified as null and

void. However, this does not imply conceptual exhaustiveness, as legal doctrine and case law have identified additional serious defects that correspond to the functional logic of nullity.

20. In particular, in administrative proceedings of a punitive or *ex officio* nature, it may be justified to treat certain constitutional principles—especially those derived from criminal procedural guarantees—as grounds for nullity, where this serves the protection of the individual and strengthens subjective legal protection.

21. Nullity remains an exceptional legal institution, as it permits the removal of the legal effects of a final administrative act. Any expansion or restriction of its scope must therefore be assessed in light of constitutional principles, particularly the balance between legality and legal certainty. However, such constitutional concerns do not arise where the expansion of nullity serves the protection of individual rights and fair procedure, rather than administrative self-correction.

22. Nullity and, more broadly, administrative invalidity should not be understood merely as procedural sanctions, but also as normative expressions of substantive expectations concerning lawful and fair public administration.

23. Given that the "Kp." covers virtually all administrative acts under Sections 4(1) and 4(3), it is worth considering whether the system of defective administrative acts should itself be normatively structured within the "Kp.", according to unified principles applicable across all types of administrative acts, including classification, grounds for nullity, protection of legitimate expectations, and validation mechanisms.

24. At the core of the doctrine of defective administrative acts lies not the formal distinction between procedural and substantive defects, but the normative message expressed by the legal order when it declines to recognise certain manifestations of state will as valid legal acts. The grounds for nullity in administrative procedural law have traditionally carried not only technical but also normative and moral content, reflecting broader expectations concerning the exercise of public power. Inclusion of general "substantive" grounds for invalidity—such as abuse of power or manifest disregard of the public interest or policy —may contribute to addressing systemic deficiencies in administrative practice and to reinforcing the normative content of good administration.

25.A possible justification for codifying a comprehensive doctrine of invalidity within the "Kp." lies in the need to ensure uniform application of law across different types of administrative acts. A ground of invalidity or non-existence identified in relation to a particular type of administrative act could thus be assessed within a coherent interpretative framework applicable to all administrative acts. By moving beyond rigid distinctions based solely on the type of administrative act, inconsistencies arising from fragmented regulation could be mitigated. While comparative borrowing from other branches of law is not excluded, such transplants must always be adapted to the autonomous structure and underlying principles of administrative law.

26. Accordingly, it may be justified to provide in the "Kp." that a defect affecting an administrative act within the meaning of Section 4(3) of the Kp. – whether non-existence, nullity, or a material procedural defect – may also be assessed , by analogy, in relation to other categories of administrative acts, within a unified doctrinal framework. Hungarian administrative legal scholarship and judicial practice therefore already provide the conceptual foundations for the emergence of a coherent and cross-cutting doctrine of unlawful administrative acts.

6. List of Publications in Hungarian and Foreign Languages related to the doctoral thesis

Barabás Gergely: „A közbeszerzési jogorvoslati kérelem tartalmának meghatározása: a kérelemhez kötöttség elve, a kérelem tartalmi elbírálása és a jogorvoslat-kiterjesztés" In Közbeszerzési Jog Online, Wolters Kluwer, 2024/1. DOI: 10.55413/193.A2400102.KOJ

Barabás Gergely: „A közigazgatási cselekmény semmissége az új közigazgatási jogorvoslati rendszerben" In Jogászegyleti Értekezések, Magyar Jogász Egylet, 2022.

Barabás Gergely: „A Kúria ítéletei a többes határozathozatal tilalmáról" In Jogesetek Magyarázata, 2021/4.

Barabás Gergely: „A hivatalbóli kiterjesztés és alaki feltételei a közbeszerzési jogorvoslati eljárásban, különös tekintettel a HUNGEOD-ügyre" Közbeszerzési Jog Online, 2020/1.

Barabás Gergely – F. Rozsnyai Krisztina – Kovács András György: *Kommentár a közigazgatási perrendtartásról szóló törvényhez.* Wolters Kluwer, Budapest, 2018.

Barabás Gergely: „Alapelvek" In Barabás Gergely – Baranyi Bertold – Fazekas Marianna (szerk.): *Kommentár az általános közigazgatási rendtartásról szóló törvényhez*. Wolters Kluwer, Budapest, 2018.

Barabás Gergely: „Hatásköri és illetékességi vita" In Barabás Gergely – Baranyi Bertold – Fazekas Marianna (szerk.): *Kommentár az általános közigazgatási rendtartásról szóló törvényhez.* Wolters Kluwer, Budapest, 2018.

Barabás Gergely: „Semmisség" In Barabás Gergely – Baranyi Bertold – Fazekas Marianna (szerk.): *Kommentár az általános közigazgatási rendtartásról szóló törvényhez*. Wolters Kluwer, Budapest, 2018.

Barabás Gergely: „Doctrines of legal consequences of administrative procedural irregularities in the case-law of the Court of Justice" In A hazai és az uniós közigazgatási eljárásjog aktuális kérdései. Budapest: Pázmány Press, 2015.

Barabás Gergely: „A közigazgatási szerződések egyes eljárás- és perjogi kérdései a magyar (közigazgatási és polgári) bírói joggyakorlatban" In Közbeszerzési Szemle 2014/11.

Barabás Gergely: „A Kúria ítélete a Magyar Orvosi Kamara tagdíjszabályzatában foglalt regisztrációs díjfizetési kötelezettséget előíró szabály hatályon kívül helyezéséről" In Jogesetek Magyarázata, 2014/4.

Barabás Gergely: „Hatásköri, illetékességi vita" In Barabás Gergely - Baranyi Bertold – Kovács András György (szerk.): *Nagykommentár a közigazgatási eljárási törvényhez*. Budapest, Complex Kiadó, 2013.

Barabás Gergely: „Semmisség" In Barabás Gergely - Baranyi Bertold – Kovács András György (szerk.): *Nagykommentár a közigazgatási eljárási törvényhez*. Budapest, Complex Kiadó, 2013.

Barabás Gergely: „A Legfelsőbb Bíróság ítélete a működési-tevékenységi hatósági engedélyek módosításáról és visszavonásáról - Engedélyezett kereskedelmi tevékenység utólagos hatósági megtiltásának feltételei" In Jogesetek Magyarázata, 2012/1.

Gergely Barabás – Marianna Nagy: „Le contentieux des contrats publics en Europe – Hongrie" In Revue française de droit administratif 2011.

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