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RETHINKING STATE ACT IMMUNITY DOCTRINE IN THE ADMINISTRATIVE JURISPRUDENCE IN THE CONTEXT OF CRISES

Abstract. This article re-examines the contemporary role and transformation of the state act immunity doctrine within European administrative jurisprudence, focusing on crisis-driven decision-making. Combining doctrinal analysis with an in-depth examination of Lithuanian administrative case law arising from the migration crisis and subsequent national security-related measures, the article demonstrates that absolute or broadly construed immunity is no longer compatible with European constitutional standards grounded in the protection of subjective rights, proportionality, and effective judicial review. Through an analysis of asylum, residence permit, and visa-related cases, the article shows how administrative courts have progressively restored and reshaped judicial control in areas traditionally characterised by extensive political discretion. European Union law – particularly the Charter of Fundamental Rights of the European Union and the case law of the Court of Justice of the European Union – emerges as the central normative framework guiding this development. The Lithuanian experience illustrates how courts have strengthened reasoning requirements, ensured procedural fairness, and resisted attempts to shield administrative decisions from review based on abstract national security arguments.

Keywords: state act immunity, judicial review, administrative courts, national security, migration law, effective judicial protection, European Union law

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PONOWNE PRZEMYŚLENIE DOKTRYNY IMMUNITETU AKTÓW PAŃSTWOWYCH W ORZECZNICTWIE ADMINISTRACYJNYM W KONTEKŚCIE KRYZYSÓW

Streszczenie. Artykuł podejmuje ponowną analizę współczesnej roli oraz ewolucji doktryny immunitetu aktów państwowych w europejskim orzecznictwie administracyjnym, ze szczególnym uwzględnieniem decyzji podejmowanych w warunkach kryzysowych. Łącząc analizę doktrynalną z pogłębionym badaniem orzecznictwa litewskich sądów administracyjnych ukształtowanego na tle kryzysu migracyjnego oraz następczych środków opartych na argumentach bezpieczeństwa narodowego, artykuł wykazuje, że absolutnie lub zbyt szeroko rozumiany immunitet nie jest już zgodny z europejskimi standardami konstytucyjnymi opartymi na ochronie praw podmiotowych, zasadzie proporcjonalności oraz prawie do skutecznej ochrony sądowej.

Analiza spraw dotyczących azylu, zezwoleń na pobyt oraz polityki wizowej pokazuje, w jaki sposób sądy administracyjne stopniowo przywracają i przekształcają kontrolę sądową w obszarach tradycyjnie charakteryzujących się szeroką dyskrecjonalnością polityczną. Prawo Unii Europejskiej – w szczególności Karta praw podstawowych Unii Europejskiej oraz orzecznictwo Trybunału Sprawiedliwości Unii Europejskiej – wyłania się jako kluczowe ramy normatywne ukierunkowujące ten proces. Doświadczenie litewskie ilustruje, w jaki sposób sądy wzmocniły wymogi uzasadniania rozstrzygnięć, zapewniły sprawiedliwość proceduralną oraz przeciwstawiły się próbom wyłączenia decyzji administracyjnych spod kontroli sądowej na podstawie abstrakcyjnych argumentów bezpieczeństwa narodowego.

Słowa kluczowe: immunitet aktów państwowych, kontrola sądowa, sądy administracyjne, bezpieczeństwo narodowe, prawo migracyjne, skuteczna ochrona sądowa, prawo Unii Europejskiej

1. INTRODUCTION

The doctrine of state acts immunity, which stems from the classic principle of the separation of powers, remains an important category of public law today. Not only does it recall the traditional idea of political autonomy, but it also becomes an important criterion for reassessing the resilience of the rule of law, especially in the face of state crises.

Historically, this doctrine has long been based on the assumption that certain areas of decision-making, particularly those related to foreign policy, national security, or strategic state interests, must remain outside the jurisdiction of the courts. This protected not only the balance of powers, but also the state's ability to respond quickly and effectively to strategic challenges. However, at the same time, the doctrine has always raised the question of implementing the principle of the supremacy of law – every case of limited control carries the risk of lowering the standard of effective judicial protection.

Today, this risk is particularly evident in the context of state crises. In such situations, where decisions are based on broad discretion and national security arguments, the question of the scope of their judicial review becomes particularly relevant. Although this issue appears to be primarily a constitutional one, in practice it is mainly dealt with by administrative courts when examining

individual disputes that have arisen during state crises. As C.A. Bradley and R.A. Posner have noted in their analysis of the doctrine of political questions related to the doctrine of immunity of state acts, the latter should be sought not “at the top of Mount Olympus, but at the foot of the mountain” (Bradley, Posner 2023, 1089). In other words, this doctrine is revealed not so much in theoretical models of the separation of powers as in the daily practice of administrative courts, where the interests of the state inevitably clash with the guarantees of effective protection of rights.

The migration crisis is one of the contemporary examples that allows us to examine how the doctrine of immunity functions today, and what challenges it poses to the effective protection of rights. The doctrine of immunity becomes a kind of stress test, showing how stable the rule of law can remain when it is under pressure from political and security crises. Migration cases, in which decisions are based on national security arguments, belong to the broader context of emergency law, in which the tension between political discretion and judicial control is probably at its most intense.

This article seeks to reveal how the doctrine of immunity of state acts, which has traditionally defined the limits of the competence of administrative courts for a long time, is being reinterpreted in contemporary European public law. This analysis focuses on the main theoretical assumptions of this doctrine, trends in its application in European and Lithuanian administrative case law, and the migration crisis, which highlights the relevance of this doctrine in the context of the rule of law and effective judicial protection. Together, these aspects form the basis for a broader discussion on the role of administrative courts and their potential activity when traditional control models are no longer sufficient to respond to the challenges posed by contemporary crises.

2. THE THEORY OF IMMUNITY OF STATE ACTS AS A BASIS FOR LIMITING THE COMPETENCE OF ADMINISTRATIVE COURTS

The role of administrative courts in public law has traditionally been linked to their function of ensuring the supremacy of law and providing individuals with an effective means of defense in disputes with the state. However, this function has been limited from the outset by the recognition that certain state decisions do not fall within the scope of judicial review. In different legal systems, these limits have been justified by different doctrines of judicial self-restraint, which sought to maintain the balance of powers or ensure the autonomy of political power. In legal doctrine, the doctrine of immunity from government decisions is based on the assumption that certain areas of decision-making are not subject to judicial review. These doctrines emerged as a means of preserving the balance of powers and ensuring that issues related to political discretion, national security,

or foreign policy are not transferred to the jurisdiction of the courts. The doctrines are interpreted differently. The classical model provides that courts should refrain from reviewing only when the constitutional system itself imperatively requires it. The functional model is based on the practical limitations of the courts' competence or available information, while the prudential model considers the doctrine to be an instrument that helps to preserve the authority of the courts and make rational use of their resources. However, despite these differences, all models of interpretation share a common feature: the complex application of the doctrine in practice, which leads to ongoing debates about its legitimacy and necessity.

The doctrine of political questions, the French concept of *actes de gouvernement*, and other national traditions can provide valuable insights into the arguments used to justify the protection of state decisions from judicial review and how this concept has evolved over time in the development of modern administrative justice.

One of the most prominent models of limited judicial review is the doctrine of political questions, which essentially recognizes that certain issues fall within the realm of the political process rather than the jurisdiction of the courts. This doctrine relies on the wisdom of the political branches of government and the need for efficiency, secrecy, speed, and flexibility in pursuing national interests. It is argued that this approach ensures that the court understands its limits as one branch of government and assesses whether a particular issue is better dealt with by another branch of government. This position is based on arguments that the assessment of state acts may lack clear legal criteria, cause practical difficulties in investigating the facts, and not always ensure that court decisions are actually enforced (Franck 1992, 56). In the United States, this doctrine was widely applied for a long time, but in later case law, its scope of application was narrowed – judicial review became the rule, and the political question doctrine became more of an exception (Harvard Law Review 2016; Cole 2014).

In the legal tradition of the United Kingdom, issues of limited judicial review are often associated with the doctrine of *justiciability*. The literature emphasizes that this doctrine is based on the assumption that certain decisions, such as those in the areas of foreign policy, high-level political discretion, or resource allocation, may be considered unsuitable for judicial review. However, some significant decisions show a consistent movement towards a broader right to judicial protection. A frequently cited example is *the Council of Civil Service Unions v Minister for the Civil Service (GCHQ case)* decision, which recognized that even in cases involving royal prerogatives, courts may apply standards of legality and rationality (Paul 2010). In 1984, based on royal prerogative powers (Order in Council), Margaret Thatcher's government banned GCHQ (Government Communications Headquarters) employees from joining trade unions, citing national security risks (Bradley, Ewing 2011). Subsequent *Miller* case law

relating to the United Kingdom's withdrawal from the European Union further demonstrated that particularly important constitutional issues do not fall within the scope of absolute non-justiciability (Elliott 2020, 625–646).

At the same time, the doctrine of political questions has not taken root in German constitutional doctrine – courts exercise judicial review even in the most sensitive areas of state governance. As Kommers points out, German law does not have a category of issues that would automatically be excluded from the scope of judicial review (Kommers 2019). This active role of the courts is often linked to the historical view of the supremacy of law, which after World War II became a fundamental principle of democracy and social stability (Franck 1992).

In the continental tradition, the French doctrine of *actes de gouvernement* played a particularly important role. According to this concept, state immunity was linked to sovereign acts, and initially, a political purpose was sufficient for an act to fall outside the jurisdiction of the courts. Later, as the concept of the rule of law gained strength, this approach was revised, and the concept of political motive was replaced by the desire to determine the nature of the act more objectively. A line was sought between strategic management decisions and ordinary administration, which must be accountable to the courts. As these concepts proved to be too abstract in the long run, an empirical assessment was adopted in practice – each situation is analysed individually. Contemporary French law distinguishes between two categories of *actes de gouvernement*: issues arising from the relationship between the executive and legislative branches (e.g., decisions to submit a bill) and issues related to international relations (e.g., ratification of international treaties) (Bell, Lichère 2022).

The argument of human rights protection has had a significant influence on the development of these doctrines. Both international standards and the practice of the European Court of Human Rights emphasize that no doctrine of limited judicial review can completely eliminate the right to an effective remedy. These arguments have prompted some European countries to undertake legal reforms aimed at ensuring greater access to justice. One of the most striking examples is the reform of administrative justice in Spain, where the 1998 Law on the Organization of Administrative Courts clearly states that even decisions considered politically motivated cannot be excluded from judicial review if they raise the issue of human rights protection. This is enshrined in the preamble to the aforementioned law (Saunier 2019, 421–444).

The development of Lithuanian law also illustrates how the integration of European Union law and international human rights standards has led to significant changes in the areas of public administration and administrative justice. The practice of Lithuanian administrative courts shows that even with the limitations of jurisdiction provided for in procedural law relating to the exercise of state power, judicial review cannot be understood as absolutely negating the right to an effective remedy. This case law emphasizes the fact that the contested act was

adopted by the President of the Republic, the Government, or the Seimas does not in itself imply the absence of judicial jurisdiction. The limits of judicial review are interpreted systematically, taking into account the interest of the person and the possible intensity of the human rights violation (Gedmintaitė, Masnevaite, Paužaitė-Kulvinskienė, Teisė 2025, 8–32). In addition, the doctrine of the Constitutional Court establishes that there are no acts that are, in principle, excluded from the scope of constitutional review (Constitutional Court of the Republic of Lithuania Rulings of 5th April, 2000; of 30th December, 2003). This means that even when deciding on issues related to the prerogatives of state power, the guarantee of judicial protection is considered an essential element of the principle of the supremacy of law. The debate over the extent of judicial control over discretionary powers reflects an attempt to reconcile the constitutional principle of separation of powers with the requirement that public authority remain subject to legal control (Paužaitė-Kulvinskienė 2026, 39). Political institutions determine the content of law, but later it can begin to conflict with it (Alexander 2018, 363). It should be emphasized that political decisions are less predictable and reliable than law. The primary aim of political institution is to create rules that become law. Through the political process, political positions are adopted as legal acts. However, once established through the political process, positive law begins to constrain politics itself; that is, political actors become bound by the requirements set by law.

This concise context of doctrinal issues clearly shows that a broad approach to the immunity of acts of state authority is becoming increasingly isolated. The evolution of these doctrines suggests that absolute immunity is no longer regarded as exclusive in contemporary public law; increasingly, even the prerogatives of state power are viewed as subject to the rule of law. As Aharon Barak points out, the benefits of a broad doctrine of non-justiciability are far less than those of a narrower approach. The more non-justiciability is expanded, the less judges can bridge the gap between law and society and protect the constitution and democracy. Therefore, the author suggests that this doctrine should be treated with extreme caution (Barak 2006). The former justice of the Lithuanian Constitutional Court and the European Court of Justice professor Egidijus Jarašiūnas has expressed the view that “not the denial of law, but its consolidation is the guiding principle of contemporary society” (Jarašiūnas 2003).

The context of crises can make this topic particularly relevant, as the application of broad discretion and national security arguments highlight the tensions between the autonomy of political power and the requirements of effective judicial protection. In such circumstances, it becomes clear to what extent the doctrine of immunity of state acts is compatible with these requirements and how it shapes the role of courts in the architecture of human rights protection. The migration crisis provides a particularly appropriate analytical context here: it combines the dimensions of national security, international obligations, and

the protection of fundamental rights, with the disputes that arise primarily reaching the administrative courts, thus allowing the practical significance of the aforementioned tensions to be revealed most clearly.

3. STATE CRISES AND JUDICIAL CONTROL: MIGRATION CASE LAW

Indeed, migration processes and the challenges of managing them are becoming one of the most challenging tests of traditional legal doctrines and court practice in administrative justice. Large-scale refugee flows, geopolitical crises, and the need to protect state borders determine decisions that are often given special political discretion. However, human rights protection standards require that effective judicial protection and compliance with the principle of proportionality be ensured in these areas as well.

One of the most important issues in contemporary migration jurisprudence is the limits of the discretion granted to state authorities and the scope of judicial review. Although decisions in the field of migration are often based on a special public interest – national security, public order, or extreme circumstances – this discretion cannot be absolute. The courts consistently emphasize that even in politically sensitive situations, the principles of the rule of law must be respected, proportionality must be ensured, individual situations must be assessed, and decisions must be sufficiently reasoned.

These standards are highlighted by three areas of administrative case law: (i) judicial review of restrictions adopted during extreme situations, (ii) review of immigration decisions based on national security arguments, and (iii) visa policy, where national security discretion is most extensive.

3.1. Regulation of emergency situations: restoration of judicial review during crises

The way judicial control is ensured during crises became particularly evident in Lithuania in 2021, when the country faced a massive influx of migrants at its border with Belarus. On July 2, 2021, a state-level emergency was declared, which, despite the fact that the actual arrival of migrants has significantly decreased, remains in force to this day. In these circumstances, a series of legislative amendments came into force, significantly restricting the rights of applicants for international protection.

The decisions of the legislature were presented as necessary measures to ensure national security. They established that, in an emergency situation, third-country nationals who had crossed the border illegally were not considered to have entered the country (the so-called legal fiction) and therefore were not given the opportunity to apply for international protection. Irregular arrival became an independent basis for *de facto* detention of asylum seekers, often

without any individual administrative decision being taken, even though EU law clearly states that illegal presence alone cannot justify such restrictions. In addition, the jurisdiction of the Supreme Administrative Court of Lithuania as the court of last instance in asylum cases was temporarily suspended, and first-instance decisions became final.

This process provides a clear example of how the doctrine of immunity of state acts may be incorporated into legislation, with the goals of protecting national security and preventing excessive strain on administrative institutions and the judiciary being expressed through a legal mechanism limiting the exercise of subjective rights. However, court practice has shown that even in the context of a mass influx of migrants, the protection of fundamental rights cannot be denied. In its ruling, the Supreme Administrative Court of Lithuania held that the regulation of the legal status of foreigners under the Law on the Legal Status of Foreigners creates legal uncertainty, as it fails to provide an effective mechanism for reviewing the legality of restrictive measures. The Court also emphasized that the declaration of a state of emergency does not extinguish a person's constitutional right to judicial protection. (Supreme Administrative Court of Lithuania, administrative case No. A-4270-492/2021). Based on Article 109 of the Constitution, which establishes the exclusive competence of courts to administer justice and their independence, Lithuanian administrative courts began to rule on the application of alternative measures to detention *ex officio*, thus filling the gap in legal protection created by the legislature (Supreme Administrative Court of Lithuania, administrative case No. eI-5-662/2023).

A major turning point in establishing this case law was the ECJ's decision of 30 June 2022 in the case of *Valstybės sienos apsaugos tarnyba* (C-72/22 PPU), which clearly stated that Article 72 TFEU cannot justify a regulation that effectively deprives a person of the right to apply for international protection (ECJ, case of *Valstybės sienos apsaugos tarnyba* (C-72/22 PPU)). The Court emphasized that the threat to public order or security posed by a mass influx cannot be an absolute ground for restricting the exercise of fundamental rights, and that the Lithuanian government had not provided convincing arguments regarding the impact of the measures on ensuring public order or security.

Although this case law has to some extent restored the balance between judicial review and the limits of the discretion of the legislative and executive branches in extreme situations, it has not resolved the question of how to assess individual decisions based on national security prevention arguments. This issue has become particularly relevant in the context of growing geopolitical tensions and security challenges in the region.

3.2. National security arguments in the field of immigration control and the principle of proportionality

In the context of geopolitical tensions arising from Russia's war against Ukraine, national security arguments have become a cornerstone for restricting the rights of foreigners in the area of migration. The Law on Restrictive Measures in Response to Military Aggression against Ukraine, adopted in 2023, made it possible to suspend the issuance or renewal of residence permits to Russian citizens for general national security reasons. At the same time, measures were taken not only to stop issuing new permits, but also to revoke previously granted long-term residence permits in order to prevent threats to national security. In many cases, the argument of a threat to national security was based on the foreigner's answer to the question of who Crimea belongs to.¹ This institutional practice quickly highlighted the tension between the logic of national security prevention and the principle of proportionality, which requires an assessment of the individual context.

In this regard, it is important to note that in areas of political sensitivity, such as migration control or national security, legislators and administrative authorities have considerable discretion. The justification for the doctrine of immunity of state acts in this area is linked not only to state sovereignty but also to institutional competence. It is often considered that the executive and political institutions have better access to sensitive information – intelligence data, diplomatic negotiations, the context of international relations – and are therefore better placed than the courts to take decisions on migration, security or foreign policy. This logic seems to suggest that judicial control in this area should be limited, as overly active intervention by the courts could jeopardize the effective protection of state interests.

In Lithuania, this question of balance became particularly relevant when restrictive measures began to be applied to persons considered to pose a risk to state security, primarily citizens of the Russian Federation and Belarus or persons with close ties to Lithuania. Despite the absolute prohibition on extending residence permits in Lithuania enshrined in national law, the Supreme Administrative Court of Lithuania ruled that this rule cannot be applied mechanically and that individual circumstances – such as family ties, long-term residence in Lithuania, and integration – must be assessed in terms of proportionality (Supreme Administrative Court of Lithuania, case No. eA-1745-1188/2024).

¹ <https://www.15min.lt/naujiena/aktualu/lietuva/kam-priklauso-krymas-sis-klausimas-lietuvoje-gyvenancia-ukrainiete-atvede-iki-teismu-56-2210986> (Accessed: 01.06.2026) or https://www.lrt.lt/naujienos/lietuvoje/2/2256671/lietuvai-nepavyko-issiusti-i-rusija-panevezietes-neatsakiusios-kam-priklauso-krymas?srsId=AfmBOoovA4SIOSR8ArtGB75Tyy-Er8IMgxN_cbtadpOz4gPpqvRDYFH (Accessed: 01.06.2026).

Similar provisions have been developed in cases concerning the revocation of permanent residence permits (Supreme Administrative Court of Lithuania, administrative case No. eA-1304-968/2024). The court emphasized that even strong social ties with Lithuania – for example, birth and long-term residence in the country – do not in themselves confer immunity from decisions taken on the grounds of national security. However, in such cases, the authorities have a particularly high duty to provide justification: they must clearly explain what factual circumstances give rise to a real and sufficiently serious threat to national security and to what extent the restriction is considered a proportionate interference in the person's life.

This line of case law reveals a general principle that coincides with the doctrine developed by the ECJ: arguments of national security, although recognized as particularly important, cannot be considered automatically superior or unreviewable. In this regard, the Lithuanian administrative courts consider the judgment of the Court of Justice of the European Union (ECJ, case of *GM v. Országos Idegenrendészeti Főigazgatóság* (C-159/21)) and considered one of the essential precedents, on which the provision is based that even in matters of national security, judicial review must be ensured in full, regardless of the desire of state institutions to act under conditions of considerable discretion. In this judgment, the ECJ formulated key standards: decision-making authorities must independently assess all factual circumstances, ensure comprehensive reasoning, and not allow the conclusions of the authorities responsible for national security to be accepted as self-evident. This requirement is based on the right to effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and the right to good administration enshrined in Article 41. These standards have been consistently transposed into the practice of the Supreme Administrative Court of Lithuania, which emphasizes that the deciding authority cannot rely solely on the unmotivated opinion of a specialized authority, the factual basis of which has not been disclosed (Supreme Administrative Court of Lithuania's, administrative case No. A-1303-442/2024; administrative case No. eA-1596-629/2025; administrative case No. A-1502-552/2024; administrative case No. eA-1049-575/2024, etc.).

Thus, administrative case law consistently emphasizes that institutions must justify their decisions by clearly demonstrating the real and sufficiently serious nature of the threat. In this way, national security is recognized as a particularly important public interest, but at the same time, the importance of the principle of proportionality is emphasized.

3.3. Discretion in visa policy: The role of procedural justice as a counterbalance

In the field of migration policy, the scope of discretion is not uniform – it varies depending on the nature of the decision and the impact of the regulated situation on human rights restrictions. Unlike in asylum or residence permit cases,

institutions are granted even greater discretion in the context of visa issuance. A visa does not create a subjective right to enter the territory of a Member State but is considered a means of regulating migration flows based on arguments of public interest, foreign policy, and national security. Therefore, decision-makers are granted considerable discretion in assessing both the facts and the political context.

However, the more discretion is given to institutions, the greater the risk that decisions will be based on abstract formulations or mere formal references to the public interest. In such circumstances, the question of the intensity of judicial review in visa cases becomes more acute in terms of doctrine: how to define the limits of institutional discretion so that judicial review remains effective but does not interfere with the prerogatives of the executive branch.

This issue has gained exceptional importance in the practice of the Supreme Administrative Court of Lithuania: the extended panel of judges of the Supreme Administrative Court of Lithuania has addressed the issue of the grounds for visa refusal and the limits of judicial review on three occasions (Supreme Administrative Court of Lithuania, administrative case No. eI-5-662/2023). This reveals that ensuring procedural fairness in the field of visa policy was not an isolated problem, but rather a systemic defect. Indeed, the cases examined by the extended panel of judges reveal a consistent range of defects in visa issuance procedures. The first case (Supreme Administrative Court of Lithuania, administrative case No. eI-5-662/2023) identified a legislative gap that prevented the obligation to state reasons from being fulfilled, the second (Supreme Administrative Court of Lithuania, administrative case No. A-1249-968/2023) identified a lack of reasons for an individual decision, and the third (Supreme Administrative Court of Lithuania, administrative case No. eA-716-789/2025) identified a situation where the reasons were written down but not submitted in time, thus hindering the person's right to prepare their defense. In all cases, it was consistently emphasized that even with very broad discretion in the context of national security or foreign policy, administrative decisions cannot be based on abstract formulations. These precedents clearly showed that even under the broadest discretion granted to institutions, the principles of procedural fairness and good administration cannot be disregarded: a decision on a visa must be reasoned, submitted on time, and accessible to the party to the dispute. Ensuring procedural fairness becomes an essential benchmark for defining the legitimate use of discretion.

However, this case law should not be understood as an attempt to substantially limit the discretion of authorities in visa policy. The Supreme Administrative Court of Lithuania, relying on the case law of the ECJ, has recognized that decision-makers in this area have broad discretion, and therefore judicial review is limited and confined to the elimination of obvious procedural defects. In this regard, the Court of Justice of the European Union has clearly emphasized that

the competent authorities have broad discretion in assessing visa applications, and the role of the courts is limited to reviewing obvious factual or legal errors (ECJ judgment *in Fahimian*, C-544/15, EU:C:2017:255, paragraphs 44 to 46, ECJ judgment, *Koushkaki*, C-84/12, EU:C:2013:862, and ECJ judgment *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 48). It is precisely this case law of the Court of Justice of the European Union that has been systematically adopted by the Supreme Administrative Court of Lithuania in developing standards for the judicial review of visas. In its practice, the Supreme Administrative Court of Lithuania consistently relies on the provisions formulated by the CJEU regarding the scope of discretion, control of manifest errors, and procedural guarantees – the obligation to state reasons for the decision and to ensure individual assessment (Supreme Administrative Court of Lithuania, administrative case No. eA-130-822/2025). In this respect, visa cases clearly differ from other migration law disputes, where courts are required to conduct a comprehensive review of the factual and legal circumstances, *ex nunc* if necessary.

The migration case law reviewed shows a consistent construction of a model of balance between state discretion and judicial control. Although states have the right to exercise broad control over migration policy based on arguments of national security, public order, or geopolitical interests, this discretion is never absolute. It is European Union law that has become the framework on which this balance is based: the provisions of the Charter of Fundamental Rights of the European Union and the case law of the ECJ define the essential standards of effective judicial protection, good administration, motivation, and proportionality. The practice of Lithuanian administrative courts has shown that even in extreme situations, these principles cannot be disregarded – the courts have restored judicial control mechanisms, strengthened the requirements for reasoning in national security cases, and, in the area of visas, established standards of procedural fairness.

This framework is not yet complete. The latest preliminary rulings of the Supreme Administrative Court of Lithuania (ECJ judgment, case C-147/25²) show that issues of national security and the intensity of effective judicial review remain at the center of case law.

² It should be noted that the request for a preliminary ruling by the Supreme Administrative Court of Lithuania in case C-147/25 is directly related to the European Union's restrictive measures against representatives of the political authorities of the Russian Federation, including Vladimir Putin. This context not only gives the case geopolitical relevance, but also raises a fundamental question: how far can national courts go in their judicial review when decisions are based on arguments of the highest level of foreign policy and national security?

4. PROACTIVITY AS A NORMATIVE RESPONSE TO THE RISKS POSED BY THE DOCTRINE OF BROAD DISCRETION

The search for a balance between limiting discretion and judicial review leads to a broader question: what is the mission of the modern administrative court? The tasks facing European administrative courts today show a conscious departure from the concept of formal control.

When reviewing the tasks currently assigned to European administrative courts, the term “judicial control” is deliberately avoided. The institutional and constitutional status of independent administrative courts implies that they are not merely supervisory or controlling bodies – they act as equals to other branches of government, with the fundamental task of safeguarding the principles of the rule of law and ensuring the protection of human rights and legitimate interests. Although the function of administrative courts has traditionally been associated with reviewing the legality of public administration, in contemporary European legal culture, their role is increasingly understood as an active and value-based activity aimed at ensuring that state decisions comply with the highest standards of the rule of law.

In the postmodernist conception of law, the primary purpose of administrative law is to enforce the rights and legitimate interests of individuals, business entities, or associations in their relations with the state. The heyday of postmodern administrative law began in 1956, when the Vice-President of the French Council of State was invited to testify before the Franks Committee, which was reviewing the judicial control of ministerial powers. The Franks Committee was a UK parliamentary committee established in 1956 to examine and make recommendations on the control of ministerial powers and administrative management. The committee was chaired by Lord Franks (William Franks) and its aim was to assess how the use of government powers could be improved to ensure greater accountability and transparency in public authorities. The Commission examined various aspects of administrative management (Bell, Lichère 2022). This relationship, in which public authorities are on one side and individuals are on the other, becomes the most important criterion for evaluating public administration activities and in the event of a dispute in court. Therefore, in a modern state based on the rule of law, public administration has at least two tasks. One of them is classic, seeking to achieve public interest goals in the context of national security, environmental protection, fair and competitive economic activity, and other areas of common good. The other is respect and attention to human rights, freedoms, and legitimate individual interests. These objectives are not hierarchically subordinate – they are equal, so when resolving disputes, the administrative court must find a reasoned balance and ensure their compatibility. Whether it’s about national security and migrants’ rights or other competing values, the main task stays the same – to make sure there’s a fair balance.

The idea of European administrative justice has historically developed as case law, in which courts play an active role not only in reviewing the legality of decisions, but also in forming practical standards, filling gaps left by the legislator, and interpreting general principles of law. Such dynamic development of law is particularly important when administrative courts are faced with new, unprecedented situations that require not only formal verification, but also value-based choices based on the ideal of the rule of law.

Therefore, the pursuit of not only legality but also justice in the relationship between the individual and the state becomes a key task for administrative courts. It is increasingly emphasized that the formal existence of a law that provides for the possibility of appealing a decision does not in itself guarantee effective judicial protection. Judicial control must be real and capable of assessing whether the actions of state institutions comply with human rights protection standards and proportionality requirements. This is particularly important in cases where decisions are considered politically sensitive and, as a result, there is a tendency to apply a model of limited judicial review.

From this perspective, the active role of the administrative court becomes a counterbalance to the doctrine of limited judicial review. It ensures that even in politically sensitive areas, the principles of the rule of law do not remain merely declarative. However, this role is not self-evident – it constantly faces tensions between the separation of powers, the limits of discretion, and the requirements of human rights protection. Although the active judge paradigm opens up a direction for further jurisprudential development rather than providing a definitive answer, this direction seems more sustainable than the doctrine of limited review, which, by leaving broad scope for institutional discretion, risks turning judicial protection into a mere procedural ritual.

5. CONCLUSIONS

1. The doctrine of immunity of state acts, which historically was an essential expression of the separation of powers and the autonomy of political power, is no longer considered an insurmountable barrier to judicial control in European public law today. Its current development reflects a change in approach, determined by the principles of the doctrine of the protection of subjective rights: immunity is increasingly understood as a means of balancing the limits of political expediency and the application of the law, while at the same time ensuring effective protection of rights and proportionate protection of human rights. In this context, it is becoming increasingly clear that the overly broad application of immunity restricts rather than strengthens the legal system.

2. The experience of the migration crisis in Lithuania has revealed that the standard of effective judicial protection, arising from national constitutional doctrine and the foundations of European human rights law, has become a common legal framework that has allowed administrative courts to maintain human rights protection standards even in exceptional circumstances. When deciding on asylum applications, residence permits, or visa policy cases, the courts encountered situations in which national security arguments and broadly understood political discretion could have overshadowed this standard. However, case law has shown the opposite: based on European Union law, the courts have restored the effectiveness of judicial review, established stricter requirements for the reasoning of decisions in national security cases, and confirmed that even in the broadest areas of discretion, the requirements of procedural justice cannot be disregarded.
3. Normative analysis shows that the active role of judges in contemporary administrative justice is inseparable from implementing the rule of law. Acting as guardians of constitutional democracy, courts must ensure that even in times of crisis or exceptional circumstances, state decisions do not violate the principles of proportionality, good administration, and the protection of human rights. In this context, the doctrine of immunity of state acts is no longer an absolute barrier to judicial review – it becomes a diagnostic tool that helps to identify so-called “blind spots,” i.e., those areas of judicial control where arguments of national security or political discretion pose the greatest threat to the guarantees of effective defense. Lithuania’s experience shows that, by developing the doctrine of the protection of subjective rights, courts are able to gradually fill these gaps: they no longer see immunity as a privilege that separates state power from control, but use it as a criterion for assessing whether state actions are compatible with the protection of fundamental rights. In this way, “blind spots” cease to be inevitable gaps in case law and become a starting point for strengthening the principle of the rule of law.

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