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DISCRETIONARY POWERS OF THE STATE TO IMPOSE ADMINISTRATIVE SANCTIONS TO ECONOMIC ENTITIES IN THE LITHUANIAN FINANCIAL SECTOR: FROM ADMINISTRATIVE IMPLEMENTATION TO JUDICIAL CONTROL

Abstract. This article examines the scope and limits of administrative discretion in the application of administrative liability to the economic entities in the financial sector, as well as its judicial oversight in Lithuania. Two opposing scholarly perspectives on discretion are outlined, followed by a distinction between administrative and judicial discretion as well as a formulation of the theoretical foundations and core elements of administrative discretion. Particular attention is given to the principle of proportionality, which serves as a key criterion for assessing both the proper exercise of administrative powers and their judicial review. Empirical findings indicate significant shortcomings in ensuring proportionality, revealing that current practices do not fully secure the objectives set by the legislator. Moreover, the analysis highlights instances where judicial control of administrative discretion is either insufficient or exceeds its boundaries, thereby undermining the essential elements of discretion. The article concludes that both administrative and judicial practices require refinement to strengthen proportionality, consistency, and adherence to the legislator's intent in the application of administrative liability.

Keywords: discretion, administrative discretion, judicial discretion, judicial review, proportionality

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UZNANIOWE UPRAWNIENIA PAŃSTWA DO NAKŁADANIA SANKCJI ADMINISTRACYJNYCH NA PODMIOTY GOSPODARCZE W SEKTORZE FINANSOWYM LITWY: OD STOSOWANIA ADMINISTRACYJNEGO DO KONTROLI SĄDOWEJ

Streszczenie. Artykuł analizuje zakres i granice uznania administracyjnego w stosowaniu odpowiedzialności administracyjnej wobec podmiotów gospodarczych sektora finansowego, a także sądową kontrolę tej odpowiedzialności. Przedstawiono dwa przeciwstawne stanowiska doktryny dotyczące natury uznania, dokonano rozróżnienia między uznaniem administracyjnym a sądowym oraz sformułowano teoretyczne podstawy i kluczowe elementy uznania administracyjnego. Szczególną uwagę poświęcono zasadzie proporcjonalności, która stanowi podstawowe kryterium oceny zarówno prawidłowego wykonywania kompetencji administracyjnych, jak i ich kontroli sądowej. Wyniki badań empirycznych wskazują na istotne braki w zapewnieniu proporcjonalności, ujawniając, że obecna praktyka nie w pełni realizuje cele wyznaczone przez ustawodawcę. Analiza pokazuje ponadto przypadki, w których kontrola sądowa uznania administracyjnego jest niewystarczająca lub wykracza poza swoje granice, podważając istotne elementy uznania. Artykuł konkluduje, że zarówno praktyka administracyjna, jak i sądowa wymaga udoskonalenia w celu wzmocnienia proporcjonalności, spójności i zgodności z intencją ustawodawcy w stosowaniu odpowiedzialności administracyjnej.

Słowa kluczowe: uznanie, uznanie administracyjne, uznanie sądowe, kontrola sądowa, proporcjonalność

1. INTRODUCTION

In legal scholarship, numerous perspectives exist on the nature and implementation of discretion. Yet, a particular subtype of discretion – administrative discretion – has received comparatively less attention. Administrative discretion is exercised by public administrative bodies in the performance of various functions,[1] one of the most significant being the supervisory authority's imposition of administrative liability to natural or legal persons. In this context, discretion is applied within strict legal boundaries that are intended to prevent arbitrary decision-making. At the same time, administrative liability is shaped not only by the exercise of administrative discretion itself, but also by judicial discretion, which operates through the review of administrative decisions and further reinforces the limits imposed on public authorities. Taken together, administrative and judicial discretion form a unified system governing the application of administrative liability, with the fairness – or, conversely, the shortcomings – of discretion determining the outcomes of liability in practice.

[1] The legal doctrine in Lithuania advances that administrative discretion differs from legislative administrative discretion (which is delegation of legislative powers to the public bodies) and is defined by the ability to exercise freedom of decision-making, legislative implementation functions and filling-in of procedural and material voids (Urmonas, Prancevičienė 2002, 58).

Because discretion plays such a broad role in legal relations, both in the administration of justice and in the daily functioning of public administrative bodies, it is essential to establish clear boundaries and ensure effective oversight of its use. Without such safeguards, the risk of arbitrariness in public administrative significantly increases. This article therefore investigates how administrative discretion is exercised in Lithuania, how courts supervise its implementation, and what consequences these practices hold for administrative liability. The analysis draws on an empirical study of supervisory measures applied by the Bank of Lithuania, considering both the Bank's own application of such measures and the judicial review of its discretionary decisions. The research is conducted through the lens of one of the most important yet broadly interpreted legal principles – the principle of proportionality. By examining administrative discretion and its judicial control in this way, the article assesses their impact on administrative liability while identifying key theoretical and practical challenges in ensuring that discretion is exercised lawfully, proportionately, and in line with legislative intent.

2. ADMINISTRATIVE AND JUDICIAL DISCRETION: KEY ASPECTS

Legal decision-makers operate within certain boundaries that define their freedom to interpret legal norms in different ways or to select among alternative paths of legal reasoning. This freedom of choice is referred to as *discretion*, commonly defined as "the right of an official or state body to resolve an issue at its own discretion" (International Dictionary of Foreign Words). Thus, the essential features of discretion include the application of law (decision-making), the authority to issue decisions with binding force, and the empowerment (freedom) to act within limits prescribed by law.

According to Dworkin (2004, 60), discretion does not amount to absolute freedom; rather, it is constrained by standards of rationality, justice, and other normative requirements. In his view, so-called "hard cases" admit of only one correct answer (Dworkin 2004, 405). For Dworkin, both coherence and political morality imply that the best interpretation of legal materials is always attainable, with truly indeterminate cases being rare (Dworkin 2006, 205–208). On this basis, he even proposes discarding the doctrine of discretion altogether (Dworkin 2004, 108). In contrast, Barak's purposive theory of interpretation regards discretion as the determination of the ultimate purpose of a legal norm. As he argues, "without judicial discretion there can be no interpretation of law; the only question is whether such discretion should be broad or narrow" (Barak 2005, 208), a view consistent with Hart and Sachs's (1958, 144) position that discretion entails a choice among several legally justified alternatives, all of which are valid. For Barak (2005, 209–213), in "hard cases" two judges may reach opposite but equally lawful outcomes. Here, judicial tasks involve assigning weights to competing purposes, resolving conflicts among principles, and engaging in balancing and weighing – arguably the most difficult responsibilities entrusted to courts (Barak 2006, 164–165; Barak 1989, 126). While this balancing approach appears to allow the “calculation” of a correct answer, thereby softening Dworkin’s critique of discretion, it nonetheless leaves space for multiple legally justified solutions. Balancing values is not a mathematical operation; it depends on the interpretative route chosen, and thus courts may legitimately adopt different solutions in hard cases. Despite theoretical divergences, both perspectives agree that discretion is limited – procedurally and substantively – by requirements such as rational decision-making, protection of legitimate expectations, and equality of parties. Thus, no decision-maker ever enjoys unlimited freedom. For Barak (1989, 116–118), judicial reasonableness has both objective and subjective components.

The *objective element* requires awareness that a decision falls within the “hard case” zone, recognition of the limits of discretion, and consideration of the relevant factors (Barak 1989, 135–138). Decision-makers must also appreciate the law-making dimension of interpretation, whether by reinterpreting existing provisions or adapting them to new realities, and thus act consciously (Barak 1989, 140–142). Yet, in administrative discretion this legislative element is absent: public administrative bodies do not provide authoritative interpretations of law but issue individual administrative acts binding only on the parties concerned. Consequently, they are expected to adopt consistent decisions under similar circumstances. Finally, the decision-maker must understand the purpose of the relevant legal norm (Barak 1989, 143–146). This purposive element can be seen as a necessary component of legal interpretation prior to exercising discretion. Indeed, the boundaries of the objective element of discretion so narrowly constrain public administrative bodies that, in practice, only one legally defensible path of reasoning may remain, subject to subsequent judicial review.

The *subjective element* of discretion is equally constrained. Although several alternatives may be legally defensible within the “zone of reasonableness,” the choice among them must be rational rather than arbitrary, never reducible to mere chance (Barak 1989, 118, 135). Personal qualities, experience, and attitudes of the decision-maker also play a crucial role in how discretion is exercised. Still, public administrative bodies enjoy narrower freedom of choice than courts. As Bakševičienė (2017, 73) notes, the subjective freedom of administrative actors is restricted by their institutional functions and subordination. Moreover, while judges may exercise discretion in an “active” or “self-restrained” manner (Barak 1989, 148; 2006, 264–265), this is possible only in contexts where judicial discretion operates – namely, in hard cases where courts may create or preserve legal norms. By contrast, administrative bodies, when issuing individual acts, cannot create new law, and thus their discretion cannot manifest as activism or self-restraint.

A crucial dimension of the subjective element is preventing arbitrariness and ensuring limits on decision-making (Linkevičiūtė 2006, 66) to curtail excessive discretionary power (Davis 1969, 217). Administrative discretion is therefore subject not only to stricter limits but also to judicial review. Both Linkevičiūtė (2006, 67) and Bakševičienė (2017, 73–74) stress that courts supervise the legality and fairness of administrative discretion through judicial discretion. Yet this control is itself limited: courts must respect the decision-making freedom of administrative bodies and restrict review to determining whether an authority committed a manifest error of fact or law, abused its powers, clearly exceeded the boundaries of discretion, violated procedural rules, relied on inaccurate facts, or acted contrary to the purposes for which it was established and empowered (see Lithuanian Supreme Administrative Court rulings: No. A415-2203/2006; No. A261-2286/2012; No. A525-2952/2012; No. A492-435/2014). In principle, then, administrative discretion within its lawful limits should remain "purely" discretionary, exercised solely by the administrative authority, with courts refraining from substituting their own preferences for reasonable administrative choices.

Nonetheless, the boundaries of judicial control over administrative discretion are not entirely clear. Courts in Lithuania administer justice under the Constitution of the Lithuanian Republic and may, in a given case, adopt what they perceive as the "correct" decision, thereby effectively supplanting the administrative authority's exercise of discretion.

3. INITIAL INTERPRETATION OF THE RULES: UNCLEAR LIMITS OF LIABILITY AND QUESTIONABLE PROPORTIONALITY

The Bank of Lithuania is the supervisory authority responsible for overseeing financial markets and applying sanctions to licensed financial institutions. The exercise of administrative discretion in this context depends entirely on the authority's interpretation of both the *objective* and *subjective* elements of law. Specific legislation (*lex specialis*) enumerates over ten different types of sanctions, each of which may theoretically be applied to any given violation. Thus, whenever grounds for sanctioning exist, the Bank of Lithuania has, at least in principle, the power to impose any sanction. The supervisory authority evaluates the nature and seriousness of the violations, along with other mandatory circumstances, and then selects the appropriate measure.

This evaluative process is inherently subjective, particularly where violations do not involve measurable economic harm or identifiable financial gain. While the Bank of Lithuania has established five categories of violations severity – minor, light, moderate, serious, and very serious (Sanctions Calculation Guidelines 2018, para. 6) – the criteria for distinguishing between these categories remain opaque. Although the Guidelines indicate that severity is assessed according to the nature, scope, and consequences of the violation, no objective reference points exist to delineate clear boundaries between categories. As a result, the Bank of Lithuania retains broad discretion to determine the severity category of a violation and, consequently, the sanction to be applied.

Beyond the classification of violations, the principle of *proportionality* plays a decisive role in shaping sanctions, particularly fines. It should be noted that according to legal scholarship (Kargaudienė 2005, 34) the doctrines of administrative discretion and principle of proportionality are closely intertwined, and the success of their application is interdependent. Therefore, further analysis of the use of administrative discretion is prepared through the lens of the principle of proportionality. Under Article 43^3(10) of the Law on the Bank of Lithuania, fines are calculated in three stages: (1) determination of the maximum fine; (2) consideration of mitigating and aggravating circumstances; and (3) adjustment of the calculated fine to ensure proportionality. While this three-step methodology is theoretically sound, the third stage allows the Bank of Lithuania to alter fine amounts even in cases involving similar – or nearly identical – violations. This raises concerns about the consistency and predictability of proportionality assessments. As Danėlienė (2009, 110, 112) argues, proportionality requires public authorities to use only those measures strictly necessary for fulfilling their functions, always preferring the least restrictive alternative. The absence of such restraint would undermine the balance of competing interests that lies at the heart of a democratic society (Barak 2012, 220, 226).

To evaluate how the third stage is applied in practice, this study analyzed the Bank of Lithuania's sanctioning activity in 2023–2024.[2] Using a conservative method, we assumed that each violation[3] fell within the "moderate" category,[4] disregarded the impact of mitigating and aggravating factors, and estimated what

[2] Due to the lack of publicly available data and the relatively small fines, penalties imposed on currency exchange operators (2) and on a crowdfunding service provider are not included in the sample.

[3] We will distinguish violations of internal control, credit risk, own funds requirements, and anti-money laundering and counter-terrorist financing (hereinafter – AML/CTF) prevention requirements into separate groups, since the Bank of Lithuania imposes separate fines for breaches of these categories. Taking into account the grouping of AML/CFT violations applied by the Bank of Lithuania in Administrative Case No. eA-9-822/2024 before the Supreme Administrative Court of Lithuania (LVAT), and the fact that LVAT did not dispute such grouping, it is appropriate to classify AML/CTF prevention violations into the following categories: assessment of overall AML/CTF risk of activities, identification of the client and the client's representative, determination of the purpose and nature of the client's business relationship, monitoring of clients' business relationships and transactions, compliance with international financial sanctions, and internal control requirements. To determine the number of violations (for which fines are imposed), the provisions on infringements of legal acts publicly disclosed by the Bank of Lithuania, as well as its press releases, are also used.

[4] According to the Bank of Lithuania's Sanctions Calculation Guidelines, moderately severe infringements are the third out of five categories of severity, with 20% of the maximum fine applied. In other words, moderately severe infringements represent the most "average" category.

the baseline fine should have been. The dataset included 19 fines imposed for violations of various legal requirements and 18 fines for breaches of the Law on the Prevention of Money Laundering and Terrorist Financing (PPTFPĮ). Since the legislator has set stricter sanctions for PPTFPĮ violations,[5] the analysis distinguishes between these two groups. Results are presented in Annexes 1 and 2. The analysis of these results yields several conclusions:

1. *Widespread reliance on discretion in the third stage*: The Bank of Lithuania adjusted fines in nearly every case. While the assumption of "moderate" severity may not always hold, the data indicate that the Bank left the second-stage fine unchanged in only two cases. In all other cases, fines were substantially reduced, with reductions exceeding 60% for general violations and more than 90% for PPTFPĮ violations.
2. *Greater use of discretion in PPTFPĮ cases*: If PPTFPĮ violations were hypothetically classified as "serious," reductions in the third stage would approach 96% of the baseline fine. This demonstrates the Bank's broad freedom to assign virtually any fine level in these cases, presenting it as proportionate.
3. *Proportionality linked to revenue ratios*: The Bank of Lithuania appears to assess proportionality primarily by comparing fine amounts to the institution's annual revenue. Excluding outliers, fines for PPTFPĮ violations ranged between 0.4% and 2.64% of annual revenue (average 1.55%), while fines for other violations ranged from 0.21% to 3.34% (average 3.7%). These findings support the conclusion that proportionality assessments are guided by past practice and relative revenue benchmarks, rather than by objective statutory criteria.
4. *Contradicting legislative intent:* Despite stricter statutory provisions for PPTFPĮ violations (minimum maximum fine of €5.1 million compared to €100,000 for other violations), the Bank of Lithuania imposed proportionally lighter fines for such cases. On average, fines for PPTFPĮ breaches were more than 2% of annual revenue lower per violation than fines for other breaches. This undermines the legislator's clear intent to treat money-laundering violations more severely.
5. *Disproportionate treatment of smaller institutions*: Institutions with lower annual revenues faced proportionally higher fines. For example, in PPTFPĮ cases, entities with revenues under €3 million (10 cases) were fined an average of 7.22% of annual revenue (2.18% per violation), while larger entities (8 cases) were fined only 2.43% (0.76% per violation). A similar pattern was observed in other cases, where fines against smaller institutions

[5] The AML/CFT Act does not provide for the mildest sanction – public disclosure – and the maximum fine cannot be less than EUR 5,100,000, whereas under the Law on Banks the minimum maximum fine is EUR 100,000 (Article 74(6) of the Law on Banks).

were up to ten times higher in relative terms than those imposed on larger entities. While it is true that smaller revenues magnify the proportional impact of even modest fines, the overall pattern indicates systemic disproportionality disadvantaging smaller financial institutions.

Taken together, these findings demonstrate that the Bank of Lithuania exercises exceptionally broad administrative discretion in imposing fines. It determines the severity category of violations with little transparency, frequently reduces calculated fines by more than 90% in the third stage and applies sanctions in ways that contradict legislative intent by treating PPTFPĮ violations more leniently and disproportionately burdening smaller institutions. This suggests that the current regulatory framework grants the Bank an overly wide margin of discretion – one that requires tightening to ensure sanctions are consistent, proportionate, and aligned with legislative objectives. Leaving aside possible legislative solutions to this issue, the following section turns to the second major constraint on administrative discretion: judicial review.

4. JUDICIAL REVIEW AS AN ESSENTIAL SAFEGUARD AGAINST IMPROPER IMPLEMENTATION OF ADMINISTRATIVE DISCRETION

The model for delineating the boundaries of administrative discretion is dual in nature. First, discretion is limited *a priori* through legal regulation, which narrows the scope of decision-making available to public administrative bodies. Second, discretion is constrained *ex post* through judicial review of administrative decisions. Judicial control of administrative discretion thus embodies a "double discretion." This raises a central problem: to what extent should judicial discretion remain distinct from administrative discretion, and how far should courts go in reviewing the latter?

In practice, courts often evaluate the proportionality of sanctions by examining the reasoning behind administrative decisions. In some cases, this results in the annulment of certain violations and the modification of the imposed fine. For example, in 2019 the Bank of Lithuania imposed a fine of €880,000 on Šiaulių Bankas AB for seven violations of the PPTFPĮ. The court annulled three of the violations and reduced the fine to €440,000 (Vilnius Regional Administrative Court, Case No. eI4-1462-764/2022). Notably, the annulment of three violations should have resulted in a fine of €510,000; however, the court further reduced the fine by an additional €70,000, invoking the principle of proportionality. This precedent illustrates several problematic aspects of judicial control over administrative discretion.

First, the court did not provide any numerical justification for its further reduction of €70,000, leaving the additional decrease entirely unsubstantiated.

Second, in assessing proportionality, the court relied twice on the same mitigating circumstances. The Bank of Lithuania had already taken into account the institution's cooperation and remedial efforts in the second stage of calculating the fine, reducing the base fine by 30%. The court nevertheless reused these same factors to justify a further reduction. Since the court did not find the Bank of Lithuania's initial reduction unlawful or insufficient, its double use of these circumstances lacked any legal basis. Similarly, the court's reliance on minor procedural breaches had already been considered at the first stage of the fine calculation when assigning violations to their respective severity categories. The absence of any finding of misclassification makes the reuse of this factor equally unjustified.

Third, the reduced fine of €440,000 corresponded to 0.54% of annual revenue, barely above the statutory minimum of 0.5% set under Article 39(1)(2) PPTFPĮ. Given that this minimum applies per violation (and four violations were established), both the Bank of Lithuania and the courts appear to have misapplied the statutory provisions. The further reduction was therefore *contra legem*, undermining the explicit requirements of the PPTFPĮ. This resulted in a paradox: the principle of effective judicial protection was applied in a manner overly favorable to the violator, disregarding the legislator's expressly established minimum sanction.

Judicial activism becomes even more evident when courts effectively substitute their judgment for that of the administrative body. Such judicial behavior has been criticized in legal scholarship (Paškevičienė 2019, 251). In its ruling of 19 June 2024 (Case No. eA-201-552/2024), the Supreme Administrative Court of Lithuania annulled the revocation of a license for unlicensed electronic money activities (while confirming other violations), and replaced it with a suspension of the license until 1 July 2024.[6] The court reasoned that no aggravating circumstances had been established, that mitigating circumstances existed, and that the violations had not caused negative consequences for clients or other financial institutions. It concluded that the objectives of supervision and sanctioning under the PPTFPĮ and the Law on Payment Institutions would be sufficiently met by a temporary suspension rather than revocation.

This precedent also raises critical questions about the limits of judicial control over administrative discretion and the principle of effective judicial protection. Replacing one supervisory measure with another should not fall within the scope of judicial review, as such intervention contradicts both the established case law of the Lithuanian Supreme Administrative Court (e.g., Cases No. A415-2203/2006, No. A261-2286/2012, No. A525-2952/2012, No. A492-435/2014) as well as the necessary distinction between administrative and judicial discretion. In this case, the court failed to respect either the objective or subjective elements of discretion.

[6] This case examined whether the Board of the Bank of Lithuania, by its decision of 16 April 2020, had valid grounds to revoke a financial institution's payment institution license for seven AML/CFT violations, failure to comply with client fund safeguarding requirements, providing false information to the Bank of Lithuania, and conducting electronic money issuance activities without authorization.

From the perspective of the *objective element*, the court ignored the statutory purposes of license suspension under the Law on Payment Institutions (2022 revision, Art. 8(5)–(6)), which restrict suspension to cases where violations can be remedied swiftly (within two months). By substituting the sanction, the court effectively imposed a suspension exceeding four years, subsequently lifted only two weeks after its ruling. The judicial protection afforded in such cases cannot be regarded as effective. By replacing a four-year license revocation with a suspension of only two weeks, the court effectively condemned the institution to a repeated revocation. For an entity that had ceased operations for several years, restoring activity and complying with the legal requirements imposed on licensed institutions within such a short timeframe was practically impossible.[7]

Moreover, by substituting revocation with suspension, the court restricted the institution's ability to pursue damages, since during the four-year period in question the institution could not reasonably have conducted licensed activities. The ruling therefore created a paradoxical compromise: the *ultima ratio* measure of revocation was formally annulled in favor of the institution, while at the same time the supervisory authority was shielded from potential liability arising from the improper exercise of administrative discretion.

This judicial approach raises serious concerns about the guarantee of effective judicial protection. The practice is particularly unfavorable to entities challenging supervisory measures. Even when one violation and the harshest sanction are annulled, the court may exercise its discretion in such a way that the institution ultimately remains in the same position as if the most severe measure had been upheld. This indicates not only the ineffectiveness of judicial protection in practice but also a deeper failure to safeguard the most basic element of justice – the right to a fair hearing and meaningful remedy.

From the perspective of the *subjective element*, judicial activism must be reasoned and rational. If the court assumed the role of deciding the sanction, it should have assessed all seven factors listed in Article 43^3(7) of the Law on the Bank of Lithuania. Instead, it selectively referred to aggravating/mitigating circumstances and negative consequences without addressing the remaining factors or rebutting the Bank of Lithuania's assessment. This selective reasoning contradicts Barak's view that an "active judge must be more restrained than a restrained judge" (1989, 150), a principle of particular importance in Lithuania where judicial precedent constitutes an official source of law (Kūris 2009, 142). The errors committed in this case therefore demonstrate a fundamental failure to implement judicial discretion in accordance with its subjective element, undermining the principle of effective judicial protection itself.

[7] The institution returned its license to the Bank of Lithuania within the two-week period (https://www.lb.lt/lt/naujienos/uz-bruc-bond-uab-siurkscius-ir-sistemingus-istatymu-pazeidimus-panaikinta-mokejimo-istaigos-licencija).

5. CONCLUSION

Seemingly antagonistic perspectives of affirming and denying discretion can be reconciled when considering which actor exercises discretion in "hard cases." Dworkin's denial of discretion carries particular weight in the administrative sphere, since public administrative bodies, when making decisions, neither create law nor administer justice; rather, they carry out functions delegated by the legislature. For this reason, in exercising administrative discretion, an authority cannot act "creatively" or "constrainedly," but must identify the specific lawful course of action. The implementation of discretion requires both an objective element (awareness of discretion) and a subjective element (choosing among possible solutions). Finally, administrative discretion is also bound by objective limitations and subject to judicial review.

With respect to administrative discretion, the legislature establishes certain boundaries within which public administrative bodies must act to reach proportionate decisions. Nonetheless, an empirical assessment of the application of the principle of proportionality in administrative discretion – based on sanctions (fines) imposed by the Bank of Lithuania in 2023–2024 – revealed that almost every decision was treated as a "hard case." Discretion was exercised expansively, in disregard of legislative intent, and the principle of proportionality was not preserved, particularly in the unequal treatment of entities with higher versus lower annual revenues. Even though supervision of economic entities is bound to be a discretion-intensive area, legislators should introduce legal "checks" to balance the current discretionary liability system and protect the legislative intent.

Judicial review plays a critical role in defining the limits of administrative discretion. An analysis of disputes between the Bank of Lithuania and financial market participants indicates that courts frequently assume an overly "active" role. They issue decisions without sufficient interpretation of law, fail to justify the rationality of their rulings, and neglect both the objective and subjective elements of discretion as well as the balancing of competing values. This deficiency in the quality of judicial reasoning results in paradoxical outcomes that, at times, even conflict with legal norms.

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Supreme Administrative Court of Lithuania. Decision of September 17, 2012, in administrative case No. A261-2286/2012.
Supreme Administrative Court of Lithuania. Decision of November 21, 2012, in administrative case No. A525-2952/2012.
Supreme Administrative Court of Lithuania. Decision of February 6, 2014, in administrative case No. A492-435/2014.
Supreme Administrative Court of Lithuania. Decision of June 19, 2024, in administrative case No. eA-201-552/2024.
Supreme Administrative Court of Lithuania. Decision of November 13, 2024, in administrative case No. eA-9-822/2024.
Vilnius Regional Administrative Court. Judgment of October 10, 2022, in administrative case No. eI4-1462-764/2022.

1 annex

Analysis of the fines imposed by the Bank of Lithuania in 2023–2024, excluding violations of the Law on the Prevention of Money Laundering and Terrorist Financing

	Annual revenue (EUR ‘000)	Number of infringe-ments	Maximum Fine (EUR ‘000)	Stage I Fine (EUR ‘000)	Imposed Fine (EUR ‘000)	Stage III Fine Change (%)	Fine as % of Annual Income	Per-Violation Fine as % of Annual Income
KogoPay UAB	299	3	100	60	30	–50,0	10,03	3,34
UAB Guru Pay	3300	4	330	264	85	–67,8	2,58	0,64
Flywire Europe, UAB	24 980	1	2498	499	40	–92,0	0,16	0,16
Revolut Bank, UAB	403 450	1	40 345	8069	200	–97,5	0,05	0,05
PayRay Bank, UAB	8464	4	846	677	210	–69,0	2,48	0,62
UAB “NexPay”	3417	1	341	68	50	–26,8	1,46	1,46
BENKER UAB	0	1	100	20	27	35,0	/	/
UAB STANHOPE FINANCIAL	868	2	100	40	48	20,0	5,53	2,76
Demivolt, UAB	9	1	100	20	3	–85,0	33,33	33,33
UAB BLUE EMI LT	0	2	100	40	6	–85,0	/	/
UAB SME Bank	6956	5	695	695	170	–75,6	2,44	0,49
SatchelPay, UAB	2515	1	251	50	25	–50,3	0,99	0,99
UAB STANHOPE FINANCIAL	868	1	100	20	9	–55,0	1,04	1,04
Via Payments UAB	13 559	1	1355	271	70	–74,2	0,52	0,52
UAB “Glocash Payment”	1099	1	109	21	10	–54,5	0,91	0,91
UAB “Finansinės paslaugos” Contis	42 473	2	4247	1698	180	–89,4	0,42	0,21
PCS Transfer, UAB	175	1	100	20	6	–70,0	3,43	3,43
Ambr Payments, UAB	23	1	100	20	2	–90,0	8,70	8,70
CBI Money UAB	0	2	100	40	12	–70,0	/	/
Average:						**–60,4**	4,60	3,70

Source: Compiled by the author, based on: Sanctions applied by the Bank of Lithuania; Audited data of electronic money institutions for 2022 and 2023; Audited financial statements of Revolut Bank UAB, UAB SME Bank, and PayRay Bank UAB.

2 annex

Analysis of the fines imposed by the Bank of Lithuania in 2023–2024 for violations of the Law on the Prevention of Money Laundering and Terrorist Financing

	Annual revenue (EUR ‘000)	Number of infrin-gements	Maximum Fine (EUR ‘000)	Stage I Fine (EUR ‘000)	Imposed Fine (EUR ‘000)	Stage III Fine Change (%)	Fine as % of Annual Income	Per-Violation Fine as % of Annual Income
UAB “Pyrros Lithuania”	681	3	5100	3060	40	–98,7	5,87	1,96
UAB “NIUM EU”	505	3	5100	3060	40	–98,7	7,92	2,64
UAB “PHOENIX PAYMENTS”[a]	57 327	3	5732	3439	970	–71,8	1,69	0,56
UAB Etapay	929	3	5100	3060	280	–90,8	30,14	10,05
Paylar, UAB	747	3	5100	3060	40	–98,7	5,35	1,78
Verified Payments, UAB	1790	4	5100	4080	110	–97,3	6,15	1,54
UAB “TransferGo Lithuania”	22 256	3	5100	3060	310	–89,9	1,39	0,46
Finci, UAB	2350	2	5100	2040	30	–98,5	1,28	0,64
UAB “NexPay”	3417	5	5100	5100	125	–97,5	3,66	0,73
Wittix, UAB	3638	2	5100	2040	55	–97,3	1,51	0,76
Via Payments UAB	13 559	1	5100	1020	100	–90,2	0,74	0,74
Transactive Systems, UAB	3971	4	5100	4080	280	–93,1	7,05	1,76
UAB EXCHANGELT	2244	3	5100	3060	45	–98,5	2,01	0,67
LTL Kredito unija	2267	3	5100	3060	25	–99,2	1,10	0,37
Valyuz, UAB	2394	3	5100	3060	55	–98,2	2,30	0,77
UAB Finansinės paslaugos “Contis”	42 473	5	5100	5100	840	–83,5	1,98	0,40
UAB “Maneuver LT”	5801	2	5100	2040	80	–96,1	1,38	0,69
“Secure Nordic Payments”, UAB	2092	7	5100	7140	210	–97,1	10,04	1,43
Average:						**–94,2**	5,09	1,55

[a] The only fine imposed by the Bank of Lithuania in 2023–2024 for violations of the PPTFPĮ, where the maximum fine was calculated based on the financial institution’s income rather than the amount specified in the law.

Source: Compiled by the author, based on: Sanctions applied by the Bank of Lithuania; Audited data of electronic money institutions for 2022 and 2023; Audited financial statements of credit union LTL.