Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

Articles

Studia Iuridica Lublinensia vol. 34, 5, 2025
DOI: 10.17951/sil.2025.34.5.253-268

Karol Skrodzki
University of Bialystok, Poland
ORCID: 0000-0003-2131-4159
k.skrodzki@uwb.edu.pl

Dismissal of a Judge from Delegation in Light of the Provisions of the Constitution of the Republic of Poland

Odwołanie sędziego z delegowania w świetle przepisów Konstytucji Rzeczypospolitej Polskiej

ABSTRACT

This article addresses the matter of constitutionality of the provisions related to dismissal of a judge from delegation to another court. The paper first discusses the scope of a judge's power connected with his or her appointment to adjudicate in a particular court. The stability of this power is guaranteed by the provisions of the Constitution of the Republic of Poland, indicating, i.a., the non-transferability of a judge. Next, it is clarified that delegation of a judge to rule in another court constitutes an extension of the judge's power. However, this expanded scope is not protected by the Constitution of the Republic of Poland since a judge can be dismissed from delegation at any time by the Minister of Justice. Finally, the article presents the view that a court staffed by judges whose stability of judicial power is not guaranteed does not meet the requirement of an autonomous, impartial and independent court, as stipulated in Article 45 (1) of the Polish Constitution.

Keywords: scope of judge's power; home court; delegated judge; dismissal of a judge from delegation

CORRESPONDENCE ADDRESS: Karol Skrodzki, PhD, University of Bialystok, Faculty of Law, Mickiewicza 1, 15-213 Bialystok, Poland.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

INTRODUCTION

The subject of this article is an analysis of Polish regulations on delegation of a common court judge to adjudicate in another court, with particular emphasis on the constitutionality of the norms related to dismissal of a judge from delegation. Statutory regulations on this matter have had a long history in the Polish legal order. Over the years, a number of interpretative issues have occurred on their grounds, including constitutional considerations. The regulations that have been analyzed with regard to compliance with the Constitution of the Republic of Poland[1] include the provisions on the competence of the Minister of Justice to delegate and regulate the possibility of delegating judges without their consent. So far, however, the correctness of the regulation covering the dismissal of a judge from delegation has not been assessed by the Constitutional Tribunal.

While examining this very problem – dismissal of a judge from delegation – one cannot fail to notice its current relevance. Although the provisions concerning this matter have in fact been in force in an unchanged form for over a dozen years, recently cases of dismissal of judges from delegation under special circumstances have been frequently discussed in public. This does not mean, however, that the issue of applying the norms allowing the dismissal of a judge from delegation has not been noticed or discussed before.[2]

The reason for considering the constitutionality of the regulations regarding dismissal of judges from delegation is also the fact that an attempt was made to make these norms subject to the assessment of the Constitutional Tribunal. The National Council of the Judiciary of Poland, via resolution of 31 May 2016,[3] submitted a motion on this subject to the Constitutional Tribunal, but it was then withdrawn,[4] and the proceedings were discontinued.[5]

Emphasizing the current relevance of the issue in question, it should also be pointed out that the related provisions were the subject of a question of law to the Court of Justice of the European Union (CJEU).[6] In response, the Court of Justice ruled that the Polish regulations allowing arbitrary delegation of a judge as well as his or her dismissal from delegation violate EU law.[7] The CJEU's judgment is an

[1] Journal of Laws 1997, no. 78, item 483, as amended.

[2] M. Domagalski, *Delegowanie sędziego: sędzia przysuwany jak żołnierz od zadań do zadań*, 21.10.2013, https://www.rp.pl/sady-i-trybunaly/art12801391-delegowanie-sedziego-sedzia-przysuwany-jak-zolnierz-od-zadan-do-zadan (access: 21.5.2024).

[3] Resolution No. 412/2016 of 31 May 2016 of the National Council of the Judiciary of Poland.

[4] Resolution No. 71/2017 of 8 March 2017 of the National Council of the Judiciary of Poland.

[5] Decision of the Constitutional Tribunal of 1 June 2017, K 32/16, OTK-A 2017, item 47.

[6] Decision of the District Court in Warsaw of 23 September 2019, X Ka 862/19, non-published.

[7] Judgment of the Court (Grand Chamber) of 16 November 2021 in Joined Cases C-748/19 to C-754/19, *Criminal proceedings v. WB and Others*, EU:C:2021:931.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

important voice in the general discussion of Polish regulations related to delegation of judges; nonetheless, this ruling does not conclude the topic and therefore does not undermine the need for this article, particularly since in the judicial decisions of Polish courts following the CJEU's judgment it has been argued that the said judgment cannot lead to an automatic assumption that any judge delegated upon his or her consent by the Minister of Justice is not an independent and impartial judge.[8] This confirms that the discussion on the constitutionality of delegation of a judge (and dismissal from delegation) is currently valid.

Furthermore, leaving the CJEU's judgment aside, the argumentation presented below focuses on assessing the compatibility of the provisions on dismissal of a judge from delegation with the Polish Constitution, presenting the issue discussed here in a broad historical perspective.

The relevant research method used for the purpose of the article is the dogmatic-legal and historical-legal method, while the complementary one is the theoretical-legal method.

The article also contains *de lege ferenda* remarks, in which – pointing to the need to preserve the very function of a judge's delegation – constitutional principles for his or her dismissal from delegation are proposed.

THE IDEA OF DELEGATING A JUDGE

The Constitution of the Republic of Poland of 2 April 1997 guarantees every judge stability of tenure, covering several dimensions: financial, administrative, and organizational, but also – which is important for further considerations presented here – in connection with the place where the judge holds office. The latter dimension of stability of a judge's office consists in the principle that a judge is appointed to hold office in a specific court (the so-called "home court") according to its local, substantive, and functional jurisdiction (see Article 55 § 1 and 3 of the 2001 Law on the System of Common Courts[9]). As noted in the literature, one of the constitutional principles of the judiciary is that a judge performs the official duties in his or her home court.[10] In contrast, in judicial decisions it has been emphasized that the essence of appointment of a judge (with simultaneous designation of his or her place of service) is the conferral of an investiture (imperium of judicial power), which not only constitutes the legitimacy to exercise judicial power but also de-

[8] Decision of the Supreme Court of 27 January 2023, I CSK 4282/22, non-published.

[9] Act of 27 July 2001 – Law on the System of Common Courts (consolidated text, Journal of Laws 2024, item 334, as amended).

[10] T. Ereciński, J. Gudowski, J. Iwulski, *Prawo o ustroju sądów powszechnych. Ustawa o Krajowej Radzie Sądownictwa. Komentarz*, Warszawa 2009, p. 266.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

termines its scope. There is a close link between granting the judge the right to "administer justice" and the need to precisely determine the scope of jurisdiction exercised by this judge. Indeed, a judge is not appointed to administer justice *in abstracto*, but only to decide on specific cases within a strictly defined jurisdictional area.[11] Therefore, the place of office constitutes an element of judicial power in the strict sense, not merely a personnel-related issue or an organizational problem of judicial structures.[12] Thus, any interference with the place of office is an interference with the scope of a judge's power.[13]

A judge may only exercise judicial power in the specific court in which he or she has been assigned an official office. The Polish Constitution in Article 180 guarantees that every judge remains in their official position prescribed in the statute.

Delegation of a judge can be defined as a transfer of the competence and duty to perform the function outside his or her permanent office.[14] While explaining the idea of delegation, attempts have been made to compare it to the civil-law constructs of power of attorney, authorization, competence, or representation.[15] In judicial decisions, it has been underlined that delegation fulfils the function of legitimacy of a judge to rule in another court.[16] It is an authorization to perform all the duties of a judge in the court to which the judge has been delegated, and any reservations contained in the act of delegation, indicating either specific cases and procedural acts or their categories, are ineffective.[17]

To put it simply: delegation is an act granting a judge the right (for a fixed or indefinite period of time) to decide on cases and exercise justice in a different area of jurisdiction from that designated in his or her act of appointment as a judge.

The absence of the necessary delegation of a judge to adjudicate in another court means insufficient number of personnel in court, resulting in a material defect in the proceedings.[18] If a judge exceeds the scope of his or her authority, both territorially and substantively, by ruling outside the court of this judge's seat, he or she becomes an incompetent judge (court) – within the meaning of Article 45 (1)

[11] Judgment of the Supreme Court of 15 December 2015, III KRS 134/12, non-published; judgment of the Supreme Administrative Court of 5 October 2017, II FSK 1262/17, non-published.

[12] T. Zembrzuski, *Delegowanie sędziego do pełnienia obowiązków w innym sądzie. Zagadnienia prawne w praktyce SN*, "Monitor Prawniczy" 2012, no. 23, p. 1271.

[13] Resolution of the Supreme Court of 17 July 2007, III CZP 81/07, OSNC 2007, no. 10, item 154.

[14] See P. Czarnecki, *Pojęcie i funkcje delegacji sędziego w aspekcie ustrojowym i karnoprocesowym*, "Iustitia" 2010, no. 2, p. 6.

[15] *Ibidem*, p. 7.

[16] Judgment of the Supreme Court of 11 February 2009, II KK 265/08, OSNwSK 2009, no. 1, item 346.

[17] Resolution of the Supreme Court of 19 February 2003, I KZP 51/02, OSNKW 2003, no. 3–4, item 25; judgment of the Supreme Court of 5 July 2010, V KK 5/10, R-OSNKW 2010, item 1377.

[18] Judgment of the Supreme Court of 29 June 2017, III KO 18/17, non-published.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

of the Polish Constitution and the provisions of procedural law.[19] It is also pointed out that delegation of a judge is an exception to the principle of his or her non-transferability and is connected with everyone's right to have their case heard by a competent court.[20]

The issue of whether a judge delegated to another court may also exercise jurisdiction in the court where he or she has the original office (the home court) during the delegation has been addressed in literature as well as judicial decisions. It consisted in determination of whether the new scope of authority conferred on the judge by delegation (in territorial and substantive terms) supersedes that resulting from the act of appointment to the office of a judge (Article 55 § 3 of the 2001 Law on the System of Common Courts). On the one hand, it has been argued in the doctrine that delegation involves an extension of the material jurisdiction beyond the boundaries specified in an appointment to the office of judge.[21] On the other hand, it has also been stipulated that delegation of a judge to another court excludes the possibility for that judge to adjudicate in their home court.[22] It has been aptly clarified in judicial decisions that the act of delegation does not imply a limitation of a judge's authority, but is rather an extension of that authority to the area and scope of jurisdiction beyond the previous boundaries. During the period of delegation, a judge may therefore simultaneously perform judicial duties in the home court and may also be delegated to several courts at the same time.[23]

The above explanations regarding the delegation of a judge, understood as granting the judge the competence to exercise justice in a different jurisdictional area than the one determined in the act of appointment to the office of a judge, are based on the current wording of Article 77 § 1 (1) of the 2001 Law on the System of Common Courts. Pursuant to this provision, the Minister of Justice may delegate judges, upon their consent, to perform the duties of a judge in another court of equal or lower competence and, in particularly justified cases, also in a court of higher competence, taking into consideration rational use of common court personnel and the needs arising from the workload of particular courts. To a limited extent, the authority to delegate a judge is also granted to the president of the court of appeal (Article 77 §§ 8 and 9 of the 2001 Law on the System of Common Courts).

---

[19] Judgment of the Supreme Court of 1 October 2002, V KK 114/02, non-published.

[20] Judgment of the Supreme Court of 17 May 2011, III KK 105/11, non-published.

[21] H. Kempisty, *Ustrój sądów. Komentarz*, Warszawa 1966, p. 142; J. Kosonoga, *Nienależyta obsada sądu jako przesłanka uchylenia orzeczenia*, "Białostockie Studia Prawnicze" 2018, vol. 23(1), p. 74.

[22] W. Kozielewicz, *Instytucja delegowania sędziego do pełnienia obowiązków sędziego w innym sądzie – aspekty ustrojowe i procesowe*, [in:] *Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy*, ed. J. Skorupka, Warszawa 2009, p. 197.

[23] Decision of the Supreme Court of 17 July 2012, I KZP 13/12, OSNKW 2012, no. 9, item 87, p. 1.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

However, pursuant to Article 77 § 1 (2) and (2b) and Article 77 §§ 2–4 of the 2001 Law on the System of Common Courts, a judge may also be delegated to perform administrative actions in the Ministry of Justice or in another organizational unit under the authority of the Minister of Justice or supervised by it, etc. A judge may also be delegated to perform duties or a particular function outside the territory of the state, within the framework of actions taken by international or supranational organizations and international teams (Article 77 § 3a of the 2001 Law on the System of Common Courts).

However, an issue relevant for further assessment of constitutionality of the provisions governing dismissal of a judge from delegation will be the question of the judge's delegation to perform judicial duties in another court, since only then is the judge's imperium of judicial power expanded and, in case of dismissal of a judge from delegation, is this power withdrawn.

HISTORICAL BACKGROUND TO THE PRINCIPLES OF DELEGATING A JUDGE

The legal regulation of the delegation of a judge has a relatively long history in Polish law. At the beginning of historical considerations, however, it may be noted that throughout the entire period in which the provisions regarding this matter have been in force, they have not undergone any significant modifications, despite being referred to in various legal acts applicable in the periods of extremely different systems of the state.

It is necessary to start with Article 105 of the Regulation of the President of the Republic of Poland of 6 February 1928 – Law on the System of Common Courts.[24] Pursuant to that provision, the Minister of Justice, having consulted the administrative board of the competent court, could delegate judges, upon their consent, to perform duties of a substitution judge or an administrative function in another court, or to perform activities in the Ministry of Justice. In urgent cases, the Minister of Justice could also, without the assessment from the board, delegate a judge, upon his or her consent and after hearing the manager of the competent court, for a period not longer than three months. Based on the regulation referred to above, the Minister of Justice could also delegate judges against their will, but only for a period not exceeding three months within three years. With regard to judicial activities in the district of the same court of appeal, also the president of the court of appeal was entitled to delegate a judge.

An amendment to the above regulation – introduced in 1929 – regarding the scope of delegation of judges, mainly consisted in granting the Minister of Justice

[24] Journal of Laws 1928, no. 12, item 93.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

the power to delegate judges against their will only upon consent of the general assembly of a court of higher competence.[25]

Under the 1928 Regulation, only the Minister of Justice had the power to delegate a judge, although according to the original assumptions it was also to be granted to the judicial self-government.

The 1928 Regulation did not specify the duration for which a judge could be delegated. In particular, the said provisions did not clarify whether delegation was only allowed for a fixed period of time (excluding delegation without the judge's consent) or also indefinitely.

More importantly, however, the pre-war regulations did not in any way address the issue of a judge's dismissal from delegation.

The 1928 Regulation, in the part related to delegation of judges, was in force in almost unchanged wording after 1945.[26] According to the provision of Article 68, which addressed the issue at that time, the Minister of Justice could delegate a judge, upon his or her consent, to perform duties of a judge or administrative activities in another court as a substitute judge, or activities in the Ministry of Justice. The Minister of Justice could also delegate judges without their consent, but only for a period of no more than three months per year.

Delegation of a judge – in a form substantially unchanged – was then regulated by Article 63 of the 1928 Regulation in the wording included in the consolidated text of 5 February 1964.[27]

The 1928 Regulation was replaced by the Act of 20 June 1985 – Law on the System of Common Courts[28] which, based on the model of the earlier regulation, the provision of Article 66, determined the power of the Minister of Justice to delegate judges, with their consent, to perform the duties of a judge or administrative activities in another court, the Ministry of Justice or another organizational unit subordinate to the Minister of Justice or supervised by it. The Minister could also delegate judges without their consent for a period of no more than three months per year. The president of a voivodeship court, on the other hand, was authorized to delegate a judge to perform the duties of a judge within the jurisdiction of this very voivodeship court, but for a period of no more than one month a year.

The said act – similar to the 1928 Regulation – also failed to address the issue of the principles governing the dismissal of a judge from delegation.

---

[25] However, the condition of obtaining consent of the general assembly of a court of higher competence was abolished pursuant to the Regulation of the President of the Republic of Poland of 23 August 1932 amending certain provisions of the Law on the System of Common Courts (Journal of Laws 1032, no. 73, item 661).

[26] See Regulation of the President of Poland of 6 February 1928 – Law on the System of Common Courts (consolidated text, Journal of Laws 1950, no. 39, item 360).

[27] Consolidated text, Journal of Laws 1964, no. 6, item 40.

[28] Journal of Laws 1985, no. 31, item 137.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

Then, the issue of delegation, in an unchanged wording, was regulated by Article 63 of the 1985 Law on the System of Common Courts.[29]

The next regulation concerning the organization of the common judiciary was, currently in force, the 2001 Law on the System of Common Courts.[30]

The provision of Article 77 § 1 of the 2001 Law on the System of Common Courts granted the Minister of Justice the power of delegating judges, with their consent, to perform judicial duties or administrative activities in another court, the Ministry of Justice or another organizational unit subordinate to that Minister or supervised by it, at the request of the First President of the Supreme Court – in the Supreme Court, and at the request of the President of the Supreme Administrative Court – in that Court, for a definite period of no longer than two years, or for an indefinite period of time. Delegating a judge in the above-mentioned cases could take place even without the judge's consent for a period not exceeding three months within one year. However, delegation without the judge's consent could not be repeated earlier than after two years.

As in previous regulations, the power to delegate judges, to a limited extent, was also held by presidents of district courts and courts of appeal (Article 77 § 8 of the 2001 Law on the System of Common Courts).

However, what was new under the 2011 Law on the System of Common Courts was Article 77 § 4, according to which a judge delegated under the said Article 77 § 1, for an indefinite period of time, could be dismissed from delegation or resign from it upon three months' notice. The law did not specify the prerequisites for dismissal from delegation.

The 2001 Law on the System of Common Courts, within the scope of the provisions related to delegation, was amended by the Act of 14 July 2006.[31] According to Article 77 § 3a added at that time, the Minister of Justice could delegate a judge, upon his or her consent, to perform duties or a specific function also outside the state borders, within the framework of activities undertaken by international or supranational organizations and international teams acting pursuant to international agreements. Such delegation could last for a fixed period not exceeding four years, with the possibility of delegating a given judge again, for another period, also not exceeding four years. However, under the new wording of Article 77 § 4, a judge delegated on the basis of Article 77 § 1 (particularly to perform the duties of a judge in another court) for an indefinite period of time, or under Article 77 § 3a (outside the country) for a period longer than one year could be dismissed from delegation or resign from it upon a three months' notice. In turn, a judge delegated pursuant

[29] Consolidated text, Journal of Laws 1990, no. 23, item 138.

[30] Journal of Laws 2001, no. 98, item 1070.

[31] Act of 14 July 2006 amending the Law on the System of Common Courts, the Law on the System of Military, and the Law on the Public Prosecutor's Office (Journal of Laws 2006, no. 144, item 1044).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

to Article 77 § 3a for a period not exceeding one year could resign upon a month's notice. The added Article 77 § 4a further provided that the Minister of Justice could dismiss a judge delegated pursuant to 77 § 3a before the expiry of the term of delegation, but only in precisely defined cases.

The amendments discussed above did not affect the power of the Minister of Justice to dismiss a judge from delegation, without the need to provide a reason, in a situation when the delegation was granted to perform the duties of a judge in another court on the territory of the country (Article 77 § 1 (1)). It is also worth noting that the provision of Article 77 § 4a, specifying precise reasons for dismissal of a judge from delegation outside the territory of the country, was later repealed, although the option of delegating a judge was left and has been in force to this day.

An important amendment to the provisions related to dismissal of a judge from delegation was introduced via the Act of 29 June 2007.[32] This amendment abolished the obligation to apply a three-month notice when dismissing a judge from delegation to another court for an indefinite period of time. However, the notice period was retained in case of delegation of a judge to the Ministry of Justice.

The Act of 18 August 2011,[33] in Article 77 § 1 (1), provided that the Minister of Justice may delegate a judge, with his or her consent, to perform the duties of a judge or administrative activities in another court of equivalent or lower competence and, in particularly justified cases, also in a court of higher competence. The idea of this amendment was to clarify that delegation of a judge to a court of higher competence is possible only in particularly justified cases.

To sum up the changes to the regulations governing delegation of judges, the following conclusions can be drawn.

The power to delegate judges, from the beginning of the existence of this regulation, was granted to the Minister of Justice, not the bodies of judicial self-government (to a limited extent, presidents of courts also have this power). A judge could be delegated to perform the duties of a judge or administrative activities. It could take place for a fixed or indefinite period of time. A judge could be primarily delegated to another court (of equivalent, lower, or higher competence), but also to the Ministry of Justice. Moreover, it is noteworthy that when amending the regulations on delegation of judges in recent years, the legislator has significantly expanded the group of institutions and organizations to which judges can be delegated.

An analysis of the existing regulations leads to the conclusion that none of them specify the prerequisites for dismissing a judge from delegation. Only the regulation on the delegation of a judge outside his or her country could be an ex-

[32] Act of 29 June 2007 amending the Law on the System of Common Courts and some other laws (Journal of Laws 2007, no. 136, item 959).

[33] Act of 18 August 2011 amending the Law on the System of Common Courts and some other laws (Journal of Laws 2011, no. 203, item 1192).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

ception to this principle. Furthermore, until the enactment of the 2001 Law on the System of Common Courts, the applicable provisions did not address the issue of dismissing a judge from delegation at all, which means that the law did not even mention such a possibility. Still, the Law of 27 July 2001, introducing a regulation on the subject, included only a brief mention of a possibility of dismissing a judge from delegation but did not specify the grounds on which this could take place.

DELEGATED JUDGE IN THE JUDICIAL DECISIONS OF THE CONSTITUTIONAL TRIBUNAL

The provisions related to delegation of a judge have already been the subject of a ruling of the Constitutional Court. However, it did not focus directly on the evaluation of solutions related to dismissal from delegation.[34] In the judgment of 15 January 2009, the Constitutional Tribunal primarily focused on the assessment of the very power of the Minister of Justice to delegate judges, considering it constitutional, whereas it questioned the entitlement to delegate judges without their consent as well as the permissibility of combining judicial functions with delegation to the Ministry of Justice. Although in the judgment of 15 January 2009, the Tribunal did not directly refer to the provisions regarding dismissal of a judge from delegation, it is worth remembering some of the arguments presented in its substantiation.

The Tribunal recalled that the appointment of a person to the position of judge constitutes not only appointment of a judge in general, but also appointment of a judge of a particular court only. By the act of appointment, the person becomes a judge, which means that he or she becomes entitled to adjudicate. However, a judge can only adjudicate in their home court.

According to the Constitutional Tribunal, the institution of delegation of a judge by the Minister of Justice or the president of a court is a temporary derogation from the legal principle of binding a judge to his or her official office and place of exercising judicial power. The regulation on delegating a judge to perform the duties outside the official place of office is exceptional in light of the constitutional guarantee of independence of judges. However, the Tribunal also pointed out that delegation does not constitute deprivation of a judge of his or her place of duty.

The Tribunal stated that when evaluating statutory regulations, it should be borne in mind that any interference with a judge's place of office, regardless of whether made with or without their consent, including in particular the delegation of a judge, is first of all an interference with the scope of a judge's authority – its withdrawal, expansion or transfer.

[34] Judgment of the Constitutional Tribunal of 15 January 2019, K 45/07, OTK-A 2009, no. 1, item 3.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

With regard to the matter of preserving the principle of separation of power, the Constitutional Tribunal took the position that granting the Minister of Justice the authority to delegate judges, upon their consent, to perform duties of a judge in another court or to perform administrative activities does not constitute a violation of this principle. By obtaining the power to delegate judges, the Minister did not receive an instrument that would give the executive branch the right to settle individual cases of a judicial type or binding effect on the settlement of such cases.

Moreover, in the context of the constitutional right to a hearing in court, the Tribunal determined that delegation of a judge to adjudicate in another court does not constitute a violation of this right. Despite the fact that the delegated judge adjudicates outside the jurisdiction of a given court, it does not mean that the judge is deprived of the attribute of independence. The very fact that he or she has been delegated to administer justice in another court by an executive authority does not determine that such a judge will be independent.

CONSTITUTIONALITY OF THE REGULATION REGARDING DISMISSAL OF A JUDGE FROM DELEGATION

As already explained, the regulations on delegation of a judge to perform judicial duties in another court do not specify the principles governing dismissal from delegation. In particular, the provision of Article 77 § 4 of the 2001 Law on the System of Common Courts neither specifies any grounds for taking such a decision nor introduces a period of "termination" of delegation. Pursuant to the current provisions, the Minister of Justice may at any time dismiss a judge delegated to perform judicial duties in another court without disclosing any reasons for this decision. Moreover, the Minister of Justice's discretionary decision in this regard is not subject to any control.

In view of such a manner of regulating the termination of delegation, the question may arise as to a possible influence of the Minister of Justice on the composition of the adjudication panel in specific cases and, consequently, on the course and outcome of proceedings, which would constitute a violation of the principle of balance of power (Article 10 (l) of the Polish Constitution), autonomy of courts and independence of judges (Article 173 of the Polish Constitution), as well as the right of citizens to have their case heard by an independent court (Article 45 (l) of the Polish Constitution).

The further discussion, however, is limited to the argumentation pointing to non-compliance of the current regulation concerning dismissal of judges from delegation with Article 45 (l) of the Polish Constitution.

Judges of common courts are appointed to hold office of a judge by the President of the Republic of Poland upon the motion of the National Council of the Judiciary. When appointing a judge, the President of the Republic of Poland designates the official place (seat) of the judge (Article 55 §§ 1 and 3 of the 2001 Law

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

on the System of Common Courts). Pursuant to the provisions of Article 55 § 3 and Article 75 § 1 of the 2001 Law on the System of Common Courts, connected with Article 180 (2) of the Polish Constitution, a judge's official seat is a particular court in which he or she may exercise judicial power. This official place of office determines the scope of that power, the judge's area of ruling and the type of cases decided in accordance with the rules on jurisdiction.

Delegation of a judge by the Minister of Justice to perform the duties of a judge in another court constitutes an extension of the judge's judicial power (in territorial and substantive terms), compared to that resulting from the act of presidential appointment. This means that within the framework of the delegation, the Minister of Justice – upon the judge's consent – has the competence to extend this judicial authority.

Since judges, during the period of their delegation, may perform judicial duties not only in the court to which they have been delegated, but also in their home court, judges are thus exercising judicial power derived from two "sources": the act of appointment to the office of a judge by the President of the Republic of Poland and the act of the Minister of Justice on delegation to another court.

The scope of power conferred on a judge upon his or her appointment is constitutionally protected, primarily pursuant to the principle of non-transferability of the judge (Article 180 of the Polish Constitution). The non-transferability of judges is one of the guarantees of the principle of judicial independence and the related impartiality of the court. In judicial decisions, it has been pointed out that this guarantee – as well as other forms of stabilization of the office of a judge – cannot be treated in terms of personal privileges of the judge. Indeed, its purpose is to create institutional mechanisms for securing proper administration of justice, and this is one of the fundamental values governing the realization of the public interest and the common good.[35]

Although the scope of judicial power defined in the act of appointment of a judge is subject to constitutional protection expressed primarily in the principle of non-transferability, the extended scope of that power, granted in connection with delegating a judge to another court, is not covered by any form of protection since the Minister of Justice may discretionarily dismiss a judge from delegation, which is tantamount to depriving the judge of a part of his or her judicial power and thus preventing him or her from deciding on particular cases.

From the point of view of the parties to the judicial proceedings, the entity placing the case before a judge sitting in the home court can use the benefit of having the right to an autonomous, impartial and independent court hearing guaranteed. In case of a delegated judge, however, the stability of the judicial power granted to the judge under delegation is not subject to any protection. Therefore, a party to

[35] Judgment of the Constitutional Tribunal of 12 December 2001, SK 26/01, OTK 2001, no. 8, item 258.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

proceedings in a case ruled by a delegated judge cannot be relieved from concern as to whether, in taking certain actions in the proceedings, the judge is acting free from the risk of being deprived of the exercised judicial power.

Bearing in mind the discretionary power of the Minister of Justice to dismiss a judge from delegation, arising from the provision of Article 77 § 4 of the 2001 Law on the System of Common Courts, it cannot be assumed that, in its current form, this power does not violate Article 45 (1) of the Polish Constitution. The court with a delegated judge, who may be deprived of his or her judicial power at any time (deprived of the guarantee of stability of that power), cannot be considered autonomous. It should be highlighted that when taking account of independence of judges, the emphasis is put on the absence of not only real but also apparent dependence of the courts (judges) in their judicial activity on factors other than the requirements of law. In an objective perspective, independence is assessed by examining whether objective facts may raise doubts as to the preservation of that independence. It is a question of confidence that courts must inspire in the society and, above all, in the parties to the proceedings.[36]

Assessing the constitutionality of the regulations related to dismissal of a judge from delegation, reference may be made to the judgment of the Constitutional Tribunal, which evaluated the regulations concerning court assessors,[37] where the Tribunal stated that the most important argument for inconsistency of entrusting an assessor with judicial functions with the Polish Constitution is the power to dismiss judges. The Tribunal pointed out that even if we accept the constitutional admissibility of the institution of temporary entrustment of an assessor with the performance of the duties of a judge within the material and time-related limits set out by the act, the elementary dimension of the principle of independence, which cannot be renounced in this case either, requires that an assessor may be dismissed from his or her post only in the same circumstances as judges or only in some of them. The regulation on dismissal of assessors – similar to the current regulation on dismissal of a judge from delegation – did not contain precisely defined factual circumstances justifying the dismissal. Moreover, the dismissal of an assessor was decided not by a court, but by the Minister of Justice. Consequently, the Tribunal found that there were no substantive or legal guarantees, or sufficient procedural guarantees, to dictate that an assessor could not be dismissed due to the content of his or her rulings.

The same must be assumed in the case of dismissal of a judge from delegation. If there are no statutory solutions guaranteeing the stability of a judge's power, extended by delegation, there are, in fact, no grounds for objectively concluding

[36] Judgment of the Constitutional Tribunal of 28 November 2007, K 39/07, OTK-A 2007, no. 10, item 129.

[37] Judgment of the Constitutional Tribunal of 24 October 2007, SK 7/06, OTK-A 2007, no. 9, item 108.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

that it is not allowed to deprive him or her of delegation in connection with the content of this judge's rulings, or even merely because of his or her actions not terminating the proceedings.

The risk of dismissal from delegation may make judges avoid decisions that the Minister of Justice, who decides on delegation of judges as well as their dismissal form it, may not like.

Therefore, the current shape of the mechanism for dismissing a judge from delegation constitutes a violation of the right of citizens to have their case heard by an independent court (Article 45 (l) of the Polish Constitution).

DISCUSSION AND CONCLUSIONS

The primary reason for the introduction of provisions allowing a judge to be delegated to perform duties in another court was the need to ensure the efficiency of court proceedings. Delegating a judge upon his or her consent is intended to enable a quick response of the executive authority to shortages of personnel in courts. Delegation is used by the Minister of Justice quite often, which means that it is not an exceptional solution intended by the legislator, mainly as an emergency response to situations arising from the need to ensure the proper functioning of courts.

The current wording of the provisions concerning dismissal of a judge from delegation does not protect the constitutional right to have a case heard by an independent court. In view of the above, taking account of the allegations concerning the unconstitutionality of the regulation connected with dismissal of a judge from delegation, as well as the common practice of delegating judges, the need for the legislator to intervene in this matter appears to be truly justified.

In terms of possible legislative solutions corresponding to the provisions of the Polish Constitution, the delegation of a judge, remaining one of the competences of the Minister of Justice, could take place only for a limited period of time and with the possibility of early dismissal only in cases established by an appropriate act. Here, it is worth recalling the above-mentioned – but currently not applicable – Article 77 § 4a of the 2001 Law on the System of Common Courts, added by the Act of 14 July 2006, regulating the dismissal of a judge delegated outside the country.

Consideration could also be given to the possibility of transferring the competences on delegation of judges from the Minister of Justice to the National Council of the Judiciary.

Furthermore, it is necessary to introduce provisions which would allow for the control of a decision on dismissing a judge from delegation, with regard to its compliance with the statutory grounds for dismissal.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

REFERENCES

Literature

Czarnecki P., *Pojęcie i funkcje delegacji sędziego w aspekcie ustrojowym i karnoprocesowym*, "Iustitia" 2010, no. 2.

Ereciński T., Gudowski J., Iwulski J., *Prawo o ustroju sądów powszechnych. Ustawa o Krajowej Radzie Sądownictwa. Komentarz*, Warszawa 2009.

Kempisty H., *Ustrój sądów. Komentarz*, Warszawa 1966.

Kosonoga J., *Nienależyta obsada sądu jako przesłanka uchylenia orzeczenia*, "Białostockie Studia Prawnicze" 2018, vol. 23(1). **https://doi.org/10.15290/bsp.2018.23.01.04**

Kozielewicz W., *Instytucja delegowania sędziego do pełnienia obowiązków sędziego w innym sądzie – aspekty ustrojowe i procesowe*, [in:] *Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy*, ed. J. Skorupka, Warszawa 2009.

Zembrzuski T., *Delegowanie sędziego do pełnienia obowiązków w innym sądzie. Zagadnienia prawne w praktyce SN*, "Monitor Prawniczy" 2012, no. 23.

Online sources

Domagalski M., *Delegowanie sędziego: sędzia przysuwany jak żołnierz od zadań do zadań*, 21.10.2013, https://www.rp.pl/sady-i-trybunaly/art12801391-delegowanie-sedziego-sedzia-przysuwany-jak-zolnierz-od-zadan-do-zadan (access: 21.5.2024).

Legal acts

Act of 20 June 1985 – Law on the System of Common Courts (Journal of Laws 1985, no. 31, item 137, as amended; consolidated text, Journal of Laws 1990, no. 23, item 138).

Act of 27 July 2001 – Law on the System of Common Courts (Journal of Laws 2001, no. 98, item 1070; consolidated text, Journal of Laws 2024, item 334, as amended).

Act of 14 July 2006 amending the Law on the System of Common Courts, the Law on the System of Military, and the Law on the Public Prosecutor's Office (Journal of Laws 2006, no. 144, item 1044).

Act of 29 June 2007 amending the Law on the System of Common Courts and some other laws (Journal of Laws 2007, no. 136, item 959).

Act of 18 August 2011 amending the Law on the System of Common Courts and some other laws (Journal of Laws 2011, no. 203, item 1192).

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

Regulation of the President of the Republic of Poland of 6 February 1928 – Law on the System of Common Courts (Journal of Laws 1928, no. 12, item 93; consolidated text, Journal of Laws 1950, no. 39, item 360; consolidated text, Journal of Laws 1964, no. 6, item 40).

Regulation of the President of the Republic of Poland of 23 August 1932 amending certain provisions of the Law on the System of Common Courts (Journal of Laws 1032, no. 73, item 661).

Case law

Decision of the Constitutional Tribunal of 1 June 2017, K 32/16, OTK-A 2017, item 47.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 13:41:09

Decision of the District Court in Warsaw of 23 September 2019, X Ka 862/19, non-published.
Decision of the Supreme Court of 17 July 2012, I KZP 13/12, OSNKW 2012, no. 9, item 87.
Decision of the Supreme Court of 27 January 2023, I CSK 4282/22, non-published.
Judgment of the Constitutional Tribunal of 12 December 2001, SK 26/01, OTK 2001, no. 8, item 258.
Judgment of the Constitutional Tribunal of 24 October 2007, SK 7/06, OTK-A 2007, no. 9, item 108.
Judgment of the Constitutional Tribunal of 28 November 2007, K 39/07, OTK-A 2007, no. 10, item 129.
Judgment of the Constitutional Tribunal of 15 January 2019, K 45/07, OTK-A 2009, no. 1, item 3.
Judgment of the Court (Grand Chamber) of 16 November 2021 in Joined Cases C-748/19 to C-754/19, *Criminal proceedings v. WB and Others*, EU:C:2021:931.
Judgment of the Supreme Administrative Court of 5 October 2017, II FSK 1262/17, non-published.
Judgment of the Supreme Court of 1 October 2002, V KK 114/02, non-published.
Judgment of the Supreme Court of 11 February 2009, II KK 265/08, OSNwSK 2009, no. 1, item 346.
Judgment of the Supreme Court of 5 July 2010, V KK 5/10, R-OSNKW 2010, item 1377.
Judgment of the Supreme Court of 17 May 2011, III KK 105/11, non-published.
Judgment of the Supreme Court of 15 December 2015, III KRS 134/12, non-published.
Judgment of the Supreme Court of 29 June 2017, III KO 18/17, non-published.
Resolution of the Supreme Court of 19 February 2003, I KZP 51/02, OSNKW 2003, no. 3–4, item 25.
Resolution of the Supreme Court of 17 July 2007, III CZP 81/07, OSNC 2007, no. 10, item 154.

ABSTRAKT

W artykule poruszono problematykę konstytucyjności przepisów związanych z odwołaniem sędziego z delegowania do innego sądu. W pierwszej kolejności wyjaśniono zakres władzy sędziego, związanej z powołaniem do pełnienia urzędu w konkretnym sądzie. Stabilność tej władzy gwarantowana jest przepisami Konstytucji RP, wskazującymi m.in. na nieprzenoszalność sędziego. W dalszej kolejności wyjaśniono, że delegowanie sędziego do orzekania w innym sądzie stanowi rozszerzenie władzy sędziego. Ten rozszerzony zakres nie podlega jednak ochronie Konstytucji RP, ponieważ sędzia może być w każdym czasie odwołany z delegowania przez Ministra Sprawiedliwości. Ponadto zaprezentowano pogląd, że sąd obsadzony przez sędziego, którego stabilność władzy sądowniczej nie jest w żaden sposób gwarantowana, nie spełnia wymogu sądu niezależnego, bezstronnego i niezawisłego, o którym stanowi art. 45 ust. 1 Konstytucji RP.

Słowa kluczowe: zakres władzy sędziego; sąd macierzysty; sędzia delegowany; odwołanie sędziego z delegowania