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THE PRINCIPLE OF RANDOM CASE ASSIGNMENT IN COMMON COURTS UNDER POLISH LAW

Doctrinal Construction, the Technological Architecture of the SLPS, and Normative Changes in 2024–2025

Krzysztof Chmielarz, PhD, Associate Professor

University of Applied Sciences in Tarnow, Poland

ORCID: 0000-0002-1088-8133

e-mail: k_chmielarz@atar.edu.pl

Patryk Chmielarz, PhD

University of the National Education Commission, Krakow, Poland

ORCID: 0000-0003-0286-741X

e-mail: chmielarzp13@gmail.com

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ABSTRACT

This article presents a dogmatic reconstruction of the normative status of the principle of random case assignment in Polish common courts and a critical assessment of the sequence of executive modifications introduced in 2024–2025. In the analytical framework adopted here, the principle constitutes a constitutionally grounded, horizontal guarantee of the right to an impartial and independent court (Articles 45(1), 7, 92(1), 176(2) and 178(1) of the Constitution of the Republic of Poland; Article 6(1) ECHR; Article 47 of the EU Charter of Fundamental Rights), combining a guarantee, a systemic, and a technical dimension. The analysis is conducted using analytical-dogmatic and linguistic-logical methods, supported by deduction from constitutional and conventional norms and induction from secondary

legislation and case law, taking into account both subjective (historical) and objective (systemic-functional) interpretations of court-organization law.

The first analytical layer confronts the statutory declaration (Article 47a(1) of the Act on the System of Common Courts – pusp) with the architecture of the Automated Random Case Assignment System (SLPS), whose operational configuration (draw pools, normalisation, assignment indicators, the 'workload-building' function, and the manipulability of participation coefficients) narrows the space of actual randomness and produces an auditability deficit, as previously signalled by the Supreme Audit Office report (P/19/038/KPB) and the judgments of the Voivodeship Administrative Court in Warsaw (II SAB/Wa 352/20; II SA/Wa 2336/23, concerning different forms of access to SLPS information). The second layer provides a linguistic-logical and systemic analysis of the regulations of the Minister of Justice of 6 February 2024 (Dz U 2024, item 149), 26 September 2024 (Dz U 2024, item 1444), and (most decisively) 29 September 2025 (Dz U 2025, item 1325), which, by means of secondary legislation, excluded an entire group of judges from draw pools in recusal cases, modified assignment indicators, and through § 50(1a) of the Court Rules enabled division heads to appoint the majority of collegial panels under a vague 'efficiency-improvement' clause.

The third layer is a confrontational case-law review: the Constitutional Tribunal found provisions of the three regulations incompatible with higher-ranking norms (U 1/24, 16 May 2024; U 16/24, 6 March 2025; U 4/25, 12 November 2025), and rejected the interpretation that a judge's appointment on the recommendation of the National Council of the Judiciary constitutes, in itself, a ground for automatic judicial disqualification (P 7/23, 25 November 2025). The existence and non-publication of the U 4/25 judgment are documented in the European Commission's 2026 Rule of Law Report (SWD(2026) 921 final, footnote 35). The Supreme Court (III CB 44/24) linked U 1/24 to the prohibition of challenging judicial status, while leading constitutionalists (A. Olaś, R. Piotrowski) raised the spectre of procedural nullity (Article 379(4) Code of Civil Procedure) and absolute grounds of appeal (Article 439(1)(2) Code of Criminal Procedure). The article concludes that modifying the randomness principle by secondary legislation violates the hierarchy of legal norms with characteristics of normative unlawfulness, and proposes the statutory recodification of the technological guarantees of the SLPS with mandatory public audits of the algorithm and draw data.

1. Introduction. *Status quaestionis* and Methodological Assumptions

The issue of case assignment in common courts is the point of convergence of three traditionally separate areas of legal doctrine: the theory of constitutional individual rights, the study of the organisation of legal protection bodies and (in the contemporary approach) the law of new technologies and so-called algorithmic justice. For decades, this issue remained on the margins of the concerns of Polish legal literature, which, although rich in monographs devoted to the status and independence of judges and the institutional independence of courts, paid little attention to court administration in its organisational and managerial dimension; only recently have studies systematising the fundamental principles of court administration begun to fill this gap, treating those principles as a constitutionally rooted mechanism balancing organisational efficiency with guarantees of the institutional independence of courts

and the independence of judges[1]. At the same time, the introduction in 2017 of Article 47a into the Act on the System of Common Courts (hereinafter: pusp)[2] and the launch, from 1 January 2018, of the Random Case Assignment System (SLPS) as a nationwide ICT tool created a qualitatively new normative–technological reality which, in 2024–2025, became the arena of an unprecedented jurisdictional conflict encompassing three implementing regulations, four judgments of the Constitutional Tribunal (U 1/24, U 16/24, U 4/25, P 7/23), an intervention through case law by the Supreme Court (III CB 44/24), positions taken by constitutional law scholars, resolution No 709/2025 of the National Council of the Judiciary, statements by the Chancellery of the President of the Republic of Poland and official confirmation of some of these facts in the European Commission's report on the state of the rule of law in Poland for 2026[3].

In this article, we advance the proposition that the principle of random case assignment has the status of a constitutionally grounded, horizontal procedural–institutional guarantee, whose modification by secondary legislation (without express and unequivocal statutory delegation) constitutes a violation of the hierarchy of sources of law (Articles 87(1) and 92(1) of the Constitution) bearing the characteristics of normative unlawfulness and generating, in the procedural sphere, a risk of nullity of proceedings (Article 379(4) of the Code of Civil Procedure) and absolute grounds of appeal (Article 439 § 1(2) of the Code of Criminal Procedure). To verify this proposition, we adopt the framework of the **analytical legal-dogmatic and linguistic-logical method**, employing in parallel **deduction** (deriving criteria for the legality of an implementing act from constitutional and Convention norms) and **induction**, ie generalising from individual implementing acts and judgments to draw conclusions concerning the actual normative state of affairs. The doctrinal construction takes account of both the **subjective (historical) interpretation** of the provisions on the organisation of courts, reconstructing the will of the rational constitution-maker as expressed, inter alia, in the ratio legis of Article 47a pusp of 2017 (the elimination of arbitrariness in the composition of panels), and the **objective (systemic-functional) interpretation**, which reads the norms under analysis in their relationships with the constitutional standard of the right to an impartial and judicially independent court and with international standards of objective impartiality (Article 6(1) ECHR, Article 47 of the EU Charter of Fundamental Rights). In each instance, we classify the norms examined according to their nature (substantive or procedural, primary or secondary) and record axiological tensions between the values underlying the system: the efficiency of proceedings (Article 45(1) in fine), legal certainty and the citizen's trust in the state (Article 2), the principle of legality (Article 7), and judicial impartiality and the independence of judges (Articles 45(1) and 178(1)).

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[1]See K Chmielarz and P Chmielarz, Naczelne zasady administracji sądowej. W poszukiwaniu równowagi między efektywnością a niezawisłością w sądach powszechnych (Od.Nowa 2026); K Chmielarz, Administracja sądowa. Ministerialny model zarządzania i administrowania sądami powszechnymi (CH Beck 2025).

[2]Act of 27 July 2001 on the System of Common Courts (consolidated text, Dz U 2024, item 334, as amended); Act of 12 July 2017 amending the Act on the System of Common Courts and certain other Acts (Dz U 2017, item 1452) art 1(20).

[3]European Commission, '2026 Rule of Law Report: Country Chapter on the Rule of Law Situation in Poland' (SWD(2026) 921 final, 17 July 2026) 7 fn 35 (hereafter 'Commission Report 2026').

From the perspective of scholarly method, an unequivocal methodological reservation is necessary: this article focuses on the critical strand of discourse on institutional structures, reconstructing the arguments that led to the legality of the regulations of 2024–2025 being challenged. The opposing strand, represented by the Ministry of Justice (arguments concerning adjudicative paralysis caused by the excessive length of proceedings and the need to protect Convention standards following judgments of the European Court of Human Rights and the Court of Justice of the European Union concerning the composition of the National Council of the Judiciary after 2018), and by some judges (the Iustitia, Themis associations) and law professors drawing attention to the non-uniform character of drawing lots as an organisational technique (Prof H Izdebski, Prof R Stankiewicz), is noted here to the extent necessary for an accurate *status quaestionis*, but is not the main subject of the analysis. Furthermore, the Obserwator Praworządności portal, whose publications are cited here, was launched by the Ordo Iuris Institute, and certain Constitutional Tribunal judgments delivered in 2024–2025 remain unpublished in the Dziennik Ustaw amid the institutional dispute following the Sejm resolution of 6 March 2024— this circumstance does not undermine their existence as jurisdictional facts, but bears on the doctrinal dispute over their binding force, which is also articulated in this work.

2. The Normative Construction and Constitutional Status of the Principle of Random Case Assignment

From the perspective of normative classification, the principle of random case assignment is a **procedural guarantee norm with primary constitutional anchoring**, whose statutory concretisation in Article 47a pusp has a concretising and implementing, rather than constitutive, character. Under Article 47a § 1 pusp, cases are assigned at random to judges and judicial assessors within specified categories, apart from assignments to duty judges; § 2 provides for equal allocation within those categories, subject to reductions permitted by statute.A literal analysis of the first of these provisions leaves no doubt: the subject of the norm requiring randomness is *cases*, not *judges* or *judge-rapporteurs*; grammatically, this means that the entire case (and thus its full adjudicating panel) is subject to random assignment unless the statute expressly provides for an exception (as in Article 47a § 4 pusp concerning specified guardianship, registration and land-and-mortgage-register matters). Restricting the draw solely to the judge-rapporteur in collegial panels, without a basis in a statutory provision, therefore directly contradicts the conditions of application of Article 47a § 1 pusp — *contra legem*, rather than alongside the statute.

The constitutional anchoring of the principle of randomness is provided by a bundle of norms with different systemic functions. First, **Article 45(1) of the Constitution of the Republic of Poland** guarantees everyone the right to a ‘competent, institutionally independent, impartial and judicially independent court’; the random mechanism for determining the composition of the panel is one of the instruments for objectifying impartiality, removing the human factor (and thus potential arbitrariness, bias or external pressure) from the stage of constituting the adjudicating panel, which is aptly classified in legal doctrine as the **safeguard** dimension of

the principle[4]. Secondly, **Article 176(2) of the Constitution** stipulates that 'the organisation and jurisdiction of courts and proceedings before courts are determined by statutes', which, in conjunction with **Article 92(1)** (requiring a regulation to be issued 'on the basis of detailed authorisation contained in a statute and for the purpose of implementing it'), creates the **institutional** dimension of the principle, placing the question of the composition of the court within the sphere reserved exclusively to statute and precluding its reconfiguration by an act of the executive without an express and exhaustively delimited delegation (the ratio of the status-related restriction in Article 41 § 1 pusp, which authorises the minister to prescribe detailed assignment rules, including drawing procedures and rules for multi-judge panels, without expressly displacing the statutory principle of randomness)[5]. Thirdly, the principle of randomness performs a **technical** (algorithmic) function: it is an instrument through which safeguard and institutional values are operationalised in a repeatable, verifiable procedure, which in turn opens the way for a requirement of openness and auditability derived from **Article 61** and **Articles 2 and 7 of the Constitution**[6].

At the international and EU levels, the principle of randomness derives its content from the standard of objective impartiality (*impartial tribunal*) in Article 6(1) ECHR and Article 47 of the EU Charter of Fundamental Rights. In cases such as *DMD GROUP a.s. v Slovakia* and *Ástráðsson v Iceland*, the European Court of Human Rights has consistently held that the composition of the court must be determined on the basis of objective, transparent and predictable criteria, and that any discretion on the part of the body determining that composition undermines the trust that courts in a democratic society should inspire in citizens[7]. In Polish constitutional case law, an analogous standard was formulated, inter alia, in the line of constitutional case law concerning the disqualification of judges (P 22/19, P 13/19 and P 10/19), and, in administrative court case law, in judgments of the Voivodeship Administrative Court in Warsaw, which addressed access to SLPS draw reports (II SAB/Wa 352/20 of 12 November 2020) and, separately, access to source code (II SA/Wa 2336/23 of 26 April 2024)[8]. In its order of 21 June 2024 (III CB 44/24, Supreme Court Judge K Zaradkiewicz), the Supreme Court invoked Constitutional Tribunal judgment U 1/24 in addressing challenges to judicial appointments, without undertaking a separate technical review of the SLPS algorithm[9].

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[4] K Chmielarz and P Chmielarz, *Naczelne zasady…* (n 1) 126–130.

[5]Cf A Olaś, 'Zgoda sędziego nie zastąpi ustawy' (Prawo.pl, 19 October 2026) <https://www.prawo.pl/prawnicy-sady/system-losowego-przydzialu-spraw-slps-wyrok-tuse-profesor-andrzej-olas,1554914.html> accessed 11 November 2026.

[6]See K Chmielarz and P Chmielarz, Naczelne zasady… (n 1) 130–141; Supreme Audit Office, Realizacja projektów informatycznych mających na celu usprawnienie wymiaru sprawiedliwości (P/19/038/KPB, 2020) 33–41.

[7]DMD GROUP, a.s. v Slovakia App no 19334/03 (ECtHR, 5 October 2010) [66]; Guðmundur Andri Ástráðsson v Iceland [GC] App no 26374/18 (ECtHR, 1 December 2020) [212]–[214].

[8]Voivodeship Administrative Court in Warsaw, judgment of 12 November 2020, II SAB/Wa 352/20 (SLPS draw reports); judgment of 26 April 2024, II SA/Wa 2336/23 (SLPS source code); response to parliamentary question no 19196, M Woś (1 March 2021).

[9]Supreme Court, order of 21 June 2024, III CB 44/24, <https://www.sn.pl/sites/orzecznictwo/orzeczenia3/iii%20cb%2044-24.pdf> accessed 11 November 2026.

From an axiological perspective, the principle of randomness embodies a pair of interlinked values: *nemo iudex in causa sua* (no one (and especially a representative of the executive) may participate in deciding the composition of the court in cases concerning them) and *aequitas* and legal certainty (Article 2 of the Constitution), according to which a citizen has the right to know that their case will be heard by a judge selected at random rather than designated ad hoc. These values, however, enter into structural tension with the pursuit of efficient and speedy proceedings: each 'workload-balancing' measure (from assignment indicators to the caseload-building function) narrows the domain of actual randomness, which requires acceptance of the proposition that the broader the scope for organisational normalisation, the lower the degree of real randomness[10]. It is precisely this axiological ambivalence that explains why the legislature entrusted the principle of randomness to statute rather than to an order of the court president or a regulation of the minister: balancing these values is a political–institutional decision, not a technical one.

3. The technological architecture of SLPS and its legal entanglement

The operationalisation of the principle of randomness in the Polish administration of justice has taken the form of a central IT tool whose design is not axiologically neutral: every algorithm translates normative and managerial preferences into computational rules and is therefore itself subject to assessment from a constitutional perspective[11]. SLPS has operated since 1 January 2018 on the basis of Article 47a pusp and the implementing provisions of the Rules of Procedure (§ 50 Rusp and following provisions), distinguishing three operational roles: Data View (entitling every court employee to inspect all data in the application without being able to modify them), Local Administrator (assigned to the head of division, who, if unable to exercise the powers personally, issues a written order pursuant to § 76 Rusp) and Registry Staff (for the registry head or a member of registry staff, with the role exercised under the constant supervision of the head of division pursuant to § 11 of the order on registry operations). This distribution of powers already reveals that decision-making rests with the division's administration, which not only supervises the system but also possesses the technical tools to influence the input parameters of the draw.

The design of randomness in SLPS declares **three dimensions of randomness**: first, the independence of the result from the order in which cases are entered into the system (that order is determined by the draw ID number in the full report); second, the ordering of judges in the draw pool by increasing workload, while the number of a judge's position in the pool is entirely random; third, the generation of a random number for each case by a random number generator. Every judge in the draw pool has a chance of drawing a case with a probability independent of the assignment indicator and the current workload before the draw. This mechanism is, however, surrounded by a layer of proportionality, at the core of which lies the concept of the **assignment cost of a case** (this value indicates how many weighted cases are equivalent to one case drawn by a judge and is calculated according to the individual

[10] This formulation draws on the findings of K Chmielarz and P Chmielarz (*Naczelne zasady…* (n 1) 136–137) and on the conclusions of the Supreme Audit Office report of 2020.

[11] cf the observations on the axiological dimension of information systems in court administration in K Chmielarz and P Chmielarz, *Naczelne zasady…* (n 1) 128–129.

parameters of the judge selected by the draw, using a proportional formula that takes account of the assignment indicator, the number of days of absence and the average number of working days in a year. Moreover, SLPS does not draw from among all judges in a division, but **from a draw pool comprising the judges with the lowest current workload in a given category**), and therefore a judge's entry into the pool is determined by the difference in the number of weighted cases assigned to individual judges, while each draw is followed by an automatic process of **normalisation** (subtracting the lowest non-negative workload when at least two judges have a positive workload and none has a value of 0.00), which is intended to prevent workloads from increasing continuously. Added to this are openly discretionary instruments: the **'caseload-building'** function (§ 67(3) Rusp), allowing the head of division to increase a judge's share of assignments to as much as 75% of the cases subject to assignment in a given category by multiplying the judge's presence in the draw pool (permitted simultaneously for a maximum of three judges in one category); tools for increasing and reducing a caseload by positive/negative entries when the assignment indicator changes (§ 67(4) and (5)); and the possibility of conducting an **on-demand draw** (type 2 — a draw of an adjudicating panel under any name, the result of which is not saved in the system, with judges who have hearings listed or are on duty that day excluded as a matter of course, after which the judge-rapporteur in each case must be changed manually).

This technical account has constitutional significance, since it provides empirical confirmation of the objections raised in the literature by the authors of the 2026 monograph[12], already from a *de lege lata* perspective preceding the September 2025 amendment. In light of the findings of the report of the Supreme Audit Office (reference P/19/038/KPB), SLPS did not guarantee full transparency in the initial period of its operation; NIK identified transparency shortcomings in case assignment and the absence of an operational reporting module supporting accountability for activities performed in the system; the explanations provided by the Ministry of Justice in 2021 (the response to parliamentary question no 19196) also confirmed the existence of interpretative doubts concerning the algorithm itself[13]. The case law of the Voivodeship Administrative Court in Warsaw recognised SLPS draw reports as public information in II SAB/Wa 352/20, whereas II SA/Wa 2336/23 concerned access to the system's source code. The further demand for a fully auditable algorithm is an inference drawn in this article, not a holding common to both judgments[14].

From the standpoint of public-law doctrine, a crucial conclusion emerges: **Article 47a pusp encoded in the text of the norm a guarantee whose implementing specification in SLPS narrowed its effective scope**. The greater the sphere of organisational normalisation (workload-based pools, percentage indicators, suspensions of assignment, on-demand draws), the lower the degree of actual randomness and the greater the scope for discretionary intervention by administrative actors. In this sense, the sequence of regulations from 2024–2025 was not an aberration divorced from existing practice, but **the logical culmination of a**

[12] K Chmielarz and P Chmielarz, *Naczelne zasady…* (n 1) 135–137 (criticisms concerning limited transparency, the absence of an independent audit and the risk of instrumentalisation).

[13]Supreme Audit Office, Realizacja projektów informatycznych mających na celu usprawnienie wymiaru sprawiedliwości (P/19/038/KPB, 2020) 39–40; response to parliamentary question no 19196 (1 March 2021).

[14]Voivodeship Administrative Court in Warsaw, judgment of 12 November 2020, II SAB/Wa 352/20 (SLPS reports); judgment of 26 April 2024, II SA/Wa 2336/23 (source-code disclosure).

process of gradual erosion of the statutory guarantee by implementing legislation — a process that entered a phase of overt dismantling of randomness in collegial panels in 2025.

4. The normative sequence of 2024–2025: a linguistic-logical and systemic analysis of implementing regulations

4.1. The Regulation of 6 February 2024 (Dz U 2024, item 149): exclusion from the draw as a selective norm

The first link in the sequence under examination was the Regulation of the Minister of Justice of 6 February 2024, which, in § 1, added § 43(1a) to the Rules of Procedure of the Common Courts, excluding, subject to the exceptions in § 43(1b), judges appointed following a recommendation by the National Council of the Judiciary constituted under Article 9a of the Act of 12 May 2011 from the allocation of cases concerning judicial disqualification where the circumstances of a judge's appointment are among the grounds invoked[15]. From a linguistic-logical perspective, this norm is **secondary and procedurally restrictive**: it does not affect the judge's substantive adjudicative competence (it does not rule on the judge's status), but modifies the procedure for constituting the panel by selectively excluding an entire category of persons from the draw pool. The enabling provision (Article 41 § 1 pusp, authorising the Minister to prescribe detailed rules for case assignment, including drawing procedures and rules for determining multi-judge panels), on the interpretation advanced here, contains no authorisation for narrowing**the class of persons to whom the principle of randomness applies**; a systemic interpretation (comparison with Article 47a § 1 pusp, which provides for randomness without exceptions, and with Article 42a § 1 pusp, which prohibits public authorities from examining the regularity of a judge's appointment) compounded this deficiency, rendering the regulation an *ultra vires* act. From an axiological perspective, the norm differentiated between judges ratione temporis according to when they had been appointed, which undermined the constitutional principle of equal treatment (Article 32 of the Constitution), the permanence of judicial appointments (Article 179) and the uniform status of judges (Article 178(1)). In its judgment of 16 May 2024 (U 1/24), the Constitutional Tribunal endorsed this chain of reasoning, finding the regulation incompatible with, among other provisions, Article 7 read in conjunction with Article 186(1), Article 45(1), Article 92(1), Article 176(2), Article 178(1), Article 179 and Article 190(1) of the Constitution[16]. It remains telling that, when issuing the consolidated text of the Rules of Procedure on 1 June 2024 (Dz U 2024, item 867), the Minister of Justice **retained the wording of the repealed provision**, indirectly invoking the refusal to recognise the effects of unpublished judgments of the Constitutional Tribunal, which in itself constituted an act, unprecedented in Polish law, of normative counter-derogation of a constitutional judgment by the executive[17].

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[15] Dz U 2024, item 149.

[16] Constitutional Tribunal, judgment of 16 May 2024, U 1/24; description in Prawo.pl, 'Wyrok TK z 16 maja 2024 r., sygn. akt U 1/24 — regulamin sądów niezgodny z Konstytucją' (article 526978); INFORLEX (case U 1/24); OTK ZU, item 47/A/2024.

[17] Dz U 2024, item 867; K Chmielarz and P Chmielarz, *Naczelne zasady…* (n 1) 137–138 (in the authors' expert analysis of 2026).

4.2. The Regulation of 26 September 2024 (Dz U 2024, item 1444): administrative recalculation of workloads

The Regulation of 26 September 2024 was normative and corrective in character: in a 2-page instrument, the Minister modified case-category provisions, judges' assignment indicators and certain courtroom-seating arrangements[18]. The doctrinal dimension of this instrument lies within the sphere of **secondary norms with an organisational function**, seemingly technical, yet directly affecting the probability that a given judge will draw a case, and thus the substantive content of the principle of randomness. By its judgment of 6 March 2025 (U 16/24), the Constitutional Tribunal also found this regulation incompatible with Article 2 (the principle of trust), Article 7 read in conjunction with Article 186(1) and Article 92(1) of the Constitution, confirming that even parametric adjustments cannot go beyond the statutory authorisation[19].

4.3. The Regulation of 29 September 2025 (Dz U 2025, item 1325): dismantling universal randomness in collegial panels

The third instrument (the Regulation of 29 September 2025) marks a turning point for the entire system. In a 3-page implementing instrument, the Minister added **§ 50(1a)** to the Rules of Procedure, under which, in collegial panels of three judges:

> *'Where there is a need to improve the efficiency of a division's work, the head of division may decide that the SLPS shall assign cases heard by three-judge panels to judge-rapporteurs, while the other two panel members shall be designated by the head of division in accordance with rules established by the court president after consulting the board of the competent court.'*[20]

A literal analysis of this norm reveals the following structural features: (a) the condition for its application is **a general clause with extremely vague content** ('the need to improve the efficiency of a division's work'); this criterion is not defined in the statute and does not itself prescribe an objective threshold, which in practice means discretion on the part of the head of division; (b) its application results in **a reversal of proportions**: of the three members of the panel, **one** is selected by draw and **two** are designated by the division's administrative authority, while, under Article 324 § 2 of the Code of Civil Procedure and Article 111 § 1 of the Code of Criminal Procedure, rulings of collegial panels are made **by a majority of votes**, which means that the content of a ruling may be determined by a majority derived from designation rather than from a draw; (c) designation takes place 'in accordance with rules laid down by the court president after obtaining the opinion of the board', that is, on the basis of **instruments of a purely internal character, not subject to publication and containing no guarantees of uniform application nationwide**, and, at most, subject to an opinion (which is not binding) from the court board; (d) related provisions (amendments to § 53 and § 69 Rusp) complete the structure, allowing the head of division, among other things, to designate deputies to the deputy judge-rapporteur.

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[18] Dz U 2024, item 1444.

[19] Constitutional Tribunal, judgment of 6 March 2025, U 16/24.

[20] Dz U 2025, item 1325, wording of § 50(1a) Rusp.

From a doctrinal perspective, the norm in § 50(1a) Rusp constitutes **a modification of the statutory norm in Article 47a § 1 pusp** (which requires the random assignment of entire cases, and thus of full panels) by means of an implementing instrument, thereby violating the constitutional principle of the hierarchy of sources of law (Article 87(1)), the requirement of specific authorisation (Article 92(1)), the reservation to statute of matters concerning the organisation of courts (Article 176(2)), the right to a competent and impartial court (Article 45(1)), and also Article 7 (public authorities acting solely on the basis of and within the limits of the law). A systemic interpretation confirms this conclusion: no provision of the Act (including Article 41 § 1, Article 41 § 2 or Article 47a §§ 2–4 pusp) authorises the Minister to dispense with drawing the members of the panel; Article 41 § 1 pusp expressly authorises detailed case-assignment rules, including drawing procedures and rules for determining multi-judge panels; on the interpretation advanced here, that delegation governs implementation without authorising a departure from the statutory principle. Moreover, Article 47a § 4 pusp provides for specified assignment arrangements in guardianship, registration and land-and-mortgage-register matters, from which, by virtue of the rule *exceptiones non sunt extendendae*, it follows that this list is **closed and not open to executive additions**. Finally, the 'improving efficiency' clause introduces a vague criterion which, under the standard of the ECtHR (*DMD GROUP a.s.*), disqualifies the procedure for designating the panel as being based on non-objective and unpredictable criteria[21].

From a procedural perspective, the consequence of this structure is the risk that every ruling issued by a panel constituted on the basis of § 50(1a) Rusp may be challenged as having been issued by an **'improperly constituted court'** (Article 379(4) of the Code of Civil Procedure) or by a panel constituted contrary to the provisions of law (Article 439 § 1(2) of the Code of Criminal Procedure), and thus as affected by **nullity of proceedings or an absolute ground of appeal**, to be taken into account of the court's own motion at every stage of the proceedings[22]. Added to this is the potential right (and, in the view of some doctrinal accounts, the duty) of courts to **refuse to apply a regulation** that is contrary to statute and the Constitution, derived directly from Article 178(1) of the Constitution (*'Judges, in the exercise of their office, are independent and subject only to the Constitution and statutes'*); this proposition, formulated by constitutional scholars and the Chancellery of the President of the Republic of Poland[23], constitutes one of the most radical instruments for defending the hierarchy of sources of law in the Polish constitutional context.

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[21] See DMD GROUP, a.s. v Slovakia App no 19334/03 (ECtHR, 5 October 2010) [66]–[69].

[22] see Prof A Olaś, statement to Prawo.pl of 8 October 2025 ('one must speak of nullity of proceedings'); advocate Dr P Dziekański (INP PAN), in the same source; statement of the Chancellery of the President of the Republic of Poland of 3 October 2025.

[23] 'Minister Żurek przedstawił projekt, który de facto znosi losowy przydział spraw…' (Obserwator Praworządności, 1 September 2025); cf Prof R Piotrowski, statement to Prawo.pl of 8 October 2025; statement of the Chancellery of the President of the Republic of Poland of 3 October 2025.

5. Judicial confrontation: Constitutional Tribunal judgments, Supreme Court and Supreme Administrative Court case law, and the Convention and EU dimensions

The most striking element of the sequence examined is its **confrontational dimension in case law**: none of the three implementing instruments of 2024–2025 went unanswered by the Constitutional Tribunal, and each was examined in constitutional review, resulting in findings of incompatibility affecting the provisions at issue. In judgment U 1/24 of 16 May 2024, the Constitutional Tribunal held the provision excluding a category of judges from draws to be incompatible with higher-ranking norms; the judgment of 6 March 2025 (**U 16/24**) rejected the constitutionality of the regulation on assignment indicators; finally, judgment U 4/25 of 12 November 2025 was unanimous and found specified provisions of the regulation of 29 September 2025, including the provision introducing § 50(1a), incompatible with higher-ranking norms; proceedings were discontinued in the remaining part[24]. The course of the hearing in case U 4/25 has documentary value in its own right: the representative of the President of the Republic of Poland, Prof D Dudek, expressly described the new regulations as **'manual control of adjudicating panels'**, while the government representative did not appear. This judgment (like U 1/24 and U 16/24) **has not been published in the Dziennik Ustaw**, which forms part of a practice of the government of the Republic of Poland initiated following the Sejm resolution of 6 March 2024 on removing the effects of the constitutional crisis of 2015–2023. The existence of this ruling and its publication status are unequivocally established by the **official European Commission report on the rule of law in Poland of 17 July 2026** (SWD(2026) 921 final), footnote 35 of which records the judgment and its non-publication:

> *The Commission identified Constitutional Tribunal judgment U 4/25 of 12 November 2025 concerning the regulation of 29 September 2025 and recorded that the judgment had not been published.*[25]

This sequence is completed by the Constitutional Tribunal judgment of 25 November 2025 (P 7/23), in which it was unanimously held to be impermissible to construe the provisions of the Code of Civil Procedure on the disqualification of judges as meaning that judges would be disqualified by operation of law solely on grounds relating to their appointment by the President of the Republic upon the recommendation of the National Council of the Judiciary, thereby establishing a barrier in case law to attempts, through implementing measures and in practice, to remove groups of judges from adjudicating panels[26].

In parallel, a line of case law is developing in the common and administrative courts and the Supreme Court. The Supreme Court order of 21 June 2024 (III CB 44/24) not only rejected an application for the disqualification of judges based on the fact of their appointment after 2018, but expressly invoked judgment U 1/24 (OTK ZU, item 47/A/2024) as an act removing the effects of the regulation in item 149, placing this argument within the prohibition on any

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[24]Constitutional Tribunal, judgments U 1/24 (16 May 2024), U 16/24 (6 March 2025), U 4/25 (12 November 2025) and P 7/23 (25 November 2025).

[25]Commission Report 2026 (n 3) 7 fn 35.

[26]Constitutional Tribunal, judgment of 25 November 2025, P 7/23; cf Ordo Iuris, press release (26 November 2025).

authority questioning presidential appointments of judges[27]. The Supreme Administrative Court, in several of the decisions cited below, has addressed challenges related to judicial appointments within the domestic legal order (including III OZ 493/22, III FSK 4255/21, III FSK 3626/21, I OSK 1917/18, I OSK 857/17)[28]. At the international level, the Venice Commission, in Opinion CDL-AD(2024)029-e of 11–12 October 2024, formulated a prohibition on removing judges as a group, while the ECtHR, following a series of judgments (*Guz v Poland*, *Ástráðsson*), struck the applications of three judges of the Court of Appeal in Warsaw out of its list on 17 September 2026 in view of unilateral declarations by the government and proposals for payments of EUR 19,500 each[29]. In the sphere of EU law, the CJEU, in its judgment of 15 October 2026 (C-159/25, Rowicz), required random-allocation systems to operate under transparent, objective and predetermined rules, while recognising that general parameters may be set by ministerial regulation pursuant to a statutory delegation. The Court also observed that the algorithm and draw reports were published and that non-disclosure of the source code did not, of itself, establish a risk of arbitrary manipulation (paragraph 68); ministerial specification of general parameters under statutory delegation was not inherently objectionable (paragraph 72); and unequal numbers of assigned cases did not, by themselves, establish undue interference (paragraphs 74–75). Whether § 50(1a) Rusp meets those standards is a separate question assessed critically in this article.[30]

From a doctrinal perspective, this situation gives rise to a dispute of the first importance: **does an unpublished Constitutional Tribunal judgment bind the courts?** Two opposing positions have emerged in the literature. The first position (that of the National Council of the Judiciary and the Chancellery of the President of the Republic of Poland) rests on the literal wording of Article 190(1) of the Constitution: Constitutional Tribunal rulings are universally binding and final, and the absence of publication (an omission by the executive) cannot extinguish the existence of a ruling; on this view, the regulations in items 149, 1444 and 1325 lost their legal force upon the pronouncement of the respective judgments, and their continued application is unlawful. The second position (represented by the government of the Republic of Poland, some judicial circles associated with the Iustitia and Themis associations, and commentary supporting the programme of ‘restoring the rule of law’) holds that an adjudicating body whose composition has been determined contrary to ECtHR judgments and CJEU rulings is not a ‘tribunal established by law’, so that its decisions suffer from the defect of *non-existentia* and produce no legal effects; on this view, the disputed regulations remain in force and the courts should apply them. A doctrinal analysis falls outside the scope of this article, but it should be noted that Prof A Olaś points to a factual situation in which ‘in

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[27] Supreme Court, order of 21 June 2024, III CB 44/24.

[28] Supreme Administrative Court, order of 15 September 2022, III OZ 493/22; judgments of 16 November 2021, III FSK 4255/21, and 4 November 2021, III FSK 3626/21; orders of 27 January 2020, I OSK 1917/18, and 7 December 2017, I OSK 857/17.

[29]Venice Commission, Opinion CDL-AD(2024)029 (11–12 October 2024); Leszczyńska-Furtak and Others v Poland (dec), App nos 39471/22, 39477/22 and 44068/22 (ECtHR, 17 September 2026).

[30]Case C-159/25 Rowicz EU:C:2026:856 [63]–[80]; cf A Olaś, ‘Zgoda sędziego nie zastąpi ustawy’ (Prawo.pl, 19 October 2026).

practice, the courts applied the new provisions differently', and every judgment delivered by a panel designated 'manually' becomes a potential subject of a procedural challenge[31].

6. A doctrinal map of criticism: the National Council of the Judiciary, judicial circles and lawyers' organisations

The critical assessment of the 2024–2025 sequence is not an isolated voice but a phenomenon displaying a **high degree of institutional convergence**. Analysis of the positions makes it possible to reconstruct a coherent line of argument in which the same objections recur among entities occupying different positions within the constitutional system:

First, the **National Council of the Judiciary** responded twice: in its opinion of 9 January 2024 on draft B800, it characterised the attempt to divide judges as a further ground of iudex inhabilis, contrary to Article 41 § 2 pusp, Articles 45/176/92/7 of the Constitution and the *Ástráðsson* standard[32]; subsequently, after publication but before the regulation entered into force, on 8 October 2025 it adopted **Resolution No 709/2025**, submitting an application to the Constitutional Tribunal for a review of the constitutionality of Dz U 2025, item 1325 in its entirety, together with an application for interim relief (published on 13 October 2025 on krs.pl, a document comprising 37 pages)[33]. The notification to the prosecutor's office of 28 October 2025 also recorded the earlier negative opinion of the National Council of the Judiciary of 12 September 2025 on draft B912[34].

Second, **lawyers' organisations addressing this issue** developed a complementary body of analysis in 2023–2026: - **Instytut Ordo Iuris** published three analyses of key importance: the analysis 'Kryzys konstytucyjny w Polsce' of 22 December 2023 (17 pages), characterising the draft implementing instrument as a 'Bodnar decree' infringing Article 176(2) of the Constitution and Article 41 § 2 pusp; the report 'Rok dewastacji państwa prawa' of 18 October 2024 (19 pages), noting that judgment U 1/24 deprived the regulation of legal force; and a statement following judgment P 7/23 of 26 November 2025[35]; - **Stowarzyszenie Prawnicy dla Polski** prepared an opinion of 28 August 2025 (sent on 29 August 2025), whose text employs unequivocal formulations: the declared 'functionality' is a 'falsehood', the ministry's interpretation is 'manipulated', and the practice of political authorities influencing the composition of adjudicating panels resembles standards from the communist period; the opinion alleges an interpretation *contra legem* and incompatibility with Article 47a § 1 pusp[36]; - **Ogólnopolskie Stowarzyszenie Sędziów 'Sędziowie RP'** issued a statement on the 23 most important violations of the law after 13 December 2023, point 8 of which alleges

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[31] Olaś (n 30), section 'Pytanie, którego w Luksemburgu nie zadano'.

[32]National Council of the Judiciary, opinion on draft B800 (9 January 2024), <https://krs.pl/pl/aktualnosci/2436-stanowisko-krajowej-rady-sadownictwa-w-sprawie-projektu-rozporzadzenia-ministra-sprawiedliwosci.html> accessed 11 November 2026.

[33] National Council of the Judiciary, Resolution no 709/2025 of 8 October 2025, krs.pl/wnioski-do-tk/3018 (published 13 October 2025).

[34] Notification submitted by the President of the Republic of Poland on 28 October 2025.

[35] Ordo Iuris Institute: *Kryzys konstytucyjny w Polsce* (22 December 2023); *Rok dewastacji państwa prawa* (18 October 2024); press release following P 7/23 (26 November 2025).

[36] Stowarzyszenie Prawnicy dla Polski, opinion of 28 August 2025, prawnicydla.pl/wp-content/uploads/2026/08/pdp_opinia_b912_2025-08-28.rtf.

that, by virtue of the regulation of 6 February 2024, the courts are not ‘established by law’ (Article 6 ECHR, Article 47 of the EU Charter of Fundamental Rights, Article 45 of the Constitution), and recalls judgment U 1/24, while point 7 raises an allegation of manipulation of the draw in connection with the application concerning Z Ziobro; in its opinion of 31 August 2025, the same organisation reported a combined total of 795 unfilled or abolished judicial and judicial-assessor posts (678 unfilled and 117 abolished), according to its assessment as at 20 August 2025 as the actual source of backlogs[37]; - **Stowarzyszenie VERITAS ET IUS – W Służbie Narodowi** adopted a position on the ECtHR decision of 17 September 2026 (12 October 2026) and organised a nationwide conference entitled ‘Trybunał Konstytucyjny, granice władzy publicznej i przyszłość polskiego wymiaru sprawiedliwości’ in Toruń on 7 November 2026[38]; - **Stowarzyszenie VOTUM** prepared an opinion of 23 August 2025 opposing draft B912 (attached to the notification submitted by the President of the Republic of Poland)[39].

Third, the **Chancellery of the President of the Republic of Poland** (on behalf of President Karol Nawrocki, through Minister Zbigniew Bogucki), in its statement of 3 October 2025, described the regulation of 29 September as an ‘ostentatious act of lawlessness’, called on judges to refuse to apply it on the basis of Article 178(1) of the Constitution, and identified procedural risks (Article 379(4) of the Code of Civil Procedure, Article 439 § 1(2) of the Code of Criminal Procedure)[40]; on 28 October 2025, the head of the KPRP submitted a notification to the prosecutor’s office against the Minister of Justice, attaching the opinions of PdP and VOTUM[41].

Fourth, among **academics and advocates**, the critical line gained support expressed with unusual clarity. Prof dr hab Andrzej Olaś (UJ), in a statement to Prawo.pl of 8 October 2025, assessed the minister’s action as **‘improper in two respects’** (exceeding the delegated authority and infringing a statutory norm), and stated that **‘one must speak of nullity of proceedings’**; Prof dr hab Ryszard Piotrowski (UW) pointed to the amendment of a statute by means of a regulation and advanced the proposition that failure to apply for the repeal of the regulation may constitute a ground for holding the Prime Minister responsible; Judge Kinga Grzegorczyk (the ‘AEQUITAS’ association) identified a ‘dangerous precedent of amending a statute by an instrument of lower rank’ and a risk of political influence over the panel’s composition; Dr Paweł Dziekański, advocate (INP PAN), challenged the vagueness of the efficiency clause. The article also revealed that **doubts as to legality had been raised by official government advisory bodies: the Government Legislation Centre (Article 47a § 1 pusp) and the Department of Regulatory Impact Assessment and Analysis of the KPRM**

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[37] Ogólnopolskie Stowarzyszenie Sędziów ‘Sędziowie RP’: statement *Najważniejsze naruszenia prawa…* (sedziowierp.pl); opinion of 31 August 2025.

[38] Stowarzyszenie VERITAS ET IUS: position of 12 October 2026; programme of the conference in Toruń of 7 November 2026.

[39] VOTUM, opinion of 23 August 2025, attached to the notification submitted by the President of the Republic of Poland on 28 October 2025.

[40] Statement by Minister Z Bogucki of 3 October 2025 (wPolityce.pl, tysol.pl).

[41] Notification submitted by the Head of the Chancellery of the President of the Republic of Poland on 28 October 2025 (Salon24).

(a recommendation of alternatives preserving the randomness of the entire panel)[42]. Dissenting or qualifying voices (Prof H Izdebski on the problem lying in the statute itself, Prof R Stankiewicz of OBSiL KRRP on the need to amend the statute, but on the justification of the intention under the Convention) complete the picture of the debate without, however, undermining the core objection concerning the hierarchy of sources of law.

7. Doctrinal conclusions and proposals *de lege ferenda*

The analysis yields four principal doctrinal conclusions. **First**, the principle of random case assignment, viewed in constitutional and institutional terms, belongs to the hard core of the right to a competent, independent and impartial court (Article 45(1), Article 176(2) of the Constitution; Article 6(1) ECHR; Article 47 of the EU Charter of Fundamental Rights). Its statutory specification in Article 47a § 1 pusp encompasses the entire adjudicating panel, not merely the judge-rapporteur; exceptions to it (in the specific statutory arrangements provided for, inter alia, by Article 47a § 4 pusp and the rule exceptiones non sunt extendendae)may be established only by statute, not by an implementing instrument. For this reason, every implementing regulation limiting randomness (selective exclusion of persons (Dz U 2024, item 149); administrative recalculation of indicators (Dz U 2024, item 1444); permitting the head of division to designate the majority of the panel (Dz U 2025, item 1325, § 50(1a) Rusp)) violates the hierarchy of sources of law (Article 87(1), Article 92(1) of the Constitution) and exceeds, on the interpretation advanced here, the delegation for detailed case-assignment rules under Article 41 § 1 pusp, as reflected, to differing extents and within the operative scope of the respective holdings, in Constitutional Tribunal judgments U 1/24, U 16/24 and U 4/25.

Second, the procedural consequence of constituting a panel on the basis of § 50(1a) Rusp is a high probability that the court will be regarded as improperly constituted (Article 379(4) of the Code of Civil Procedure) or constituted contrary to the provisions of law (Article 439 § 1(2) of the Code of Criminal Procedure), and consequently that there will be nullity of proceedings or an absolute ground of appeal to be taken into account ex officio. This risk is not theoretical but has been raised by constitutional and procedural law scholars of unquestioned authority (Prof A Olaś, Prof R Piotrowski, Dr P Dziekański, advocate) and by the Chancellery of the President of the Republic of Poland, while judgment U 4/25 itself (although unpublished) strengthens the substantive basis for such objections. Irrespective of disputes over the status and publication of Constitutional Tribunal judgments, judges have at their disposal a constitutional instrument of refusal to apply regulations contrary to statute, derived directly from Article 178(1) of the Constitution—an instrument whose use has been publicly urged both by the Chancellery of the President of the Republic of Poland and by the authors of critical scholarly and journalistic commentaries.

Third, the crisis of random case assignment reveals a structural fracture in legal and constitutional culture: the executive's temptation to address the problem of excessive length of proceedings through ad hoc solutions at the expense of procedural safeguards (of which the vague clause on 'improving efficiency' in § 50(1a) Rusp has become a paradigmatic

[42] P Rojek-Socha, 'Minister rozporządzeniem zmienił «sądolotka», szykuje się kwestionowanie orzeczeń' (Prawo.pl, 8 October 2025).

expression) collides with the tradition of the primacy of statute and the formal rule of law. From an axiological perspective, this debate concerns overriding values: the efficiency of the administration of justice cannot be pursued by relinquishing impartiality, since (as legal scholarship aptly observes) randomness ceases to be a safeguard the moment any authority acquires the right to dispense with it on a discretionary basis.

Fourth, the technological dimension of SLPS shows that operationalising the principle of randomness itself requires normative safeguards. We formulate the proposals de lege ferenda as follows: 1. **Statutory recodification of safeguards for randomness**: the introduction into pusp of an unequivocal provision establishing that random case assignment applies to the full adjudicating panel in all categories of cases, and that technical departures from randomness may derive only from statute; 2. **Regulation of the status of SLPS at statutory level**: specification in a statute, rather than a regulation, of the principles governing the construction of the algorithm, input parameters (assignment indicators, normalisation, draw pools) and operational roles; 3. As an additional safeguard proposed de lege ferenda, rather than a requirement established in Rowicz, a mandatory, independent and public audit of the SLPS algorithm and source code,coupled with the publication of statistical data on draws, taking account of the public-information standard concerning SLPS draw reports recognised in II SAB/Wa 352/20, while distinguishing the separate source-code dispute in II SA/Wa 2336/23 and in response to the objections of the Supreme Audit Office (P/19/038/KPB); 4. **Ensuring that the parameters of the draw are disclosed to the parties to the proceedings**, including the right to inspect the full report of the draw indicating the ID number and the list of members of the draw pool; 5. **Repeal of § 50(1a) Rusp by an implementing or statutory instrument**, as well as a systemic solution to the problem of publication of Constitutional Tribunal rulings, without which the Polish system of sources of law remains in a state of lasting dysfunction.

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Supreme Administrative Court: 40. Orders: III OZ 493/22 (15 September 2022), I OSK 1917/18 (27 January 2020), I OSK 857/17 (7 December 2017); judgments: III FSK 4255/21 (16 November 2021), III FSK 3626/21 (4 November 2021).

Regional Administrative Court in Warsaw: 41. Judgment of 12 November 2020, II SAB/Wa 352/20. 42. Judgment of 26 April 2024, II SA/Wa 2336/23.

European Court of Human Rights: 43. *DMD GROUP, a.s. v Slovakia App no 19334/03 (ECtHR, 5 October 2010)*. 44. *Ástráðsson v Iceland* (Judgment) [GC] ECtHR App No 26374/18 (1 December 2020). 45. *Guz v Poland App no 965/12 (ECtHR, 15 October 2020)*. 46. Leszczyńska-Furtak and Others v Poland (dec), App nos 39471/22, 39477/22 and 44068/22 (ECtHR, 17 September 2026).

Court of Justice of the European Union: 47. Case C-487/19 W.Ż. EU:C:2021:798. 48. Case C-159/25 Rowicz EU:C:2026:856 (15 October 2026).