

On the (Im)possibility of Withdrawing the Countersignature by the Prime Minister: A Few Remarks

Abstract

Can a public authority retract its own decision? This question becomes crucial in the context of analyzing the institution of the counter-signature within the Polish constitutional system—particularly in light of attempts to withdraw the Prime Minister's signature from an official act of the President of the Republic of Poland. The authors explore the permissibility of revoking a counter-signature, understood as an act of assuming political responsibility for the decision of the head of state. They argue that the counter-signature strengthens parliamentary oversight of the executive and constitutes an integral element of the constitutional procedure, whose legal effects are binding and durable. The analysis takes into account the systemic importance of the presumption of the counter-signature's necessity and the strict interpretation of constitutional exceptions, leading to the conclusion that a unilateral withdrawal of responsibility for co-signed presidential acts is inadmissible.

KEYWORDS: constitution, counter-signature, revocation, prime minister, president, self-restraint, responsibility

BARTOSZ PAŁUCKI – student, University of Lodz, ORCID – 0009-0007-1348-5333, e-mail: paluckibartosz02@gmail.com

SZYMON NIEZNAŃSKI – student, University of Lodz, ORCID – 0009-0005-0898-3480, e-mail: s.nieznanski@student.uw.edu.pl

1 | Introduction

The institution of countersignature constitutes one of the essential constitutional mechanisms designed to maintain balance within the executive branch. It serves as a metaphor for responsibility and the irrevocability of co-governing acts. Its origins date back to the 18th century – the era of constitutional monarchies. At that time—primarily in Great Britain and France – a systematic separation between the monarch and the political substance of power began to take shape. Montesquieu, in *The Spirit of the Laws*, wrote about the need to balance power: “Power should check power.”^[1] British legal thought expanded the concept of countersignature. William Blackstone, in his *Commentaries on the Laws of England* (1765–1769), noted that the king cannot be held accountable for acts he does not personally perform: “The King can do no wrong” – not because he is always right, but because his decisions are not effective without the approval of a minister who bears responsibility. In the context of historical monarchies, the countersignature carried significant symbolic weight, absolving the ruler from potential blame for decisions that were human, mundane, and unworthy of the majesty of a crowned head. It served as a bridge between majesty and politics, authority and action, will and consequence. It is this very signature that determines whether an act of power remains a personal gesture of statehood or becomes a legally effective act – a joint and co-responsible one.

This historical trajectory – from monarchical absolutism to democratic co-responsibility – finds its contemporary expression in Article 144(2) of the Polish Constitution, which institutionalizes the countersignature as a binding mechanism of executive accountability. The 2024 controversy surrounding the attempted withdrawal of a countersignature reveals that the constitutional logic of this institution remains contested in practice, making its theoretical examination not merely academic, but constitutionally urgent.

Today, this aspect of co-responsibility is particularly emphasized. In the context of modern Polish constitutionalism, a countersignature is essentially the Prime Minister’s signature on a presidential act that is not a prerogative – that is, an action taken by the president on their own initiative and for which they bear sole responsibility. Countersignature

¹ <https://constitutioncenter.org/education/classroom-resource-library/classroom/6.5-primary-source-montesquieu-the-spirit-of-the-laws>. [accessed: 10.2.2025].

thus also constitutes a form of a “specific binding element of the executive power.”^[2] Presidential prerogatives “are, namely, acts which, by reason of their nature, are not amenable to the attribution of responsibility.”^[3] Neither the President nor, still less, the Prime Minister bears political responsibility for such acts. Co-responsibility brings to the forefront another feature: co-governance. The countersignature necessitates cooperation between the Prime Minister and the President in exercising executive power, a consequence of the dual nature of the executive – an element characteristic of the Republic of Poland under the 1997 Constitution.

Does the Prime Minister’s signature allow the president to perform a kind of “Pontius Pilate hand-washing” in terms of responsibility for the decision made? In a sense – yes. In the case of official acts requiring countersignature, it is the Prime Minister who bears political responsibility for their content and consequences. The countersignature not only confers legal validity on the act but above all signifies the assumption of responsibility by an authority subject to parliamentary control. The President of the Republic of Poland may still incur constitutional liability (exclusively before the State Tribunal), even in relation to acts requiring a countersignature. The Prime Minister’s signature does not grant the President full immunity from responsibility for the act in question. Although, in Polish constitutional practice, there has not yet been a case in which a Prime Minister suffered political consequences – such as a vote of no confidence – solely due to countersigning a presidential act, it cannot be ruled out that such a scenario might occur under specific circumstances. The potential to burden the Prime Minister with political consequences renders the countersignature not merely a formality but also a symbolic act of significant constitutional gravity.

² Sławomir Patyra, „Uwagi o nowym kształcie kontrasygnaty w Konstytucji z 2 kwietnia 1997 roku”, [in:] *Konstytucyjny ustrój państwa. Księga jubileuszowa Profesora Wiesława Skrzydły*, ed. Tadeusz Bojarski, Ewa Gdulewicz, Jan Szreniawski (Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2000), 213.

³ Anna Frankiewicz, *Kontrasygnata aktów urzędowych Prezydenta RP*, 1st ed. (Kraków: Kantor Wydawniczy Zakamycze 2004), 151.

2 | Countersignature in Poland

The notion of an official act includes not only legal acts but also other measures taken by the President in the exercise of his vested competences.^[4] Which official acts require the Prime Minister's signature for their validity? Article 144(3) of the Constitution of the Republic of Poland enumerates, in thirty points, the presidential powers that do not require a countersignature and thus fall under the exclusive competence of the president. These include official acts concerning: ordering elections to the Sejm and the Senate; convening the first sitting of the newly elected Sejm and Senate; shortening the Sejm's term in constitutionally defined cases; legislative initiative; ordering a nationwide referendum; signing or refusing to sign a bill; ordering the promulgation of a law or international agreement in the Journal of Laws of the Republic of Poland; addressing the Sejm, the Senate, or the National Assembly; referring motions to the Constitutional Tribunal; requesting an audit by the Supreme Audit Office; nominating and appointing the Prime Minister; accepting the resignation of the Council of Ministers and entrusting them with interim duties; submitting motions to the Sejm to hold ministers accountable before the State Tribunal; dismissing a minister against whom the Sejm has passed a vote of no confidence; convening the Cabinet Council; awarding orders and decorations; appointing judges; granting clemency; conferring or accepting renunciation of Polish citizenship; appointing the First President of the Supreme Court; appointing the President and Vice President of the Constitutional Tribunal; appointing the President of the Supreme Administrative Court; appointing presidents of the Supreme Court and vice presidents of the Supreme Administrative Court; submitting motions to the Sejm for the appointment of the President of the National Bank of Poland; appointing members of the Monetary Policy Council; appointing and dismissing members of the National Security Council; appointing members of the National Broadcasting Council; granting the statute of the Chancellery of the President of the Republic of Poland; appointing and dismissing the Chief of the Chancellery of the President; issuing orders as provided in Article 93; and resigning from the office of President of the Republic of Poland. For this reason "an

⁴ Wiesław Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 7th ed. (Warszawa: Wolters Kluwer, 2013), 186.

official act issued [by the President] cannot be self-standing” – argues Kozłowski.^[5]

The Constitution of the Republic of Poland adopts the principle of the presumption of the requirement for countersignature – meaning that all official acts of the President require the countersignature of the Prime Minister, unless the Constitution explicitly provides otherwise. Article 144(3) contains an enumerative (closed) list of exceptions – therefore, any other action by the President is considered to be exercised jointly with the head of government. However, this cooperation is of a superficial and uncertain character.^[6]

This method of interpretation is based on the classical principle of public law *exceptiones non sunt extendendae* – exceptions should not be interpreted broadly. As Paweł Sarnecki notes in his commentary on Article 144, any instances of exemption from the countersignature requirement must be explicitly confirmed by a constitutional provision.^[7]

Similarly, Krzysztof Wojtyczek observes that the structure of Article 144(2) and (3) leads to the adoption of the principle of “presumption of countersignature,” with the exceptions formulated in paragraph 3.^[8] Since prerogatives are, by their nature, exceptions to the rule, they cannot be interpreted expansively. When construing the concept of countersignature, due regard must be had to the fact that the position of the President of the Republic of Poland, as an organ of the executive, is to a significant extent autonomous and need not be confined to the formula of a merely “representative” president.^[9]

Before turning to the central question of whether a countersignature may be withdrawn, it is necessary to briefly address one further structural feature of Article 144 — the so-called implied prerogatives. While this question is analytically distinct from the revocability problem, it bears upon the scope of acts to which the countersignature requirement applies in the first place. Clarifying its boundaries strengthens, rather than undermines,

⁵ Krzysztof Kozłowski w: *Komentarz Konstytucja RP*, vol. II, red. Marek Safjan, Leszek Bosek (Warszawa: C.H. Beck, 2016), 707.

⁶ Tomasz Borkowski, „System rządów w nowej Konstytucji” *Państwo i Prawo*, No. 11-12 (1997): 75.

⁷ Paweł Sarnecki w: Paweł Sarnecki, *Prezydent Rzeczypospolitej Polskiej, Komentarz* (Kraków: Kantor Wydawniczy Zakamycze, 2000), art. 144.

⁸ Krzysztof Wojtyczek, „Prezydent Rzeczypospolitej”, [in:] *Prawo konstytucyjne RP*, red. Paweł Sarnecki (Warszawa: C.H. Beck, 2014), 367.

⁹ Jerzy Ciapała, „Charakter kompetencji Prezydenta RP. Uwagi w kontekście kompetencji w zakresie powoływania sędziów” *Przegląd Sejmowy*, No. 4 (2008): 31.

the argument for the irrevocability of countersignatures where they are constitutionally required.

According to the authors, this approach supports expanding the catalogue of presidential prerogatives to include so-called implied acts – that is, acts which, although not explicitly listed in Article 144(3) of the Constitution, derive from its systemic logic or functional necessity. These are actions that remain closely connected to powers already recognized as prerogatives and serve as their natural complement. “It appears that powers «analogous» to any of the competences enumerated in this provision – where the same *ratio legis* justifying their exemption applies—are likewise excluded from the requirement of countersignature.”^[10]

For example, since under Article 144(3)(4) of the Constitution the President has legislative initiative (which does not require a countersignature), it is logical that the withdrawal of a legislative proposal, as a symmetrical action, should also not require one. This view has been expressed, among others, by Marek Zubik, who pointed to the need for a reasonable and functional interpretation of the constitutional powers of the head of state: “In practice, it has been accepted that the constitutional powers of the President, which – although not explicitly listed in Article 144(3), but directly related to prerogative powers – may be exempted from the requirement of countersignature for official acts.”^[11]

Nota bene, it should be noted that not all presidential actions can be classified as “implied” prerogatives. The key criterion in this regard should be a strict functional connection with the prerogatives enumerated in Article 144(3) of the Constitution and the absence of the nature of an independent constitutional decision. After all, outside the list in Article 144(3), there also exists the so-called “informational act,” which does not require the Prime Minister’s countersignature. Some authors contend that this act of the President is not of a purely informational nature – “it possesses legal significance. It enables the initiation of the judicial nomination procedure and, in this sense, has an authoritative character.”^[12] “This non-authoritative sphere of activity of the President of the Republic of Poland does not require the issuance of official acts and, consequently, does not fall within

¹⁰ Sarnecki, *Prezydent Rzeczypospolitej Polskiej. Komentarz*, 57-58.

¹¹ Marek Zubik, *Prawo konstytucyjne współczesnej Polski*. 3rd ed. (Warszawa: C.H. Beck, 2022), 219.

¹² Zubik, *Prawo konstytucyjne współczesnej Polski*, 220.

the scope of Article 144 of the Constitution of the Republic of Poland.”^[13] Such non-authoritative, and thus informational, acts include announcements concerning vacant judicial positions in the Supreme Court.

According to the Authors, this is an informational act, as it constitutes merely a communication that does not produce legal effects vis-à-vis individuals. The President acts pursuant to Article 7 of the Constitution, “on the basis of and within the limits of the law,” and that law for him also includes the statute which imposes upon him the obligation to announce the number of vacant judicial positions in the individual chambers of the Supreme Court. The Authors further note that, by this act, the President does not initiate the nomination procedure, but merely precedes it – the announcement is an organisational measure intended to enable candidates to submit applications. The procedure for appointing a judge is initiated only subsequently, independently of the act of announcement itself. This interpretation has been supported by both the Constitutional Tribunal and the Supreme Court. The latter emphasized that such an announcement should be qualified as a statutory obligation of the President of the Republic of Poland, rather than an exercise of a constitutional power or another form of authority.

“The Supreme Court stated that the announcement issued by the President under Article 31 § 1 of the Act on the Supreme Court regarding the number of vacant judicial posts is not an official act of the President requiring the countersignature of the Prime Minister, as understood under Article 144(2) of the Constitution. Rather, it constitutes a distinct official activity – an authoritative public announcement of the number of vacant judicial positions in the Supreme Court – which initiates the procedure for selecting candidates for the office of Supreme Court judge. Requiring a countersignature for this type of announcement would contradict Articles 10 and 179 of the Constitution.” This was the reasoning presented by the Constitutional Tribunal in its judgment of 23 February 2022.^[14] On the other hand, the essence of the matter has also been addressed by the Supreme Administrative Court (NSA), for instance in judgment II GOK 10/18

¹³ Marek Zubik, „Kontrasygnata aktów urzędowych Prezydenta RP. Norma i praktyka, które nie poddają się zasadzie legalizmu?”, [in:] *XXV Lat Konstytucji Rzeczypospolitej Polskiej, Księga jubileuszowa dedykowana Profesor Halinie Ziębie-Załużkiej z okazji 70. rocznicy urodzin*, ed. Radosław Grabowski (Toruń: Wydawnictwo Adam Marszałek, 2022), 668.

¹⁴ Judgment of the Constitutional Tribunal of 23 February 2022, P 10/19 (OTK ZU A/2022, item 14). Note 45.

and another from 26 November 2021 (case No. II GSK 317/21), where the Court held that countersignature is mandatory for non-constitutional acts of the President. At present, there is no unified position on whether a countersignature from the Prime Minister is necessary for presidential announcements concerning vacant judicial offices. Despite the NSA rulings indicating the need for a countersignature, the practice of publishing such announcements without the Prime Minister's signature continues (e.g., the most recent announcement in October 2023).^[15] Marek Zubik observes that "the practice tending towards the exclusion of the President's official acts from the requirement of countersignature simultaneously results in a reduction of the scope of the Prime Minister's accountability before the Sejm for those acts of authority."^[16]

This doctrinal dispute, while unresolved, does not affect the central argument of the present paper. Whether or not presidential announcements concerning judicial vacancies require a countersignature, the general principle remains unaffected: where a countersignature is constitutionally mandated and has been duly affixed and promulgated, it produces binding legal effects that cannot be unilaterally undone.

Therefore, the general rule remains that only the Prime Minister's signature gives full legal effect to a presidential act that is not a prerogative. In order to avoid the sanction of invalidity, such an act requires two signatures – of both the President and the Prime Minister – in order to take effect. Countersignature should be regarded as a necessary condition for the validity and final legal effectiveness of those acts of the Head of State which have not been expressly exempted, by a provision of the Constitution, from the requirement of countersignature.^[17]

Countersignature is considered a constitutional institution, and as such, it cannot be altered or modified by an ordinary statute. A regular law cannot independently determine which official acts require countersignature and which are exempt from this requirement.^[18]

¹⁵ Announcement of the President of the Republic of Poland of 10 October 2023, No. 127.4.2023, concerning vacant judicial posts at the Supreme Court (Official Journal 2023, item 1112).

¹⁶ Marek Zubik, „Konstytucja a rzeczywista rola ustrojowa Sejmu III RP” *Państwo i Prawo*, No. 10 (2022): 191-212.

¹⁷ Zdzisław Czeszejko-Sochacki, Zdanie odrębne do uchwały Trybunału Konstytucyjnego z 5 września 1995, 1/95, OTK 1995/1/5.

¹⁸ Marcin Krzemiński, „Kontrasygnata aktów urzędowych Prezydenta RP», Anna Frankiewicz (Kraków, 2004)” *Przegląd Sejmowy*, No. 4 (2004): 141-145; Piotr

3 | The 2024 Case: An Attempt to Withdraw the Countersignature

In September 2024, the Polish legal doctrine – and, as it later turned out, not only the doctrine – faced a fundamental question: whether a countersignature on a presidential act can be reversed. This paper will examine the legal dispute, relevant case law, actions of state bodies, and doctrinal opinions in order to answer whether a public authority can “retract” its own signature.

The authors will analyze the legal and factual situation as of 17 June 2025. To begin, it is necessary to explore the political and legal origins of the issue. Several months earlier, the term of office of Supreme Court judge Joanna Misztal-Konecka – President of the Civil Chamber of the Supreme Court – was nearing its end. According to the applicable law, before the end of her term (set for 30 September 2024), she was obliged to convene the Assembly of Judges of the Civil Chamber in order to nominate candidates for her successor.

Joanna Misztal-Konecka herself was proposed as a candidate. In such a case, “A Supreme Court judge who has not been nominated shall be appointed by the President of the Republic of Poland and shall chair the Assembly of Judges of the Civil Chamber of the Supreme Court” – Article 15 § 3 in conjunction with Article 13 § 3 of the Act of 8 December 2017 on the Supreme Court.^[19]

By a decision dated 17 August 2024, the President of the Republic of Poland, Andrzej Duda, appointed Supreme Court judge Krzysztof Wesołowski to this role. The Prime Minister formally countersigned the act, and following the procedure, the decision was forwarded to the Government Legislation Centre (GLC), which operates under the Prime Minister and is responsible for publishing all types of legal acts. Pursuant to the Prime Minister’s instruction, the GLC published the decision, thus completing the enactment procedure. The countersigned act was officially published in the Official Gazette of the Republic of Poland – Monitor Polski on 27 August 2024, item 799.

Czarny w: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed., red. Piotr Tuleja (Warszawa: Wolters Kluwer, 2023), art. 144, s 467.

¹⁹ The Act of 8 December 2017 on the Supreme Court (Journal of Laws of 2018, item 5).

This act of promulgation is constitutionally significant. Under the principle *lex promulgata obligat*, a normative or official act acquires binding legal force upon publication through the prescribed mode. From that moment, it becomes an element of the legal order and may only be removed through legally defined procedures — none of which include the unilateral withdrawal of a co-signatory's signature. The Prime Minister's subsequent attempt to retract the countersignature, made after promulgation had already occurred, was therefore legally inoperative regardless of its procedural framing.

To gain a deeper understanding of this phenomenon, the authors will now provide a chronological analysis of the events.

On 28 August 2024, during a press conference, the Prime Minister stated that a “mistake had occurred”^[20] as a result of an error by officials preparing the documentation. The Prime Minister had signed an act appointing a judge to the Supreme Court who had been nominated by the National Council of the Judiciary (NCJ) under the amended Act adopted by the 8th Sejm. That judge had been appointed by presidential decision dated 3 March 2022.^[21]

On 6 September 2024, Supreme Court judges from the Civil Chamber, Dariusz Zawistowski and Karol Weitz, filed a complaint with the Provincial Administrative Court (WSA) via the Prime Minister, challenging the President's decision of 17 August 2024. The judges also filed a separate complaint directly concerning the countersignature. Subsequently, on 9 September, the Prime Minister issued a document titled “Revocation of Countersignature” (“Uchylenie Kontrasygnaty” in Polish), referring to the complaint mistakenly dated 5 September instead of the actual filing date of 6 September. While this dating error does not independently invalidate the document, it further illustrates the informal and procedurally deficient character of the purported revocation.

The Prime Minister's action purported to rely – at least implicitly – on Article 54 § 3 of the Law on Proceedings before Administrative Courts, which permits an authority to rectify a contested act through self-correction (autocontrol) once a complaint has been lodged. However, this procedural

²⁰ <https://tvn24.pl/polska/donald-tusk-kontrasygnowal-decyzje-andrzeja-dudy-dotyczy-neosedziow-i-izby-cywilnej-sn-premier-wyjasnia-st8061255>. [accessed: 15.2.2025].

²¹ Decree of the President of the Republic of Poland of 3 March 2022, No. 1130.19.2022, on the appointment to the office of judge (Official Journal 2022, item 505). [accessed: 11.2.2025].

mechanism applies exclusively to acts of public administration directed externally — toward citizens, legal entities, or other subjects outside the administrative structure. A countersignature, by contrast, is an intra-constitutional act performed between two organs of the state. It does not constitute an administrative decision within the meaning of Article 104 of the Code of Administrative Procedure, nor does it produce effects characteristic of public administration in the functional sense. Consequently, the self-correction mechanism was inapplicable from the outset.

On the same day, 9 September, the WSA in Warsaw, based on an order from the Presiding Judge of the Sixth Adjudication Division, confirmed that the complaint had been forwarded to the President of the Republic of Poland. In accordance with Article 54 §§ 1 and 2 of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Journal of Laws 2024, item 935), a complaint must be submitted via the competent authority, which is then obligated to transfer it to the court along with a response and the case files, within 30 days of receipt. After the President completes this step, the administrative court may proceed with the case.

Notably, also on 9 September 2024, the court received a written declaration from Joanna Misztal-Konecka, President of the Supreme Court's Civil Chamber, stating her intention to participate in the proceedings.^[22]

On 10 September, the Assembly of Judges of the Civil Chamber of the Supreme Court convened to select candidates for the position of President of the Supreme Court in charge of this Chamber. The selected candidates were: Supreme Court Judge Marcin Krajewski, Supreme Court Judge Marcin Łochowski, and Supreme Court Judge Joanna Misztal-Konecka. According to a statement issued by the Supreme Court, the judges, “prior to ordering the vote, familiarize themselves with the letter from the Prime Minister dated 9 September of the current year, entitled ‘Revocation of countersignature’, after which they adopted a resolution stating that the letter did not constitute an obstacle to Justice Krzysztof Wesołowski presiding over the assembly.”^[23]

On 18 September, Judges Zawistowski and Weitz withdrew their complaint and filed a motion to discontinue the proceedings, pointing out that

²² Decree of the President of the Republic of Poland of 17 August 2024, No. 1131.18.2024, on the appointment of the Chair of the Assembly of Judges of the Civil Chamber of the Supreme Court (Official Journal 2024, item 799). [accessed: 20.02.2025].

²³ <https://www.sn.pl/aktualnosci/SitePages/wydarzenia.aspx?ItemSID=1023-odc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>. [accessed: 21.02.2025].

on 9 September 2024, the Prime Minister had fully upheld the applicants' complaint concerning the countersignature, revoked the countersignature regarding the presidential decision, and refused to grant countersignature for the decision. "Since the countersignature is no longer legally in force, the President's decision has no legal effect and does not produce any legal consequences. Therefore, there is no need to continue to challenge the President's decision or subject it to judicial review. Such review has become moot," argued Michał Jabłoński, attorney and legal representative of the judges.^[24] By virtue of a decision dated 26 September 2024, the President of the Republic of Poland, Andrzej Duda, appointed Joanna Misztal-Konecka as President of the Supreme Court in charge of the Civil Chamber, with effect from 1 October 2024.^[25]

On 9 October, Misztal-Konecka submitted a complaint directly to the Voivodeship Administrative Court (WSA) challenging the Prime Minister's self-review act dated 9 September 2024. The Court subsequently forwarded the complaint to the Prime Minister, as, under the applicable procedure, a complaint must be lodged via the authority whose action, inaction, or excessive duration of proceedings is the subject of the complaint.^[26]

On 10 October, the Prime Minister transmitted to the Voivodeship Administrative Court the complaint submitted by Supreme Court Judges Dariusz Zawistowski and Karol Weitz regarding the countersignature act issued by the Prime Minister in relation to the decision of the President of the Republic of Poland dated 17 August 2024, which concerned the appointment of the presiding judge of the Assembly of Judges of the Civil Chamber of the Supreme Court. The complaint was submitted along with the Prime Minister's response. The Prime Minister requested the discontinuation of the proceedings, arguing that the countersignature act in question had been effectively removed from the legal order.^[27]

²⁴ <https://konkret24.tvn24.pl/polityka/kontrasygnata-tuska-rzeczywiscie-wycofana-jest-dokument-st8u18618>. [accessed: 22.2.2025].

²⁵ <https://www.prezydent.pl/aktualnosci/nominacje/joanna-misztalkonecka-kolejna-kadencje-prezesem-izby-cywilnej-sn,92069>. Decision of the President of the Republic of Poland of 3 March 2022, No. 1130.19.2022, on the appointment to the office of judge. [accessed: 3.3.2025].

²⁶ <https://bip.warszawa.wsa.gov.pl/1328/skarga-na-uchylenie-kontrasygnaty-przez-prezesa-rady-ministrow.html>. [accessed: 5.3.2025].

²⁷ <https://bip.warszawa.wsa.gov.pl/1329/prezes-rady-ministrow-przekazuje-do-sadu-skarge-sedziow-sn.html>. [accessed: 13.3.2025].

In its decision of 29 October 2024 (case no. VI SA/Wa 3316/24)^[28] the Voivodeship Administrative Court in Warsaw dismissed the complaint filed by the Supreme Court judges against the President's decision regarding the appointment of a Supreme Court judge. In its reasoning, the Court held that "the decision of the President of the Republic of Poland designating the presiding judge of the Assembly of Judges of the Civil Chamber of the Supreme Court does not fall within the scope of public administration subject to the jurisdiction of administrative courts, but constitutes a solely official act of a systemic nature — related to the internal organization of the Supreme Court."

In the author's view, the decision of the President of the Republic of Poland concerning the designation of the presiding judge of the Assembly of Judges of the Supreme Court's Civil Chamber cannot be classified as an act falling within the sphere of public administration *sensu largo* and, consequently, does not constitute an administrative act or decision within the meaning of Article 5 § 2(3) of the Code of Administrative Procedure.^[29]

According to the jurisprudence of both administrative courts and the Constitutional Tribunal, the determination of whether a given entity qualifies as a public administration body is based on a functional criterion, which refers to the nature of the actions undertaken and their placement within the structure of public authority. This criterion presupposes that such a body performs functions within the scope of public administration, acting within the limits and on the basis of law. However, this classification cannot be applied to an authority such as the President of the Republic of Poland, who – by virtue of the Constitution – serves as the head of state and the supreme representative of the Republic of Poland.^[30]

The scholarly literature emphasizes the necessity of drawing a precise distinction between the concept of the executive and that of public administration in the functional sense. The notion of the "executive," as distinct from the "legislature," is broader than the classical understanding of public administration. It encompasses not only acts of a strictly administrative

²⁸ <https://bip.warszawa.wsa.gov.pl/1335/wsa-w-warszawie-rozpatrzyl-skargę-na-postanowienie-prezydenta-rzeczypospolitej-polskiej-w-sprawie-wyznaczenia-przewodniczącego-zgromadzenia-sędziów-izby-cywilnej-sadu-najwyższego.html>. [accessed: 15.3.2025].

²⁹ The Act of 14 June 1960 – Code of Administrative Procedure. (Journal of Laws of 1960, No. 30, item 168).

³⁰ Article 126(1) of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

nature, but also activities related to the formulation and implementation of state policy, the determination of the directions of action of state authorities, as well as the exercise of supervisory and control functions. Acts performed by the President of the Republic of Poland within his constitutional competences belong to the broadly understood executive power, but do not amount to the application of law characteristic of public administration. They are not administrative in nature and therefore are neither subject to judicial review by administrative courts nor to hierarchical administrative control. Consequently, as the authors note, there is no normative basis for classifying the President of the Republic of Poland as a public administration body, even under the functional understanding of that concept.

This position is justified both by the constitutional design of the President as head of state and by the specific nature of his competences, which are often of an autonomous character and exercised outside the framework of administrative-law subordination.

Subsequently, on 31 October, the Warsaw Administrative Court rejected a second complaint (case No. VI SA/Wa 3299/24) – this time concerning the Prime Minister’s countersignature of the President’s decision. The complaint was deemed inadmissible. Among other points, the Court stated that “considering the scope of administrative courts’ jurisdiction, the subject of the complaint – namely, the Prime Minister’s act of signing, under Article 144(2) of the Constitution of the Republic of Poland, an official act of the President — does not fall within the category of matters subject to review by administrative courts.”^[31] Under the law, the parties had the right to appeal the Voivodeship Court’s decisions to the Supreme Administrative Court (NSA). The authors submitted a request for information in this regard. On 11 April 2025, the Supreme Administrative Court informed that the case had been received and registered under case No. II GSK 432/25, and was awaiting the scheduling of a closed session.

³¹ Decision of the Provincial Administrative Court in Warsaw of 31 October 2024, VI SA/Wa 3299/24, LEX No. 3889549.

4 | Controversies

This case – also the subject of the author’s analysis – has divided the academic community. Ryszard Piotrowski argues that “a countersignature is the act of the Prime Minister signing a presidential decision. As such, the President remains the principal authority of that act. Once the countersignature is given, it produces legal effects which cannot be unilaterally revoked by the Prime Minister.”^[32]

A similar position on the substance, though focusing on a different aspect, is taken by Bartosz Zalewski, who claims that “the Prime Minister’s act of signing an official act of the President of the Republic of Poland is a procedural act whose effects cannot be undone through administrative or administrative-judicial proceedings, because the decision itself is a systemic act not subject to judicial review by administrative courts.” He further explains that “a systemic-political act such as a systemic-political act such as the Prime Minister’s countersignature of a presidential act cannot be classified either as a quasi-administrative decision or as a specific declaration of intent within the meaning of civil law provisions.”^[33]

As Grzegorz Krawiec notes, “The Prime Minister may be treated as a public administrative authority, but that is not sufficient to consider all his actions as acts of public administration.” He further explains, “This falls outside the jurisdiction of administrative courts. A countersignature is an act by a public authority (the Prime Minister) addressed to another public authority (the President) – it is an «internal» matter between organs of public authority. What is subject to administrative court review are «external» actions – directed, for example, toward citizens, entrepreneurs, or other entities outside the administration.”^[34] A different view regarding the revocation of the countersignature is held by Zbigniew Kmiecik, a retired judge of the Supreme Administrative Court, who stated: “The signatures of the President and the Prime Minister express their respective wills. The President initiates an act and informs the Prime Minister, who, by signing it, either gives or withholds consent. Thus, the claim that a signature cannot be revoked is a highly misleading oversimplification.

³² <https://oko.press/prof-piotrowski-cofniecie-kontrasygnaty>. [accessed: 16.3.2025].

³³ <https://ordoiuris.pl/komentarz/uchylenie-kontrasygnaty-precedens-ktory-umozliwi-ucieczke-od-odpowiedzialnosci/>. [accessed: 28.3.2025].

³⁴ <https://www.prawo.pl/prawnicy-sady/wycofanie-kontrasygnaty-a-postepowanie-sadowoadministracyjne,528977.html>. [accessed: 25.3.2025].

By withdrawing the countersignature, the Prime Minister is in fact withdrawing his consent – not dematerializing the signature.”^[35] In a similar vein, Ewa Łętowska emphasized that although, under normal circumstances, the Prime Minister cannot revoke his signature from a presidential act, “once a complaint was submitted by judges of the Civil Chamber of the Supreme Court and accepted by the Voivodeship Administrative Court as a complaint specifically against the countersignature (as such), then — under the procedure applicable before administrative courts – the author of the contested act (in this case, the Prime Minister) may amend that act (pursuant to Article 3 § 2 point 4 and Article 54 § 3 of the Law on Proceedings before Administrative Courts).” Ewa Łętowska argues that this constitutes a different legal institution – “a self-correction made by a party during the judicial review of the contested act.”^[36] Judge Włodzimierz Wróbel emphasized yet another aspect of the case: “Legal evaluations must always be made within a specific systemic context. And that context is the fact that the Prime Minister gave his consent (via countersignature) to a clearly unconstitutional decision by the President to appoint an electoral commissioner to oversee the election of his own candidate for President of the Civil Chamber of the Supreme Court. The Constitution allows for the enactment of a statute that would grant the President certain additional powers not explicitly provided for in the Constitution, provided such powers are not contrary to it.”^[37] The judge concluded that, in effect, the granting of the countersignature had no legal significance. The authors acknowledge the systemic concerns underlying these positions – particularly the argument that the countersignature was granted in relation to a constitutionally questionable presidential act. However, constitutional irregularity in the underlying decision does not, of itself, create a legal basis for the withdrawal of a countersignature that has already been affixed and promulgated. The appropriate remedy in such circumstances lies in proceedings before the State Tribunal, constitutional review, or parliamentary mechanisms of accountability – not in the extra-legal retraction of a co-signature.

³⁵ <https://www.prawo.pl/prawnicy-sady/wycofanie-kontrasygnaty-a-postepowanie-sadowoadministracyjne,528977.html>. [accessed: 31.3.2025].

³⁶ <https://monitorkonstytucyjny.eu/archiwa/29661>. [accessed: 24.3.2025].

³⁷ <https://www.facebook.com/share/p/1BrxvH6svA/?mibextid=wwXlfr>. [accessed: 1.4.2025].

5 | Conclusions

The authors argue that the possibility of withdrawing a countersignature constitutes a dangerous constitutional precedent that may, in the long term, lead to the systematic evasion of political responsibility by the Prime Minister for official acts he co-signs. Such a mechanism could seriously undermine the constitutional principle of a democratic state ruled by law by eroding the foundations of executive accountability. Analyzing the institution of countersignature through the lens of constitutional law leads to the conclusion that there is no legal basis for the withdrawal or annulment of a countersignature. As Krzysztof Wojtyczek rightly argues: “Applying the requirement of countersignature – and, in the event of its absence, the consequence of invalidity – to legally insignificant acts or to acts of a purely factual nature would introduce inconsistency into the constitutional structure of countersignature.”^[38]

Firstly, the Constitution does not provide for such a procedure. Countersigning presidential acts is a matter regulated by the Constitution. Public authority, acting on the basis of and within the limits of the law, cannot presume powers not explicitly granted – Polish law simply does not recognize such a procedure. Secondly, the countersignature is not an administrative act, and therefore the mechanism of self-correction (autocontrol) does not apply. After all, an official act consists of several components – including its title, content, the name of the authority, and the signature – and not merely the signature itself. It cannot be claimed that the signature alone constitutes an administrative act. Thirdly, if one were to apply Article 54 § 3 of the Law on Proceedings^[39] before Administrative Courts to a countersignature, then the entire act would be subject to self-correction – not just the Prime Minister’s signature. Fourthly, an act issued by two authorities (the President’s decision and the Prime Minister’s countersignature) would require joint action in the event of any self-correction. Finally, if one accepts the possibility of withdrawing a countersignature, by the same logic, it would also be conceivable to annul other official signatures – leading to potentially grave consequences, such as the President retracting judicial appointments.

³⁸ Wojtyczek, *Zasada kontrasygnaty w polskim prawie konstytucyjnym*, 154.

³⁹ The Act of 14 June 1960 – Code of Administrative Procedure. (Journal of Laws of 1960, No. 30, item 168).

It is worth noting that the presidential decision in question, accompanied by the Prime Minister's countersignature, has been duly published in the *Monitor Polski* and remains legally binding.

In the event that the withdrawal of a countersignature were to occur after the promulgation of an act in the *Journal of Laws* (*Dziennik Ustaw*) or through another legally prescribed mode of publication (such as the *Monitor Polski*), reference must first be made to the principle that follows a contrario from *lex non obligat nisi promulgata* – namely, *lex promulgata obligat*⁴⁰ – which constitutes one of the foundations of the system of enacted law. According to this principle, a normative act becomes binding from the moment it enters into force, with promulgation serving as a *conditio sine qua non* for its legal effectiveness. In this context, the act of affixing a countersignature – as a constitutive element of an official act of the President of the Republic of Poland requiring the signature of the Prime Minister – is a one-off formal act which, once completed and followed by promulgation, cannot be effectively revoked.

A withdrawal of the countersignature *ex post* – understood as an attempt to deprive the act of binding force with retroactive effect (*ex tunc*) – would, under the current legal order, be devoid of legal effect. This conclusion flows both from the principle of legal certainty (Article 2 of the Constitution) and from the need to safeguard the stability of legal relations already established on the basis of a promulgated act. Recognizing a withdrawal of the countersignature as a legally operative measure would create a situation in which binding provisions could be arbitrarily “retracted” through extra-legal means, thereby undermining the constitutional framework governing the sources of law.

The paradox of the situation is underscored by the fact that the self-correction mechanism serves to admit complaints that are at least formally admissible. In this case, a complaint was submitted by judges of the Supreme Court's Civil Chamber – judges who lacked legal standing to file such a complaint (no valid legal interest was demonstrated) – against an official act that is not subject to administrative court review. Nevertheless, the Prime Minister admitted the complaint and, based on it, withdrew his signature from the President's decision.

⁴⁰ Piotr Nazaruk w: *Kodeks cywilny. Komentarz*, 2nd ed., ed. Jerzy Ciszewski (Warszawa: Lexis Nexis, 2014), art. 3.

The introduction of a practice allowing for the withdrawal of a countersignature would, in effect, amount to an abdication of responsibility for the actions of the executive branch, posing a serious threat to the principle of legality,^[41] according to which public authorities may act only on the basis of and within the limits of the law. Moreover, the absence of a clear legal basis for the withdrawal of a countersignature within the current legal system renders such a practice impermissible. In the authors' view, had the legislature intended to allow for the possibility of revoking a countersignature, it would have explicitly expressed this in constitutional provisions. The lack of such regulation means that any attempt to construct such a power is incompatible with the principle of the rule of law and with the fundamental requirement that state organs act within the framework of law.

This paper has taken into account doctrinal opinions both supporting and opposing the idea of revoking a countersignature, alongside the authors' own position. It has also addressed the historical origins and institutional character of the countersignature, as well as the chronology of events relevant to the case at hand.

The analysis conducted demonstrates that the countersignature, as a constitutional institution, does not allow for its withdrawal by the Prime Minister. Revoking a signature from a presidential act lacks any basis in the Constitution, in statutory law, in the systemic logic of the Republic of Poland, or in the country's legal tradition. Accepting the opposite view would establish a dangerous precedent that undermines the constitutional principle of political accountability and the stability of executive power.

In practice, permitting such a withdrawal would introduce a structural vulnerability into the constitutional order: the binding force of promulgated acts would become contingent upon the continued political will of a co-signatory, transforming a constitutionally defined procedure into a reversible political gesture. The principle of legality – requiring that public authorities act exclusively on the basis of and within the limits of law – admits of no such construction. The countersignature, once affixed and promulgated, is constitutionally final.

⁴¹ Article 7 of the Constitution of the Republic of Poland.

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