

The Nature of Constitutional Review of Judicial Decisions Exercised by the Supreme Court in Proceedings Initiated by an Extraordinary Complaint

Judgment of the Supreme Court of 28 October 2020, I NSNc 22/20¹

- 1. Article 76 of the Constitution of the Republic of Poland² expresses a constitutional principle, and this updates the possibility of its use as a standard of review of a judicial decision in proceedings initiated by an extraordinary complaint.**
- 2. Although, according to the Constitutional Tribunal, the plea of infringement of Article 76 of the Polish Constitution may not constitute an autonomous basis for a constitutional complaint, this position certainly may not be extended *per analogiam* to an extraordinary complaint.**

Aleksandra Szydzik

University of Gdańsk, Poland

aleksandra.szydzik@ug.edu.pl

ORCID: 0000-0003-3744-859X

<https://doi.org/10.26881/gsp.2024.3.15>

Commentary

The extraordinary complaint was introduced into the Polish legal order on the basis of the Act of 8 December 2017 on the Supreme Court (SCA),³ as a new extraordinary remedy against final judicial decisions.⁴ More than five years of the functioning of the extraordinary complaint in the case law of the Supreme Court provides an opportunity to reflect on the nature of this judicial remedy and its implications for the legal system.

¹ Judgment of the Supreme Court of 28 October 2020, I NSNc 22/20, OSNKN 2021/1/4.

² Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483 as amended; hereinafter: Polish Constitution).

³ The Act of 8 December 2017 on the Supreme Court (consolidated text: Journal of Laws 2023, item 1093 as amended; hereinafter: SCA) entered into force on 3 April 2018.

⁴ It should, however, be noted that the material scope of the extraordinary complaint does not cover all judicial decisions. Pursuant to Article 89 § 1 of the SCA, an extraordinary complaint may be only lodged against final decisions of a common court or a military court.

The starting point for further considerations is the observation that the extraordinary complaint is a constitutional remedy which is particularly highlighted by the construction of substantive conditions for its admissibility both in terms of content (i.e. as to the standards of review) and in terms of functionality (i.e. as to the manner in which fulfilment of these conditions are assessed).

Indeed, pursuant to Article 89 § 1 of the SCA, the substantive conditions for the admissibility of an extraordinary complaint, also referred to as its grounds,⁵ comprise the general (functional) condition of the need to ensure compliance of the contested decision with the principle of a democratic state ruled by law and implementing the principles of social justice, and three special conditions:

- 1) infringement by the contested decision of the principles or rights and freedoms of human and citizen, enshrined in the Polish Constitution,
- 2) gross infringement of law by the contested decision through its misinterpretation or misapplication, and
- 3) obvious contradiction between the court findings and the evidence collected in the case.

For the extraordinary complaint to be admissible, the general condition and one of the special conditions must be met cumulatively. Thus, the fulfilment of the general condition is mandatory, while the fulfilment of the special conditions is alternative.

The construction of the substantive conditions for the admissibility of the extraordinary complaint, as presented above, indicates the strong focus of this judicial remedy on the constitutional content, which is manifested in at least two aspects. First, as many as three categories of standards of review of a constitutional nature are distinguished in this construction, i.e. the principle of a democratic state ruled by law formulated in Article 2 of the Polish Constitution, the principles enshrined in the Polish Constitution and rights and freedoms of human and citizen enshrined in the Polish Constitution (the content aspect). Second, the admissibility of the extraordinary complaint always depends on the fulfilment of a general condition, which is the carrier of the constitutional standard of review. Each decision contested by the extraordinary complaint is therefore subject to mandatory review in terms of compliance with the constitutional standard, i.e. the principle of a democratic state ruled by law expressed in Article 2 of the Polish Constitution (the functional aspect).

The arguments above are also perceived in the jurisprudence of the Supreme Court, which indicated at least several times that the general condition gives the extraordi-

⁵ The terminology used in this regard varies. The concept of grounds for an extraordinary complaint is used, inter alia, by K. Szczucki, *Article 89 [in:] Ustawa o Sądzie Najwyższym. Komentarz*, edition 2, Warszawa 2021, p. 462; and R. Bełczącki, *Dopuszczalność skargi nadzwyczajnej ze względu na wymagania konstrukcyjne [in:] Skarga nadzwyczajna w świetle systemu środków zaskarżenia w postępowaniu cywilnym*, ed. T. Wiśniewski, Warszawa 2019, p. 52. On the other hand, the Supreme Court in its decisions more often uses the concept of conditions for an extraordinary complaint, dividing them into formal and substantive ones and then distinguishing among the substantive conditions the general (functional) condition and the special conditions. See the decision of the Supreme Court of 22 February 2021, I NSNc 164/23, LEX No. 3554513.

nary complaint the nature of a means of constitutional review of judicial decisions, and the constitutional nature of the extraordinary complaint is further emphasised by the fact that the infringement of constitutional principles or rights and freedoms of human and citizen is listed as the first among the special conditions of the extraordinary complaint.⁶

The recognition of the extraordinary complaint as a means of constitutional review of judicial decisions⁷ has certain implications for the legal system. On the one hand, it confirms the evolution of the Polish system of the constitutional review of law, while on the other hand it distorts to a certain extent the model of competences of the Constitutional Tribunal and expands the systemic position of the Supreme Court in Poland.⁸

When reconstructing the current model of constitutional review of law in Poland, it should be noted that in the objective aspect, two separate spheres of constitutional review of law are distinguished under this model – the sphere of its creation and the sphere of its application. Within the sphere of law creation, the review covers normative acts, while within the sphere of law application, the subject to review are judicial decisions. In turn, in the subjective aspect, this model assumes assigning such separated spheres of constitutional review of law, bodies that are to exercise the powers of review (control competences) within them. Within the sphere of law creation, these powers are divided between the Constitutional Tribunal and the administrative courts⁹ – the review of law created at the central level is entrusted to the Constitutional Tribunal, while the review of law created at the local level (including local law) is entrusted to the administrative courts, with some exceptions in this respect.¹⁰ Within the sphere of law application, on the other hand, the powers of review are assigned to the

⁶ Judgment of the Supreme Court of 27 October 2021, I NSNc 180/21, OSNKN 2022/1/3. This is also held by the Supreme Court in its judgments: of 28 October 2020, I NSNc 22/20, OSNKN 2021/1/4; of 25 November 2020, I NSNc 57/20, LEX No. 3093105; of 14 September 2022, LEX No. 3486928; and of 19 April 2023, I NSNc 32/23, LEX No. 3585995.

⁷ This is done explicitly by the Supreme Court in its judgments: of 19 January 2021, I NSNc 50/20, LEX No. 3114858; of 27 January 2021, I NSNc 147/20, LEX No. 3112900; of 15 December 2021, I NSNc 97/20, LEX No. 3275920; and of 23 June 2022, I NSNc 567/21, OSNKN 2022/3/17.

⁸ Differently M. Dobrowolski, A. Stępkowski, *Skarga nadzwyczajna – dopełnienie systemu ochrony porządku konstytucyjnego*, "Studia Iuridica" 2022, No. 91, p. 72.

⁹ As pointed out by M. Bogusz, the term "constitutional review of law" is a *de facto* rhetorical shortcut, as the review of legitimacy of law creation, i.e. of normative acts, exercised by the Constitutional Tribunal and by administrative courts, does not exclusively include the examination of legal norms in terms of their compliance with the Polish Constitution, but has a broader character and consists in the examination of the hierarchical compliance of legal norms within the entire system. See M. Bogusz, *Niedopuszczalność skargi konstytucyjnej na akt prawa miejscowego o charakterze generalno-konkretnym (miejscowy plan zagospodarowania przestrzennego). Postanowienie Trybunału Konstytucyjnego z dnia 6 października 2004 r., SK 42/02*, "Gdańskie Studia Prawnicze" 2020, No. 1(45), p. 145.

¹⁰ For example, the Constitutional Tribunal is not entitled to rule on the constitutionality of a local spatial development plan in proceedings initiated by a constitutional complaint, as it is not a normative act within the meaning of Article 79 § 1 of the Polish Constitution. See M. Bogusz, *Niedopuszczalność skargi konstytucyjnej...*, p. 148.

Supreme Court in connection with the introduction of the extraordinary complaint into the Polish legal order.

In the context of the reflections above on the extraordinary complaint and the systemic implications resulting from its introduction into the Polish legal order, it seems advisable to undertake an analysis of the nature of the constitutional review of judicial decisions exercised by the Supreme Court. In particular, it is worth asking whether this review is of an independent nature, i.e. whether the Supreme Court independently reconstructs the constitutional standards of review of judicial decisions, or whether it makes use of the jurisprudence of the Constitutional Tribunal in this respect, which would prejudice the bound nature of this review and constitute a manifestation of the judicial co-dependence of the Supreme Court on the Constitutional Tribunal.

Among the relatively numerous judgements delivered as a result of the consideration of an extraordinary complaint, particular attention should be given in this respect to the judgment of the Supreme Court which is the subject of this commentary. Although almost three years have passed since its delivery, this judgement is one of the first and relatively few to include in its statement of reasons the deliberations relevant to the assessment of the nature of the constitutional review of judicial decisions exercised by the Supreme Court when considering extraordinary complaints.

Referring to the facts of the case, in the judgment under discussion the Supreme Court upheld an extraordinary complaint lodged by the Public Prosecutor General against a final order for payment issued by a district court in the proceedings by writ of payment, on the basis of which the defendant, who was a consumer, was ordered to pay to the plaintiff – a limited liability company conducting business activity including, inter alia, the provision of loans – an amount due under a loan agreement, the repayment of which was secured by a blank promissory note. When justifying the extraordinary complaint, the Public Prosecutor General alleged that the contested judgment infringes the constitutional principles and rights and freedoms of human and citizen enshrined in Article 30 and Article 76 of the Polish Constitution, i.e. human dignity, as well as the consumer protection principle, by failing to provide the defendant – as the weaker party in the relations with entrepreneurs – with due protection against unfair market practices, which consequently led to the adjudication in favour of the plaintiff of the amount due under the loan agreement solely on the basis of the blank promissory note, without examining whether the loan agreement, as the basis of the claim from which the obligation secured by the blank promissory note arose, does not contain any prohibited provisions referred to in Articles 385¹–385³ of the Act of 23 April 1964 – Civil Code.¹¹ It should be emphasised that the regional court adjudicated in favour of the plaintiff the amount due solely on the basis of the blank promissory note without seeing the loan agreement.

When considering the plea of infringement of Article 76 of the Polish Constitution, the Supreme Court was first obliged to consider whether this provision constitutes

¹¹ Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws 2023, item 1610, as amended; hereinafter: CC).

an acceptable standard of review of a judicial decision under Article 89 § 1 point 1 of the SCA. The resolution of this issue should have been considered as particularly important in the context of the position of the Constitutional Tribunal expressed in its judgment of 13 September 2011, K 8/09,¹² which rejected the possibility of invoking Article 76 of the Polish Constitution as a basis for a constitutional complaint.

The analysis of the statement of reasons of the judgment under discussion leads to the conclusion that the Supreme Court, in reconstructing the content and nature of Article 76 of the Polish Constitution, relied on the jurisprudence of the Constitutional Tribunal, which accepted that this provision expresses one of the state policy principles, imposing on public authorities “the duty to protect consumers from actions endangering their health, privacy and safety and from unfair market practices”, but does not create any specific rights or potential claims on the part of the individual.¹³ This obligation is based on the assumption that the consumer is the weaker party to the legal relationship in relation to professional market participants, which requires the creation of legal solutions guaranteeing him/her protection aimed at implementing the principle of equality of parties to civil law relationships.¹⁴

Nevertheless, the Supreme Court recognised in the judgment under discussion that although Article 76 of the Polish Constitution does not result in any specific rights or claims for an individual and, as a result, the norm arising from this provision does not constitute a source of subjective right; however, Article 76 of the Polish Constitution has a certain normative significance, as evidenced by the activity of the Constitutional Tribunal, which has repeatedly ruled on the incompatibility of laws with this provision. Thus, although an infringement of Article 76 of the Polish Constitution may not form the basis for a constitutional complaint, “this position certainly may not be extended *per analogiam* to an extraordinary complaint. Indeed, while the objective nature of the constitutional guarantees of Article 76 of the Constitution and the reference to statutory regulations justifies the position of the Tribunal with regard to the concrete constitutional review of abstract and general normative provisions of law under a constitutional complaint, there is nothing to prevent treating this provision of the Constitution as a fully-fledged basis for concrete constitutional review of specific acts of law application, which is carried out within the framework of extraordinary review in the Supreme Court. This follows from the very wording of Article 89 § 1 point 1 of the SCA, which clearly indicates among the grounds for an extraordinary complaint not only the infringement of constitutional rights and freedoms, but also of constitutional principles.”

¹² Judgment of the Constitutional Tribunal of 13 September 2011, K 8/09, OTK-A 2011/7/72.

¹³ Judgments of the Constitutional Tribunal: of 13 September 2011, K 8/09, OTK-A 2011/7/72; of 11 July 2011, P 1/10, OTK-A 2011/7/74; of 2 December 2008, K 37/07, OTK-A 2008/10/172; of 17 May 2006, K 33/05, OTK-A 2006/57; of 13 September 2005, K 38/04, OTK-A 2005/8/92; of 21 April 2004, K 33/03, OTK-A 2004/4/31; of 26 September 2000, P 11/99, OTK 2000/6/187; of 12 January 2000, P 11/98, OTK 2000/1/3 and of 10 October 2000, P 8/99, OTK 2000/6/190.

¹⁴ See judgments of the Constitutional Tribunal: of 15 March 2011, P 7/09, OTK-A 2011/2/12 and of 11 July 2011, P 1/10, OTK-A 2011/6/53.

The position of the Supreme Court quoted above is based on the assumption that Article 76 of the Polish Constitution expresses “a constitutional principle obliging state authorities – including common courts – to take actions to protect consumers against unfair market practices.” This position is supported by the jurisprudence of the Constitutional Tribunal.¹⁵ Thus, by recognising the norm resulting from Article 76 of the Polish Constitution as a constitutional principle, the Supreme Court has updated the possibility of its use as a standard of review of a judicial decision in proceedings initiated by an extraordinary complaint.

It should be emphasised that in none of the judgments invoked by the Supreme Court has the Constitutional Tribunal given the norm arising from Article 76 of the Polish Constitution the rank of a constitutional principle,¹⁶ but has only considered that this provision formulates a state policy principle addressed to the public authorities. However, the concepts of a state policy principle and a constitutional principle are not identical, and their distinction seems to be based on different quality criteria. Indeed, the concept of a state policy principle focuses on emphasising the content nature of the legal norm, i.e. the fact that the legal norm formulates a specific obligation for the public authorities, without connecting it with a subjective right of the individual that would allow enforcing this obligation. It therefore seems that it has been separated in order to distinguish norms of such content nature from constitutional rights and freedoms. The fundamental difference between these two is that while constitutional rights and freedoms directly affect the legal situation of the individual, in the case of state policy principles one can only speak of indirect affection (reflexive law) – in contrast to the former, state policy principles may not constitute a direct source of individual rights and claims.¹⁷

The notion of constitutional principle is not uniformly defined in doctrine and jurisprudence, and, consequently, its interpretation is not free from doubt.¹⁸ In fact, the criteria for the identification of constitutional principles, their content, functions or the relation between them and other constitutional norms, are debatable.¹⁹ Without

¹⁵ See judgments of the Constitutional Tribunal: of 21 April 2004, K 33/03, OTK-A 2008/10/172; of 13 September 2005, K 38/04, OTK-A 2005/8/92; of 17 May 2006, K 33/05, OTK-A 2006/5/57; of 13 September 2011, K 8/09, OTK-A 2011/7/72.

¹⁶ For the record, it should be mentioned that the Constitutional Tribunal, in its judgment of 13 September 2005, K 38/04, OTK-A 2005/8/92, when enumerating the standards of review constituting the basis for plea of unconstitutionality, indicates, inter alia, Article 76 of the Polish Constitution, adding in brackets the annotation “infringement of consumer protection principles.” Thus, the connotation of the notion of principle with consumer protection is present in this judgement, although it is not clear whether the notion of principle is used by the Constitutional Tribunal to refer to a state policy principle or a constitutional principle.

¹⁷ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, edition 6, Warszawa 2019, p. 117.

¹⁸ A. Pułło, *Idee ogólne a zasady prawa konstytucyjnego*, “Państwo i Prawo” 1995, No. 8, pp. 16–17; T. Zalański, *W sprawie pojęcia konstytucyjnej zasady prawa*, “Państwo i Prawo” 2004, No. 8, p. 18; P. Tułaja, *Pojęcie zasady konstytucyjnej* [in:] *Zasady ustroju Rzeczypospolitej Polskiej w nowej konstytucji. Materiały naukowe XXXVII Sesji Katedry Prawa Konstytucyjnego*, ed. K. Wójtowicz, Wrocław 1997, p. 20.

¹⁹ M. Wyrzykowski, M. Ziółkowski, *Konstytucyjne zasady prawa i ich znaczenie dla interpretacji zasad ogólnych prawa i postępowania administracyjnego* [in:] *Konstytucyjne podstawy funkcjonowania admi-*

going into an in-depth consideration of the definitional problems, it can be pointed out that two basic approaches to understanding the notion of constitutional principle have been developed in the constitutional law²⁰ – a broad one, which considers that all constitutional norms may establish constitutional principles,²¹ and a narrow one, according to which only constitutional norms of major importance may be considered as constitutional principles.²² In view of the above, the criterion underlying the distinction of the notion of constitutional principle is the source of anchoring the legal norm, which is the Polish Constitution, and additionally, in the case of choosing a narrower definitional approach – the major importance of the legal norm for the legal system, which also indirectly results from the constitutional anchoring of the principle. Thus, assuming the different criteria for distinguishing the notions of state policy principle and constitutional principle, it should be recognised that they are not identical in content, but at the same time they do not exclude each other, as a legal norm constituting a state policy principle may at the same time constitute a constitutional principle.

Thus, the possibility of interpreting a constitutional principle based on Article 76 of the Polish Constitution largely depends on the definitional approach chosen by the Supreme Court. It seems, however, that when constructing the substantive conditions for the admissibility of an extraordinary complaint, the legislator does not aim to extend the scope of review of judicial decisions to the overall provisions of the Polish Constitution, which is what the adoption of the first of the definitional approaches indicated above would amount to. In this case, the standard of review in the form of constitutional principles would absorb both the second standard of review of the special condition, i.e. constitutional rights and freedoms of human and citizen, and the standard of review of the general condition, i.e. the principle of a democratic state ruled by law. Therefore, guided by the directives of functional interpretation, in view of the clear distinction made by the legislator between the constitutional principles and rights and freedoms of human and citizen enshrined in the Polish Constitution, a narrower interpretation of the notion of constitutional principles should be adopted under Article 89 § 1 point 1 of the SCA, limiting their scope exclusively to constitutional norms of major importance.

In view of the above, the statement of reasons of the judgement of the Supreme Court under discussion should be assessed critically. In fact, the Supreme Court has not presented any arguments in favour of recognising the norm resulting from Article 76 of the Polish Constitution as a constitutional principle, and in particular, it has

nistracji publicznej, seria: System Prawa Administracyjnego, vol. 2, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, p. 6.

²⁰ Two basic definitional approaches to the notion of constitutional principle are also mentioned by R. Kropiwnicki, *Wokół wartości i zasad konstytucyjnych* [in:] *Dookoła Wojtek... Księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018, p. 109; and M. Wyrzykowski, M. Ziółkowski, *Konstytucyjne zasady prawa...*, p. 6.

²¹ P. Rozmaryn, *Konstytucja jako ustawa zasadnicza PRL*, Warszawa 1967, p. 108. After: M. Wyrzykowski, M. Ziółkowski, *Konstytucyjne zasady prawa...*, p. 6.

²² K. Działocha, *Hierarchia norm konstytucyjnych i jej rola w rozstrzyganiu kolizji norm* [in:] *Charakter i struktura norm konstytucyjnych*, ed. J. Trzciniński, Warszawa 1997, p. 90.

not indicated the criteria adopted for the reconstruction of constitutional principles or the chosen definitional approach, which should be considered advisable in the light of the current academic discussion on the notion of constitutional principles. As Mirosław Wyrzykowski and Michał Ziółkowski point out, the starting point for determining whether a given norm constitutes a constitutional principle should be the reference to a selected theoretical and legal concept, and then – based on its directives – the assessment of whether a given constitutional norm²³ fulfils the conditions for recognising it as a constitutional principle.²⁴

The considerations above also support the conclusion that in general the Supreme Court does not independently reconstruct the standards of review of judicial decisions but draws in this respect on the jurisprudence of the Constitutional Tribunal. This is evidenced by the jurisprudence of the Constitutional Tribunal extensively referred to in the statement of reasons for the judgment under discussion, concerning Article 76 of the Polish Constitution, as well as other constitutional standards of review, including Articles 2 and 30 of the Polish Constitution.

The non-independent (bound) nature of the constitutional review of judicial decisions exercised by the Supreme Court is also confirmed by an analysis of judgements delivered in cases initiated by extraordinary complaints. A review of the statements of reasons for the Supreme Court judgements makes it possible to conclude that the meaning and the content scope of the standard of constitutional review is very often reconstructed by referring to the jurisprudence of the Constitutional Tribunal and its opinions in this respect.²⁵

At the same time, the judgment under discussion is a manifestation of the departure by the Supreme Court from the practice described above of reconstructing the standards of the constitutional review of judicial decisions using the jurisprudence of the Constitutional Tribunal, which confirms the recognition of the norm resulting from Article 76 of the Polish Constitution as a constitutional principle. It should be emphasised that although the jurisprudence of the Constitutional Tribunal²⁶ previously

²³ It should be noted that a constitutional principle may be interpreted based on more than one constitutional norm.

²⁴ M. Wyrzykowski, M. Ziółkowski, *Konstytucyjne zasady prawa...*, p. 10.

²⁵ See, for example, the judgements of the Supreme Court: of 17 May 2023, II NSNc 190/23, LEX No. 3579744; of 15 December 2021, I NSNc 97/20, LEX No. 3275920; and of 3 August 2021, I NSNc 24/20, LEX No. 3207785 – in the context of the reconstruction of the principles of social justice as the standard of the review.

²⁶ The possibility of recognising Article 76 of the Polish Constitution as a basis for a constitutional complaint also raises doubts in the doctrine of constitutional law. The permissibility of such a solution is supported by, inter alia, J. Węgrzyn, *Prawo konsumenta do informacji w Konstytucji RP i w prawie unijnym*, Wrocław 2013, p. 102; P. Mikłaszewicz, *Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej*, Warszawa 2008, pp. 115–116. An opposing view in this regard is expressed by, inter alia, E. Łętowska, *Wpływ Konstytucji na prawo cywilne* [in:] *Konstytucyjne podstawy systemu prawa*, ed. M. Wyrzykowski, Warszawa 2001, p. 131; as well as in the review of the aforementioned monograph of P. Mikłaszewicz – see E. Łętowska, *Rec.: P. Mikłaszewicz, Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej*, Warszawa 2008, "Państwo i Prawo" 2009, No. 5, p. 125.

rejected the possibility of recognising Article 76 of the Polish Constitution as a standard of the constitutional review of normative acts in proceedings initiated by a constitutional complaint, in the judgment under discussion the Supreme Court recognises this provision as an admissible standard of constitutional review of judicial decisions in proceedings initiated by an extraordinary complaint. This position of the Supreme Court is justified by the different construction of the extraordinary complaint in terms of the subject of review (in the case of a constitutional complaint, the normative acts are the subject of review, while in the case of an extraordinary complaint – judicial decisions) and the standards of review (the standards of review of a constitutional complaint are exclusively constitutional rights and freedoms of human and citizen, while in the case of an extraordinary complaint – also constitutional principles), as well as conferring the rank of a constitutional principle to the norm resulting from Article 76 of the Polish Constitution, despite the fact that this is not done directly by the Constitutional Tribunal in its previous jurisprudence.

To sum up, in the judgment under discussion, the Supreme Court independently reconstructs the constitutional standard of review of a judicial decision in proceedings initiated by an extraordinary complaint, thus demonstrating a manner of judicial independence from the Constitutional Tribunal. Although it seems that such an action of the Supreme Court should be assessed rather in terms of an exception to the rule, there is no doubt that this judgment may give rise to a change in the nature of the constitutional review of judicial decisions exercised by the Supreme Court by gradually moving away from the model of bound review to the model of autonomous (independent) review.

Literature

- Bełczącki R., *Dopuszczalność skargi nadzwyczajnej ze względu na wymagania konstrukcyjne* [Admissibility of an extraordinary complaint on grounds of structural requirements] [in:] *Skarga nadzwyczajna w świetle systemu środków zaskarżenia w postępowaniu cywilnym* [Extraordinary complaint in the light of judicial remedies in the civil procedure], ed. T. Wiśniewski, Warszawa 2019.
- Bogusz M., *Niedopuszczalność skargi konstytucyjnej na akt prawa miejscowego o charakterze generalno-konkretnym (miejscowy plan zagospodarowania przestrzennego). Postanowienie Trybunału Konstytucyjnego z dnia 6 października 2004 r., SK 42/02* [Inadmissibility of a constitutional complaint against a general and concrete local law act (local spatial development plan). Decision of the Constitutional Tribunal of 6 October 2004, SK 42/02], "Gdańskie Studia Prawnicze" 2020, No. 1(45).
- Dobrowolski M., Stępkowski A., *Skarga nadzwyczajna – dopełnienie systemu ochrony porządku konstytucyjnego* [Extraordinary complaint – supplementing the system for protecting constitutional order], "Studia Iuridica" 2022, No. 91.
- Działocha K., *Hierarchia norm konstytucyjnych i jej rola w rozstrzyganiu kolizji norm* [The hierarchy of constitutional norms and its role in resolving conflict of laws] [in:] *Charakter i struktura norm konstytucyjnych* [Nature and structure of constitutional norms], ed. J. Trzcíński, Warszawa 1997.

- Garlicki L., *Polskie prawo konstytucyjne. Zarys wykładu* [Polish constitutional law. Lecture outline], edition 6, Warszawa 2019.
- Kropiwnicki A., *Wokół wartości i zasad konstytucyjnych* [Around constitutional values and principles] [in:] *Dookoła Wojtek... Księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi* [About Wojtek... A memorial book dedicated to Dr. Artur Wojciech Preisner], eds. R. Balicki, M. Jabłoński, Wrocław 2018.
- Łętowska E., *Rec.: P. Mikłaszewicz, Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej, Warszawa 2008* [Review: P. Mikłaszewicz, Information obligations in contracts involving consumers against the background of European Union law, Warsaw 2008], "Państwo i Prawo" 2009, No. 5.
- Łętowska E., *Wpływ Konstytucji na prawo cywilne* [Impact of the Constitution on civil law] [in:] *Konstytucyjne podstawy systemu prawa* [Constitutional foundations of the legal system], ed. M. Wyrzykowski, Warszawa 2001.
- Mikłaszewicz P., *Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej* [Information obligations in contracts involving consumers against the background of European Union law], Warszawa 2008.
- Pułło A., *Idee ogólne a zasady prawa konstytucyjnego* [General ideas versus principles of constitutional law], "Państwo i Prawo" 1995, No. 8.
- Szczucki K., *Article 89* [in:] *Ustawa o Sądzie Najwyższym. Komentarz* [The Act on the Supreme Court. Commentary], edition 2, Warszawa 2021.
- Tuleja P., *Pojęcie zasady konstytucyjnej* [The concept of a constitutional principle] [in:] *Zasady ustroju Rzeczypospolitej Polskiej w nowej konstytucji. Materiały naukowe XXXVII Sesji Katedr Prawa Konstytucyjnego* [Principles of the system of the Republic of Poland in the new constitution. Scientific materials of the XXXVII Session of the Departments of Constitutional Law], ed. K. Wójtowicz, Wrocław 1997.
- Wyrzykowski M., Ziółkowski M., *Konstytucyjne zasady prawa i ich znaczenie dla interpretacji zasad ogólnych prawa i postępowania administracyjnego* [Constitutional principles of law and their relevance to the interpretation of general principles of administrative law and procedure] [in:] *Konstytucyjne podstawy funkcjonowania administracji publicznej, seria: System Prawa Administracyjnego* [Constitutional foundations for the functioning of public administration, Administrative Law System series], edition 2, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012.
- Zalasiński T., *W sprawie pojęcia konstytucyjnej zasady prawa* [On the concept of a constitutional principle of law], "Państwo i Prawo" 2004, No. 8.

Summary

Aleksandra Szydzik

The Nature of Constitutional Review of Judicial Decisions Exercised by the Supreme Court in Proceedings Initiated by the Extraordinary Complaint

The commentary concerns the nature of constitutional review of judicial decisions exercised by the Supreme Court in proceedings initiated by an extraordinary complaint. In the judgment under discussion, the Supreme Court found that the legal norm arising from Article 76 of the

Constitution of the Republic of Poland expresses a constitutional principle and, as a result, constitutes an admissible standard of review of a judicial decision contested by an extraordinary complaint. The position of the Supreme Court should be considered as particularly interesting in the context of the jurisprudence of the Constitutional Tribunal, which generally rejects the possibility of invoking Article 76 of the Polish Constitution as a basis for a constitutional complaint, indicating that the legal norm arising from this provision has the character of a state policy principle and, as a result, does not create any rights or potential claims on the part of the individual. The commentary examines the mutual relationship between the notions of "state policy principle" and "constitutional principle," and analyses the Supreme Court practice of reconstructing standards of constitutional review of judicial decisions. The considerations undertaken lead to the conclusion that the judgment under discussion is a manifestation of the departure by the Supreme Court from the previous practice of reconstructing standards of constitutional review of judicial decisions.

Keywords: extraordinary complaint, constitutional review of judicial decisions, Supreme Court, constitutional principle, standards of review.

Streszczenie

Aleksandra Szydzik

Charakter kontroli konstytucyjności orzeczeń sądowych sprawowanej przez Sąd Najwyższy w postępowaniach inicjowanych skargą nadzwyczajną

Problematyka glosy dotyczy charakteru kontroli konstytucyjności orzeczeń sądowych sprawowanej przez Sąd Najwyższy w postępowaniach inicjowanych skargą nadzwyczajną. W komentowanym wyroku Sąd Najwyższy uznał, że norma prawna wynikająca z art. 76 Konstytucji Rzeczypospolitej Polskiej wyraża zasadę konstytucyjną, a w konsekwencji stanowi dopuszczalny wzorzec kontroli orzeczenia sądowego zaskarżonego skargą nadzwyczajną. Stanowisko Sądu Najwyższego należy uznać za szczególnie interesujące w kontekście praktyki orzeczniczej Trybunału Konstytucyjnego, który zasadniczo odrzuca możliwość powoływania się na art. 76 Konstytucji RP jako podstawę skargi konstytucyjnej, wskazując, że norma prawna wynikająca z tego przepisu ma charakter zasady polityki państwa, a w konsekwencji nie kreuje po stronie jednostki żadnych praw lub potencjalnych roszczeń. W glosie zbadano relację, w jakiej pozostają do siebie pojęcia „zasady polityki państwa” i „zasady konstytucyjne” oraz przeanalizowano praktykę Sądu Najwyższego w zakresie rekonstrukcji wzorców kontroli konstytucyjności orzeczeń sądowych. Podjęte rozważania prowadzą do wniosku, że komentowany wyrok stanowi przejaw odejścia przez Sąd Najwyższy od dotychczasowej praktyki rekonstrukcji wzorców kontroli konstytucyjności orzeczeń sądowych.

Słowa kluczowe: skarga nadzwyczajna, kontrola konstytucyjności orzeczeń sądowych, Sąd Najwyższy, zasada konstytucyjna, wzorce kontroli.