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SUMMARY OF THE DOCTORAL DISSERTATION
entitled „Extraordinary Complaint as a Means of Constitutional Review
of the Judicial Application of Law”

The extraordinary complaint was introduced into the Polish legal system in 2018, as a new extraordinary remedy against final judicial decisions. The legislature aimed to address the existing gap in the system of protection of constitutional rights and freedoms, as well as satisfy the postulates raised in the doctrine of constitutional law on the necessity of reforming the constitutional complaint. Over the years, it has been observed that there is a need to expand the scope of protection of the individual, by granting the right to challenge acts of law application which, although issued based on provisions consistent with the Constitution of the Republic of Poland, were nevertheless in violation of its provisions. This was based on the conviction, that certain violations of constitutional rights and freedoms, fall outside the scope of constitutional complaint, at they arise at the stage of application of law.

Considering the main purpose of introducing the extraordinary complaint into the Polish legal system, as well as the fact that its construction is based on constitutional standards of review, both in case law and doctrine, it has been recognised as a remedy, serving the purpose of concrete constitutional review of judicial decisions. However, this institution has not been a subject to a comprehensive constitutional analysis, particularly in relation to the ongoing discussion on the optimal model of constitutional review, as well as the postulate to expand the scope of protection guaranteed by the constitutional complaint. Therefore, it has been deemed justified to undertake considerations in this regard.

The main research purpose of the dissertation is to analyse the extraordinary complaint as a means of constitutional review of judicial application of law, as well as to answer the question whether it might become an alternative to a constitutional complaint with a broad subject matter.

The considerations presented in the dissertation aim to verify three research hypotheses. First, it was asserted that the extraordinary complaint does not provide an optimal scope of protection, consistent with the assumptions that guided its introduction into the Polish legal

system, nor does it provide an alternative remedy to the constitutional complaint with a broad subject matter scope. Secondly, it was assumed that although the extraordinary complaint was intended to serve a subjective function, focused on the protection of constitutional rights and freedoms, the construction of this legal remedy and the way it functions in practice lead to the conclusion that it primarily fulfills an objective function, related to the protection of the constitutional order. Thirdly, it was assumed that the introduction of the extraordinary complaint into the Polish legal system, resulted in the evolution of the existing model of constitutional review in Poland. For the purposes of the research, I adopted a broad understanding of the constitutional review, which refers to both the sphere of lawmaking and law application.

The doctoral dissertation is structured into four chapters, preceded by an introduction. Each chapter begins with preliminary remarks and concludes with a summary.

The first chapter is of an introductory nature and serves to explain the initial concepts. First, I analysed the concept of constitutional review, considering its scope and models presented in the doctrine of constitutional law. Given the research hypothesis, I proposed a broader approach to the constitutional review, considering the specific dimension (sphere) of functioning of law to which the review is applied. The adoption of this systemic perspective allowed for the analysis of the phenomenon of the constitutional review also in relation to the sphere of its application. Subsequently, I outlined the concept of judicial application of law and identified the existing mechanisms for reviewing the constitutionality of acts resulting from this process. As a point of reference, I examined, on the one hand, the institution of the constitutional complaint in countries where its construction allows for challenging acts of judicial application of law, and on the other hand, the means of appeal in the Polish legal system, which may also serve to review the constitutionality of judicial application of law. The final section of this chapter is dedicated to the origins of the extraordinary complaint, with particular emphasis on the political and legal context as well as the constitutional rationale for its introduction into the Polish legal system.

The second chapter outlines the subject and object scope of the extraordinary complaint, which significantly determine the nature of this legal remedy. Due to the specific construction of the extraordinary complaint, the considerations in this regard were conducted in two directions. On the one hand, I identified the category of entities entitled to file an extraordinary complaint and analysed the scope of their activity. On the other hand, I distinguished the category of entities covered by the protection offered by the extraordinary complaint, in order to determine the scope of protection of this legal remedy. Aiming to determine the subject of

the extraordinary complaint, I found it necessary to discuss the characteristics a judicial decision must possess in order to be subject to the Supreme Court review, as well as the formal requirements of this legal remedy, since they also determine the catalogue of judicial decisions that can be challenged through an extraordinary complaint.

Conditions for admissibility and the standards of review of the extraordinary complaint are characterized in the third chapter. First, I classified the conditions for admissibility of the extraordinary complaint, distinguishing substantive and formal conditions. Then I analysed the substantive conditions of admissibility in relation to the corresponding constitutional standards of review. In this regard, I identified the constitutional norms, whose violation is crucial for the admissibility of the extraordinary complaint, in order to reconstruct the scope of protection guaranteed by this legal remedy. Beyond the scope of consideration, I left the formal conditions of the extraordinary complaint, recognising that they were referred to the necessary extent in the second chapter. The chapter concludes with an analysis of the Supreme Court's manner of reconstructing the constitutional standards of review in the proceedings initiated by the extraordinary complaint.

The last, fourth chapter of the dissertation attempts to consider the extraordinary complaint as a new area of jurisdiction of the Supreme Court. Therefore, the considerations undertaken in the last chapter begin with the characteristics of the court entrusted with resolving cases initiated by an extraordinary complaint. In this regard, I found it reasonable to correlate the power to recognise the extraordinary complaint with the existing constitutional roles of the Supreme Court and to try to place it within this framework. Next, I analysed the types of judicial decisions issued in cases initiated by the extraordinary complaint and their consequences in legal order. Particular attention has been paid to positive decisions, i.e., accepting the extraordinary complaint, due to their significant importance for the parties to the proceedings. The types of decisions and their legal consequences are functionally related elements of the extraordinary complaint. Their analysis allowed me to specify the role that the extraordinary complaint plays in the Polish legal system, as well as the nature of the control that is exercised through it.

The dissertation concludes with a summary of all chapters and final conclusions, which include verification of the research hypotheses.

The research conducted for the purposes of this dissertation mostly relied on the dogmatic-legal method. The analysis focused on national constitutional and statutory provisions, concerning the regulation of the extraordinary complaint, constitutional complaint and other legal remedies. To the extent that I examined the institution of constitutional

complaint in foreign legal systems, I applied the comparative legal method. In this regard, I referred to the views expressed in both Polish and foreign literature on the constitutional complaint and the constitutional review. In terms of consideration regarding extraordinary review, I applied the historical-legal method. Complementarily, I also used the theoretical-legal method, when analysing the model of judicial application of law.