Chapter 2.

THE RIGHT TO CONSTITUTIONAL COMPLAINT IN POLAND

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I. Introduction

The constitutional complaint (also referred to as: complaint) is in the legal system of continental Europe, excluding the Nordic countries, one of the fundamental guarantees of freedom and human rights. The essence of the constitutional complaint lies in the fact that an individual (a natural person or a legal entity) may require protection of their fundamental (constitutional) rights directly before a constitutional court (tribunal).[2] The institution of the constitutional complaint is closely associated with the control of constitutionality and legality of law exercised by the constitutional court. It should be noted that although the archetype of constitutional complaint dates back to the mid-nineteenth century,[3] it was only the introduction of the institution of constitutional court to the system of constitutional state bodies that had an impact on the formation of the constitutional complaint. Due to the identical objective, which was to protect the supremacy of the constitution in

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2 In this paper I use the general term "constitutional court", which includes both constitutional courts and constitutional tribunals, i.e. separated from the judiciary (courts) bodies designated for vertical control of legal norms, and in particular their compliance with the Constitution.

3 As the archetype of constitutional complaint we consider citizens' complaint to the Court of the *Reich* on violation of their constitutional rights established by the Austro-Hungarian Constitution of 1867, although legislative acts could not be the subject of the complaint. See B. Szmulik, *Skarga konstytucyjna. Polski model na tle porównawczym*, Warszawa 2006, p. 13. In turn, B. Banaszak reminds that the term "constitutional complaint" (in German: *Verfassungsbeschwerde*), was first used in German legal literature under the influence of the solutions proposed in the draft Constitution of the Reich of 1849. See B. Banaszak, *Modele skargi* konstytucyjnej, [in:] J. Trzciński (ed.), *Skarga konstytucyjna*, Warszawa 2000, p. 10.

the legal system, the constitutional complaint could not remain outside the framework of a coherent constitutional control exercised since 1920 by a separate constitutional court.[4] Today, in almost all countries where there is a separate body adjudicating on matters of compliance of normative acts with the Constitution, there is also a constitutional complaint. It is already regarded as standard, as an essential element in ensuring, together with the right to a judgment, coherence of the system of guarantee of freedom and rights of the individual, or even as an indicator of democracy of a state.

The constitutional complaint is of a special nature compared with other complaints raised by interested individuals about abuses carried out by public authorities, and in particular compared with the (usual) court proceedings. The uniqueness of the complaint reveals itself in many aspects: there are special reasons to use the complaint, they are recognized by a special authority, in a special procedure, special are also the consequences of recognition of the legitimacy of the complaint. In case of constitutional complaints a very important feature is their nature and scope of their selection as there is only one state body (constitutional court) authorized to adjudicate and therefore it should settle only those constitutional issues that are of major importance from the point of view of the status of the individual.

The introduction of a constitutional complaint to the Polish legal system occurred relatively late, in 1997, with the entry into force of the current Constitution of the Republic of Poland.[5] Although the Constitutional Tribunal has adjudicated in Poland since 1986, the sanctioning of the fundamental political changes of 1989 was the adoption of the Constitution. Along with the Constitution, the same day (17 October 1997), the Act of 1 August 1997 on the Constitutional Court (later referred to as the Act)[6] entered into force. The Act included provisions regulating in detail, among others, the procedure before

4 See more [in:] L. Jamróz, *Skarga konstytucyjna. Wstępne rozpoznanie,* Białystok 2011, pp. 17-19, *passim*.

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

6 Journal of Laws No. 102, item 643, as amended. The Act replaced the (first) Act of 29 April 1985 on Constitutional Tribunal (Journal of Laws No. 22, item 98, as amended).

the Tribunal, also in cases initiated as constitutional complaints. At the moment the acts mentioned above (of 1985 and 1997) are no longer in force, since on June 25, 2015 the Sejm passed a new Act on the Constitutional Tribunal (later referred to as the new Act).

II. The procedure of recognition of constitutional complaints under the 1997 Act and the new Act of 2015

The new Act has a different structure in comparison to the previous regulation, however, in fact it has not introduced many significant changes. These are rather corrections and supplements to the Act resulting from observation of its application and the judicial practice of the Tribunal. Without going into detailed considerations, it can be concluded that the Act meets the demands of representatives of the doctrine and the Tribunal itself.

The main change, however, touched the procedure in cases of constitutional complaints, significantly altering the stage of the so-called preliminary examination. According to the 1997 Act, a document which showed that it is a complaint and which was drawn up (signed) by a lawyer or a legal counsel and accompanied by an authorization special for the operation was designated for a preliminary examination. The preliminary examination was conducted by the Constitutional Tribunal composed of a single judge. If the Tribunal found that the application complies with all constitutional and statutory premises, in the aftermath the President of the Tribunal issued an ordinance to designate the complaint for substantive proceedings (to initiate the complaint proceedings). However, in case of obstacles of formal or material nature he issued a refusal to initiate the complaint proceedings.[7] This refusal, however, was actionable. After the submission by the applicant (or more precisely his legal representative) a complaint against the refusal to initiate proceedings, the complaint was transmitted to the Tribunal

7 If the complaint did not meet the formal requirements which by their nature could be completed, the Tribunal (judge) before issuing the refusal to pursue the motion called the complainant to remove them within 7 days. Failure to remove the deficiencies resulted in the issuance of that decision. This procedure also applies in the new Act (Article 77 paragraph 3 point 1).

again, this time to verify the validity of the prior decision based on the arguments put forward in the complaint. Recognition of the complaint resulted in its referral to a hearing or a failure to take account of the complaint, which ended the complaint proceedings. This particular two-tier principle was a source of criticism because it constituted a breach of the constitutional principle of finality of judgments of the Tribunal. The decision on refusal to initiate complaint proceedings was in fact a ruling.

The new Act did not eliminate the stage of preliminary diagnosis but it revolutionized it. As previously, the preliminary diagnosis serves as a selection of constitutional complaints. However, the two-tier principle was eliminated. The preliminary examination is conducted by the Tribunal composed of three members and its decision on granting or refusing to initiate proceedings is not actionable. The statutory changes are therefore in relation to the constitutional complaint of a procedural nature.

At the time of preparing this elaboration (September 2015), we are in a transitional period, since in cases initiated and not completed before 30 August 2015 within the extent specified in Article 134 of the new Act, in proceedings before the Tribunal, the provisions of the Act of 1997 are applied. This also includes complaint cases where in relation to the preliminary diagnosis previous provisions are applied. That is why presenting a sketch of the proceedings on constitutional complaints, it was necessary to identify provisions of the current and previous Act on the Constitutional Tribunal.

III. Classification of complaint models

The activity of the Constitutional Court related to the settlement of constitutional complaints is classified as the so-called specific control of the constitutionality of the law, as opposed to the so-called abstract control. The "specificity" of the control stems from the fact that a constitutional complaint must be linked to a particular (specific) matter of an individual that was finally resolved by a court or a body of public administration. A mandatory condition is the identity of the originator of the complaint proceedings with the entity whose particular matter was

finally settled by a court or a body of public administration. Sometimes we mention "the incidental nature of complaint", which means that it must occur on the background of a particular case and a particular violation of the legal status of an individual.[8]

When classifying a constitutional complaint one must apply several criteria of differentiation, of which the most important are the subject-related and object-related criteria.[9] The result of the application of these criteria is recognition of a specific complaint model as narrow or broad. The Polish model of constitutional complaint within its object-related scope is considered narrow because the object of appeal may be only a legal provision (a rule of law) which was used for settling an individual affair in judicial or administrative proceedings. Therefore, only the legal basis for this decision may be challenged. In turn, in the broad model the complaint includes not only legal acts (general and abstract) but also individual acts, including decisions of courts or bodies of public administration. An example is the Austrian constitutional complaint, which essentially consists of two separate legal institutions: the individual application (in German: *Individualantrag*), which may be directed against a general normative act, under which not only the constitutional rights of citizens are protected but also the subjective rights derived from ordinary laws, and the complaint (in German: *Beschwerde*) against an administrative decision or any other administrative act of an individual nature.[10]

While using the subject-related criterion, the Polish model of complaint is considered wide because according to the wording of Article 79 paragraph 1 of the Constitution of the Republic of Poland a complaint may be lodged by "anyone whose constitutional freedoms or rights have been violated...".

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8 L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2007, p. 364.

9 The third known criterion is the extent of protected freedoms and rights: whether the rights arising solely from the constitution, or also from other normative acts; whether all constitutional rights are protected by a complaint, or only some. According to the Polish constitutional normalization in the constitutional complaint procedure, one can claim protection of every law (every freedom) which has a constitutional status.

10 P. Tuleja, W. Wróbel, *Postępowanie w sprawie skargi konstytucyjnej przed austriackim Trybunałem Konstytucyjnym*, Państwo i Prawo 1999, No. 11, p. 63.

IV. Legitimacy to lodge a complaint

The width of the object-related scope of complaint means that those who are entitled to lodge it are not only citizens but also non-citizens (in this case it concerns at least certain rights); not only natural persons but also legal entities (in the nature of things it concerns only certain rights). In the wide object-related model the legitimacy to lodge a complaint also includes legal persons of public law, although only some, and in relation to certain rights. Recognition of the legitimacy of a complaint of a particular entity derives not only from the wording of constitutional and legal norms, because they are quite general, but also from constitutional jurisdiction and from the influence of the doctrine of law. Such a situation also exists in Poland where it is the jurisdiction of the Tribunal and the doctrine of law that try to ensure consistency of the generally sounding constitutional norm, creating a catalogue of authorized entities ("everyone whose...") with protective and guaranteeing function of constitutional complaint.

In case of the Polish constitutional complaint, there is no doubt that the phrase "everyone whose…" should be interpreted broadly.[11] This means that beyond natural persons[12] it also includes other legal entities. The right to a complaint is enjoyed by legal persons operating within the private sector, i.e. legal persons of civil and commercial law (in particular companies), social organizations, trade unions, political parties and associations,[13] but of course only to the extent in which they can use constitutional rights and freedoms due to their nature.

In complaint-related practice, most controversies were (and still are) connected with the confirmation of the legitimacy of state legal persons, local government units, companies with state ownership, or

11 See, for example, Z. Czeszejko-Sochacki, *Skarga konstytucyjna w prawie polskim*, Przegląd Sejmowy 1998, No. 1, p. 40.

12 In Poland, the right to a complaint by natural persons is subject to a subject-related limitation because within the scope of the complaint the Constitution excludes matters concerning the exercise of the right of asylum and granting a refugee status (Article 79 paragraph 2). By nature of those rights it means that the legitimacy of foreigners and stateless persons was reduced, but only in the use of these rights.

13 See, for example, J. Trzciński, *Zakres podmiotowy i podstawa skargi konstytucyjnej*, [in:] J. Trzciński (ed.), *Skarga konstytucyjna*…, p. 49; L. Garlicki, *Polskie prawo konstytucyjne...,* p. 364.

public healthcare facilities. Actually, although the term "everyone" accommodates different entities and although in many cases they are the beneficiaries of the constitutional freedoms or rights, a constitutional complaint is essentially an institution benefitting a specific entity somehow "against" public authority.

In its judicial practice, the Tribunal has repeatedly held it to be inadmissible to lodge a constitutional complaint by the municipality as a unit of local government. The rationale was the statement that the addressees of the rights arising from individual constitutional rights and freedoms are not entities performing public tasks. As the second argument it was pointed out that the bodies being units of local government may initiate the review procedure of constitutionality of law by filing an application under Article 191 paragraph 1 point 3 of the Constitution.[14] The lack of a municipality's ability to complain was also the reason for discontinuance of the complaint proceedings already at the hearing by the full composition of the Constitutional Tribunal; the judgment, however, was not unanimous.[15] The presented jurisprudence of the Tribunal has been also confirmed recently.[16] That also applies to other levels of local government units.[17]

As for the legitimacy of the complaint of public healthcare facilities – as in the case of municipalities and counties – "entities performing functions of public authority must not submit constitutional complaints because they are not addressees of rights arising from individual constitutional rights but addressees of duties associated with the realization of the rights of others.[18] The Tribunal, however, accepted the possibility of lodging a complaint in a situation "when by limiting

14 Compare the decision of the Constitutional Tribunal of 12 October 2004, Ts 35/04 (OTK ZU 2005, No. 1B, item 25, p. 73). Compare also decisions of the Constitutional Tribunal in cases: Ts 72/01; Ts 74/04; Ts 9/05.

15 The decision of the Constitutional Tribunal of 22 May 2007, SK 70/05 (OTK 2007, No. 6A, item 60).

16 Compare decisions of the Constitutional Tribunal of 8 December 2014, Ts 291/14 (OTK ZU 2014, No. 6B, item 639).

17 With reference to poviats, see, for example, the decision of the Constitutional Tribunal of 27 September 2005, Ts 83/05 (OTK ZU 2005, No. 6B, item 258), the decision of the Constitutional Tribunal of 12 December 2013, Ts 156/12 (OTK ZU 2014, No. 4B, item 271).

18 See the decision of the Constitutional Tribunal of 6 February 2001, Ts 148/00 (OTK ZU 2001, No. 3, item 72, p. 414). Compare also the decision of the Constitutional Tribunal of 19 December 2008, Ts 181/08 (OTK ZU 2009, No. 1B, item 53).

the rights of a legal person related to the implementation of public tasks, rights of individuals would be at the same time limited."[19] The constitutional complaint of such an institution would also be acceptable if it was based on an alleged breach by the contested regulation of the constitutional right to equal protection of property and other property rights (Article 64 paragraph 2 of the Constitution).[20]

With regard to state legal persons or companies with the participation of Treasury, legitimacy of complaint is limited because, according to the analysis of the Court, these entities have a legitimacy to lodge a constitutional complaint but only within the scope of protecting their property rights.[21] In several cases, the Tribunal allowed for a content-related recognition (e.g. directed the case to a hearing) for complaints made by companies with the Treasury, referring to an argument that the applicant companies operate in the sphere of private law.[22] Nevertheless, ultimately, there was no substantive decision due to the finding by the Tribunal at a hearing on lack of legitimacy of these entities.[23]

It is interesting also to see the issue of the possibility to lodge constitutional complaints by bailiffs. Until recently, the Tribunal denied them this right due to the fact that as an enforcement body acting as a public authority they cannot be at the same time a state authority and a person seeking protection of their constitutional rights.[24] With time, however, the Tribunal revised its findings and allows for that possibility in particular with regard to situations when the complaint concerns financial and personal status of the bailiff.[25]

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19 *Ibid*., the decision of the Constitutional Tribunal of 6 February 2001, as above, p. 414.

20 The decision of the Constitutional Tribunal of 4 April 2005, SK 7/03 (OTK ZU 2005, No. 4A, 34, pp. 445-446).

21 In case SK 24/04 the Tribunal recognized the essence of the constitutional complaint of the Agricultural Property Agency. Compare the decision of the Constitutional Tribunal of 21 March 2005, (OTK ZU 2005, No. 3A, 25).

22 Decisions of the Constitutional Tribunal of 8 November 2005: Ts 203/04 (OTK ZU 2005, No. 6B, item 237, p. 685) and Ts 204/04 (OTK ZU 2005, No. 6B, item 239, p. 691).Compare also the decision of 20 December 2007, SK 67/05 (OTK ZU 2007, No. 11A, item 168).

23 See decisions of the Constitutional Tribunal of 20 December 2007, SK 67/05 (OTK ZU 2007, No. 11A, item 168) and of 8 April 2008, SK 80/06 (OTK ZU 2008, No. 3A, item 51). In the second case with one dissenting opinion.

24 See, for example, the decision of the Constitutional Tribunal of 11 September 2007, Ts 292/06 (OTK ZU 2009, No. 3B, item 157, p. 445).

25 In the case with SK 34/07 (the decision of the Constitutional Tribunal of 24 February 2009, OTK ZU 2009, No. 2A, item 10) the Tribunal found that personal and pecuniary status of a bailiff as

At the end of this part we can also point out that the Tribunal recognizes the right to lodge a constitutional complaint of a private entity providing at a certain period some services to public entities, such as state or poviat.[26]

V. Substantive and procedural requirements of a constitutional complaint

The substantive recognition of a constitutional complaint is subject to a number of premises. In addition to proving the legitimacy of the complaint, one of the basic prerequisites is for the complainant to have the final ruling of a court or public authority of the complainant's rights, freedoms or constitutional obligations, whereby the basis of this ruling shall be the normative act (legislative provision) challenged in the complaint.[27] A constitutional complaint must be preceded by proceedings in an individual case (civil, criminal or administrative), and the ruling shall decide on the rights or freedoms or obligations guaranteed (imposed on the complainant) by the Constitution of the Republic of Poland.

The complaint is a subsidiary legal measure which is permitted only after unsuccessful exhaustion of other remedies by the complainant. In addition, a constitutional complaint as an extraordinary legal measure shall be admissible only if the alleged violation of fundamental rights cannot be otherwise removed. If, however, the individual case of the complainant is still under investigation due to the contribution of an extraordinary measure in individual judicial proceedings (cassation or

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a specific person decides that he is the so-called office holder. He operates on a self-employed basis although he is not an entrepreneur. Bailiff "is a self-financing body, and he suffers from risks, and consequently also bears personal responsibility for their activities, according to the current composition of the Constitutional Tribunal the way of shaping of the compensation mechanism of that kind of a public official is of importance for the constitutional protection of property rights." See there p. 152.

26 In case of the applicant company, dealing with the removal of vehicles from roads, the Court stated that "(...) the mere fact of entrusting a specific private entity with specific services related to the implementation of public tasks does not automatically deprive the entity of the legitimacy to lodge a constitutional complaint." See the decision of the Constitutional Tribunal of 25 May 2009, SK 54/08 (OTK ZU 2009, No. 5A, item 69, p. 699).

27 See, for example, *Informacja o istotnych problemach wynikających z działalności i orzecznictwa Trybunału Konstytucyjnego*, Warszawa 2006, p. 26.

cassation appeal to the Supreme Court or the Supreme Administrative Court), pursuant to Article 67 of the new Act, the Tribunal may suspend the proceedings until the remedy is recognized.

The sole object of a complaint can only be a law or another normative act, i.e. a specific legal provision (or provisions) that was applied by a court or a public authority when issuing a final decision (it was the basis for determining an individual case). This eliminates the possibility of making the entire normative act the object of the complaint.[28] As used herein, the term "normative act" determines that it can be any act, regardless of its form (name), if only it establishes legal standards of general (i.e. it is directed to a class of recipients singled out due to a common feature) and abstract (i.e. it establishes certain patterns of behaviour) application.[29]

In connection with this, a few years ago there was a discussion regarding the subject of the constitutional complaint about the acts of local law (implementing provisions of separate laws and order regulations issued on the basis of general competence expressed in the provisions of acts).[30] These include in particular: resolutions, regulations or order enforcement provisions and local zoning plans. Although the Tribunal does not absolutely exclude such a possibility, in practice – most often in relation to spatial management plans – the Tribunal has not issued substantive decisions because of the inadmissibility of the judgment.[31]

Similar disputes emerged on the admissibility of initiating a constitutional complaint aimed at controlling international law. Also in this area – in principle – the Polish model of constitutional complaint provided for in Article 79 paragraph 1 of the Constitution does not give grounds to question legal international standards.[32] More significant

28 Compare the decision of the Constitutional Tribunal of 20 May 2002, SK 28/01 (OTK ZU 2002, No. 3A, item 38, p. 499).

29 See the decision of the Constitutional Tribunal of 7 June 1988, U.15/88 (OTK 1989, item 10, pp. 146-147).

30 I presented it on another occasion; see L. Jamróz, *Skarga konstytucyjna*… pp. 153-157.

31 Compare, for example, the decision of the Constitutional Tribunal of 6 October 2004, SK 42/02 (OTK ZU 2004, No. 9A, item 97).

32 See M. Grzybowski, *Prawo międzynarodowe i wspólnotowe jako wzorzec i przedmiot kontroli norm*, [in:] M. Zubik (ed.), *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego*, Warszawa 2006, p. 340.

from the practical point of view is the question about the possibility of making the so-called secondary legislation acts of the European Union subject of a complaint. So far the Polish Tribunal only once faced such a problem. In its judgment of 16 November 2011 the Tribunal found that the basis for the unconstitutionality of the secondary law of the Union may be recognizing that the protection of individual rights under the law of the Union is lower than the protection provided for in the Constitution of the Republic of Poland. The Court therefore allowed the possibility of review of such acts.[33]

Although the act in relation to the object of the review uses the term "regulation", in fact in the procedure of standards review, the Tribunal determines whether a legal norm was established with a violation of law; the object of the proceedings is the issue of failure of a particular legal norm.[34] The Tribunal "removes" (decodes) the norm (s) from the provision (provisions) and compares it to a particular constitutional norm. The jurisdiction of the Tribunal, which consists of the review of standards, correlates with the accepted understanding of the normative act, which is any piece of legislation containing general and abstract norms.

It is worth mentioning that since the object of review in the Tribunal may only be a legal norm (anchored in legal provision or provisions) that excludes control of the practice of its application by courts or bodies of public administration. The Tribunal is not legitimized to control the so-called acts of applying the law. Furthermore, since the constitutional complaint can only refer to a specific provision, the subject of the complaint cannot be the so-called legislative failure (i.e. a failure to issue a specific act or a legal provision). The Tribunal may, however, control the so-called legislative omission, i.e. lack of certain regulatory elements, the existence of which would condition the constitutionality of the regulation. In such a situation the plea should be based on the finding that the provision is unconstitutional because it has a too narrow

33 See the decision of the Constitutional Tribunal, SK 45/09 (OTK ZU 2011, No. 94, item 97).
34 See K. Wojtyczek, *Zasada skargowości w procedurze kontroli norm przed polskim Trybunałem Konstytucyjnym*, Przegląd Sejmowy 2003, No. 1, p. 26.

scope of application or standardization, resulting in violation of the constitutional rights of the complainant.[35]

The last constitutional premise of the constitutional complaint is an indication which constitutional freedom (right) has been breached. This does not cause much difficulty if the complainant indicates a specific provision of the Constitution from its Chapter II, which directly enacts a certain freedom (right). Problematic, however, are those cases where the complainant refers, for example, to legal principles, such as those of the democratic state of law (provisions of Chapter I). Although the Tribunal admits that it is not absolutely excluded, it is the complainant's duty to demonstrate that the breach of such a provision has led to the violation of his, specified in the Constitution, rights or freedoms.[36]

As far as typically formal criteria are concerned, a constitutional complaint should comply with the requirements of a pleading (Article 60 of the new Act) but in terms of its preparation, filing and representing the complainant in the proceedings before the Tribunal, there is a duty of replacement of the complainant by a lawyer or a solicitor (the so called lawyer-solicitor coercion; Article 66 of the new Act). The coercion does not apply if the complainant is a judge, prosecutor, lawyer, solicitor or notary or a professor or senior Doctor of Law.

The basic formal condition for a complaint is also the date, which is three (3) months from the date of notification of the complainant of a final judgment, final decision or other final settlement (Article 64 paragraph 1 of the new Act). The date is impassable and non-recoverable, and is suspended only if the complainant submits a request to appoint an attorney from office. In addition, the complaint must (Article 65 of the new Act):1/ determine the object of the review (specific provision of an act or another normative act); 2/ indicate which constitutional freedom or right of the complainant and the complainant in what way – according to the complainant – has been violated; 3/ justify the allegation that the object of review is non-compliant with the specified

35 See the decision of the Constitutional Tribunal of 4 October 2001, SK 22/01 (OTK ZU 2001, No. 7, item 216, p. 1092).

36 Compare the decision of the Constitutional Tribunal of 3 February 2000, Ts 58/99 (OTK ZU 2000, No. 1, item 7, p. 81).

constitutional freedoms or rights, with calling arguments or evidence in support thereof; 4/ present facts and document the date of delivery of the judgment (decision or any other settlement), and also inform whether it was the subject of filing an extraordinary remedy. Compliance with these requirements is fundamental because – according to the principle of availability – the Tribunal cannot itself determine the scope of the action and patterns of control; also it cannot clarify them independently (the so called binding by the scope of the complaint – Article 50 of the new Act).

The complaint should be accompanied by (Article 65 paragraph 2 of the new Act): 1 – a ruling (decision or another settlement); 2 – rulings decisions or other settlements, confirming the exhaustion of all legal means; 3 – special power of attorney.

VI. Conclusion

To summarize the above, it is clear that the Polish approach to the constitutional complaint causes dissonance. On the one hand, the constitutional complaint is considered one of the most important institutional foundations of the protection of human rights but, on the other hand, due to its specific normative structure, it is a special remedy, the launch of which is possible only after fulfilling a number of conditions, which significantly narrows the possibility of its practical application. Moreover, given the Polish case, one can even say that the conditions to benefit from the complaint are very restrictive, which in practice leads to a significant reduction in the benefit of that institution and obtaining a favourable judgment of the constitutional court for the complainant is even harder. This is confirmed by statistics: in 2014 375 constitutional complaints were transferred for the preliminary examination, of which 44 complaints were forwarded for factual recognition (for a comparison, in 2012 the respective figures were 320 and 67, and in 2013: 331 and 71). Calculating the average of these figures: only about 20% of the complaints got through the stage of preliminary examination, however, at the hearing, on average every fourth complaint was resolved to the

benefit of the thinking of the complainant (in whole or in part). This means a few-percent effectiveness of the complaint.[37]

The entity submitting a complaint must prove his/her personal, legal and real interest. "Personal interest" means that the complainant is personally interested in eliminating the infringement of the freedoms and rights he is entitled to. The condition of "personal interest" makes the complaint different from the so-called *actio popularis*. Showing the "legal interest" consists of proving that the infringement of freedoms or rights concerns directly the complainant's legal situation. Therefore an indispensable condition of accepting the case for substantive examination is the complainant specifying a particular right (or freedom) which has been infringed. Meeting the condition of "real interest" involves proving a real infringement of law (the fact that did occur) and not only the infringement which may happen in the future or is hypothetical.

A balance for the restrictive approach of the complaint is judicial practice of the Tribunal, which adopted the widest possible understanding of the legitimacy of the complaints, the object of the complaint and the review models in the accusatorial proceedings. For each of the substantive conditions resulting from the constitutional structure of the complaint, the Tribunal applied an expanded interpretation which, however, fits within the existing legal regulation. It can be considered that the provision of Article 79 of the Constitution has been embraced by the interpretation of the Tribunal.

Moreover, in case of serious doubts whether the conditions for the complaint have been met (in particular confirmation of the legitimacy of the complaint, the recognition of the object of the complaint, or models of review) the Tribunal – applying the principle of precaution – initiates the proceedings of constitutional complaints. The decision on initiation is not certainly binding for the composition of the Tribunal on the hearing because the Tribunal is obliged to monitor compliance with the conditions of the constitutional complaint at any stage of the proceedings.

37 See statistical data available on the official website of the Tribunal at: http://trybunal.gov.pl/fileadmin/content/dokumenty/ds.pdf (8 September 2015).

Thus, although the constitutional complaint is concerned to be a non-judicial remedy, the same as it, it is not complete and absolute. Access to the Constitutional Tribunal in the complaints procedure is limited and the procedure for recognizing the complaint is significantly formalized.