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LEGAL NATURE OF THE SUPREME COURT RESOLUTIONS

ZBIGNIEW KWIATKOWSKI*

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The activity of passing resolutions by the Supreme Court, which is a body of the judicial power appointed to uphold the administration of justice, constitutes one of its most important tasks that aim to ensure that common and military courts' judgments are uniform and in compliance with the law (*arg. ex* Article 1 para. 1(a) Act on the Supreme Court[1]).

A question is raised in what way the Supreme Court can unify common and military courts' case law. Analysing this issue it is necessary to notice that the Supreme Court, within its functional competence, adjudicates questions of law that require fundamental interpretation of a statute; in case a legal question arises when an appeal is heard, the court of appeal can adjourn a trial and refer it to the Supreme Court for adjudication (*arg. ex* Article 441 § 1 Criminal Procedure Code, henceforth CPC); it resolves questions of law connected with a particular case; if hearing a cassation or another appellate measure it has serious doubts concerning the interpretation of the provisions of law that are grounds for a judgment, it refers the legal question to a bench of seven judges of the Court (*arg. ex* Article 82 Act on the Supreme Court); and it passes resolutions if discrepancies concerning interpretation of the provisions of law that are grounds for a judgment occur between common and military courts' and the Supreme Court's case law (*arg. ex* Article 83 § 1 Act on the Supreme Court).

Thus, the provisions of Article 441 § 1 CPC, Article 82 and Article 83 § 1 Act on the Supreme Court constitute normative grounds for passing resolutions by the Supreme Court.

* Prof., PhD hab., Head of the Department of Criminal Procedure Law, Faculty of Law and Administration of the University of Opole; e-mail: zkwiatkowski@uni.opole.pl; ORCID: 0000-0003-2838-6550

1 Act on the Supreme Court of 8 December 2017 (Dz.U. of 2018, item 5, as amended).

The activity of passing resolutions by the Supreme Court has not been directly regulated as judicial supervision in the Act on the Supreme Court due to the content of Article 183 para. 1 Constitution of the Republic of Poland,[2] which stipulates that 'The Supreme Court shall exercise supervision over common and military courts regarding judgments'. Monika Zbrojewska[3] rightly highlighted that 'in order to avoid a construct that the Supreme Court exercises supervision over its own activity, the legislator assumed that it upholds the administration of justice [*arg. ex* Article 1 para. 1 Act on the Supreme Court – the author's annotation]'.

There is another question concerning the legal nature of the Supreme Court resolutions. In other words, a question is raised whether they have the same features as judgments and rulings that allow one to recognise them as judgments or they constitute another type of solutions. There are three different approaches to the issue in the legal doctrine. According to one of them, 'the Supreme Court resolutions are judgments'.[4] Stefan Kalinowski[5] assumed that 'the Supreme Court resolutions constitute a separate group of judgments because they are not court judgments concerning directly the subject matter of a trial and do not conclude it; some of them are issued in connection with a particular trial, e.g. a resolution passed in accordance with Article 390 of the former CPC, at present Article 441 § 1 CPC [the author's annotation], and concern legal issues that require fundamental interpretation of a statute and bind courts that hear particular cases'. Edward Skrętowicz[6] stated that 'the Supreme Court resolutions concerning legal questions and issued in accordance with Article 441 CPC do not belong to the category of judgments. These resolutions bind a common or military court in a certain case, which means that a court cannot judge in this case in a way different from the Supreme Court's answer to the legal question'. One can encounter a statement that 'a resolution is a special form of judgment issued by the Supreme Court (Article 441 § 3 CPC)'.[7] It seems that literal interpretation of this stand can lead to a conclusion that the Supreme Court resolutions constitute one of the forms of a judgment because it is assumed in the literature on a trial[8] that 'the decisions are declarations of will that are imperative in nature and that, unlike legal norms which are abstract, concern particular cases, thus they also include judgments'.

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[2] Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483, as amended).

[3] M. Zbrojewska, *Rola i stanowisko prawne Sądu Najwyższego w procesie karnym*, Warszawa 2013, p. 171; also see L. Garlicki, *Sąd Najwyższy – regulacja konstytucyjna i praktyka*, [in:] W. Skrzydło (ed.), *Sądy i trybunały w Konstytucji i w praktyce*, Warszawa 2005, pp. 15–16.

[4] A. Kordik, F. Prusak, Z. Świda, *Prawo karne procesowe. Część ogólna*, Wrocław–Szczecin 1994, p. 104; K. Marszał, *Proces karny. Zagadnienia ogólne*, 2nd edn supplemented, Katowice 2013, p. 308; L.K. Paprzycki, [in:] L.K. Paprzycki, J. Grajewski, *Kodeks postępowania karnego z komentarzem*, Sopot 2000, p. 164; S. Waltoś, *Wprowadzenie i próba podsumowania*, [in:] S. Waltoś (ed.), *Jednolitość orzecznictwa w sprawach karnych*, Zakamycze 1998, p. 15.

[5] S. Kalinowski, *Polski proces karny w zarysie*, Warszawa 1981, pp. 141 and 341.

[6] E. Skrętowicz, [in:] R. Kmiecik, E. Skrętowicz, *Proces karny. Część ogólna*, 6th edn, Warszawa 2006, p. 274.

[7] Z. Świda, [in:] Z. Świda, R. Ponikowski, W. Posnow, *Postępowanie karne. Część ogólna*, Warszawa 2008, p. 240.

[8] M. Lipczyńska, *Polski proces karny. Zagadnienia ogólne*, Warszawa 1986, pp. 113–114.

Looking for the answer to the question concerning the legal nature of resolutions passed by the Supreme Court, one should conclude that from the normative point of view, it is hard to classify them as judgments in the strict sense.[9] The provisions of the Criminal Procedure Code do not divide judgments into sentences and decisions. The provision of Article 93 § 1 CPC only lays down that 'if a statute does not require the issue of a sentence, a court shall take a decision' and Article 441 § 1 CPC determines when an appellate court can adjourn hearing a case and ask a legal question to the Supreme Court. That is why, the dominating opinions in the legal doctrine[10] are for traditional division of judgments into sentences and decisions and does not cover the Supreme Court resolutions. On the other hand, some representatives of the doctrine of criminal procedure[11] classify the Supreme Court resolutions as judgments, however, this is applicable only to resolutions that are answers to legal questions referred to the Supreme Court, in accordance with Article 441 §§ 1 and 3 CPC, and does not concern the Supreme Court resolutions passed in accordance with Article 82 and Article 83 Act on the Supreme Court. This point of view, however, does not supply precise criteria justifying the classification of the Supreme Court resolutions as judgments, but it emphasises that 'resolutions are passed within the non-instance-related supervision and concern interpretation of the provisions of law'.[12] This shows their interpretative nature. As a result, a question is raised whether defining the precise criteria is possible at all. It seems that determination of positive criteria indicating similarity of the Supreme Court resolutions to judgments can be difficult. On the other hand, providing negative criteria excluding the assumption that the Supreme Court resolutions are judgments is possible and these can include:

1) The inability to recognise a resolution as an imperative judgment on the subject matter of a trial, and thus the liability of the accused;[13]
2) Resolutions are not amenable to review, unlike judgments, which can be appealed against in accordance with the provisions of the Criminal Procedure Code: Article 444 and Article 506 § 1 in the case of a sentence and Article 459 in the case of a decision;
3) The lack of regulation in the Criminal Procedure Code concerning:
   a) the course of a consultation and voting on a resolution,
   b) developing and signing resolutions,

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[9] R.A. Stefański, *Instytucja pytań prawnych do Sądu Najwyższego w sprawach karnych*, Zakamycze 2001, p. 339; *idem*, *Rodzaje rozstrzygnięć Sądu Najwyższego w przedmiocie pytań prawnych*, Wojskowy Przegląd Prawniczy 3–4, 2000, p. 55.

[10] M. Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne*, Warszawa 1984, p. 53; W. Daszkiewicz, *Prawo karne procesowe. Zagadnienia ogólne*, Vol. II, Bydgoszcz 2001, p. 33; T. Grzegorczyk, [in:] T. Grzegorczyk, J. Tylman, *Polskie postępowanie karne*, 4th edn amended and supplemented, Warszawa 2003, p. 386; H. Paluszkiewicz, [in:] K. Dudka, H. Paluszkiewicz, *Postępowanie karne*, 3rd edn, Warszawa 2017, p. 216; J. Skorupka, [in:] D. Gruszecka, K. Kremens, K. Nowicki, J. Skorupka (ed.), *Proces karny*, Warszawa 2017, p. 333.

[11] K. Marszał, *Proces karny*, *supra* n. 4, p. 308; S. Waltoś, [in]: S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2016, p. 47; A. Kordik, F. Prusak, Z. Świda, *supra* n. 4, p. 104.

[12] Thus, A. Kordik, F. Prusak, Z. Świda, *supra* n. 4, p. 104.

[13] R.A. Stefański, *Instytucja*, *supra* n. 9, p. 339.

c) the possibility of dissenting, even from the justification of the resolution; in the case of a judgment, such a possibility is laid down in Article 114 § 2 CPC,
d) adjourning the issue of a resolution,
e) correction of obvious clerical errors.

4) The lack of a statutory regulation concerning the elements a resolution should contain.

It is worth mentioning that after the present Criminal Procedure Code entered into force, a question was asked in the doctrine[14] whether the CPC provisions concerning, e.g. the secrecy of consultation and voting, the possibility of dissenting, the mode of signing and announcing resolutions or serving them, correcting obvious errors, etc., are applicable to the Supreme Court resolutions. At the same time, attention is drawn to the fact that 'reference made in Article 458 CPC concerning "application by analogy" of the provisions regarding proceedings before a court of first instance in appellate proceedings does not seem sufficient because it is placed in Chapter 49 entitled Appeal, while the provisions concerning legal questions (Article 441 CPC) are in Chapter 48 entitled General provisions, and the reference can be applicable only by means of far-reaching analogy'.[15] Jerzy Bratoszewski[16] rightly notices that 'it constituted an unquestioned statutory defect, and there was an attempt to eliminate it in a normative act of a lower rank, i.e. Regulation of the President of the Republic of Poland of 29 March 1991,[17] which constitutes the so-called rules and regulations of the Supreme Court'. It was intended to introduce a regulation stipulating that the provisions concerning judgments are applicable to resolutions by analogy to one of the bills of the Code of Criminal Procedure. However, in the course of legislative work, the idea was abandoned.[18] The above-mentioned legal state resulted in amendments to the Supreme Court Rules and Regulations of 27 September 1984,[19] and a change in the regulation concerning the possibility of dissenting from a resolution, substituted by a ban on it (§ 40(2) of the Supreme Court Rules and Regulations), which was justified by the fact that a resolution is not a judgment, thus the provisions of Articles 113 and 114 CPC are not applicable.[20]

At present the above issues are provided for in Regulation of the President of the Republic of Poland of 29 March 2018: the Supreme Court Rules and Regulations.[21]

The provision of § 111(1) of the Supreme Court Rules and Regulations stipulates that a resolution must be passed after a closed session of the adjudicating panel. The session consists of a report presented by a reporting judge, a discussion, voting, a discussion of the fundamental motives behind the judgment, and the development of a resolution. All judges must sign the resolution. A judge who dissents can report

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[14] J. Bratoszewski, *Działalność uchwałodawcza Sądu Najwyższego. Wybrane problemy*, [in:] T. Nowak (ed.), *Nowe prawo karne procesowe. Zagadnienia wybrane. Księga ku czci profesora Wiesława Daszkiewicza*, Poznań 1999, p. 184.

[15] *Ibid*.

[16] *Ibid*., pp. 184–185.

[17] Dz.U. No. 34, item 153.

[18] J. Bratoszewski, *supra* n. 14, p. 185.

[19] Monitor Polski of 30 October 1984, No. 24, item 165.

[20] J. Bratoszewski, *supra* n. 14, p. 185.

[21] Dz.U. of 30 March 2018, item 660.

his/her voice of dissent by making a relevant annotation when signing the resolution (§ 111(3) Supreme Court Rules and Regulations).

A resolution must be announced straight after it has been passed. In extraordinary situations, the Court can adjourn the announcement of the resolution for 14 days. The presiding judge announces the resolution in the presence of the adjudicating bench also when its announcement has been adjourned. On the request of a judge reporting a voice of dissent, the presiding judge announces this fact (§ 112(1) and (2) Supreme Court Rules and Regulations). The presiding judge develops justification of a resolution within 30 days (§ 112(3) Supreme Court Rules and Regulations). He is not obliged to develop justification of a resolution to which the voice of dissent has been reported. All judges, without exception, including those who have been outvoted or who have reported a voice of dissent, sign a resolution. If a judge cannot sign the justification, the presiding judge or the judge with the longest tenure annotates the reason for the lack of such signature. The moment when the justification of a resolution is being signed, a judge can report his/her voice of dissent to the justification (Article 112(6) *in principio* Supreme Court Rules and Regulations).

With reference to point (4) in the above listing, such a regulation is provided for in relation to a sentence (Article 413 §§ 1 and 2 CPC) and a decision (Article 94 § 1 CPC). Despite the lack of a clear regulation concerning the elements of a resolution in the Criminal Procedure Code, it is assumed in the doctrine[22] that a resolution should contain:

– the indication of a court, judges, a prosecutor and a minute taker,
– the date and place of resolving a legal question,
– the given name and surname of the accused and the legal classification of an act one is charged with,
– the indication of a court that has asked a legal question,
– the legal grounds for asking a legal question,
– the content of a legal question,
– the resolution of a legal question,
– the justification.

Thus, the part of the resolution that constitutes a default rule should contain a thesis. The resolution should contain justification providing an explanation that the requirements for asking a legal question have been met and the issue referred by an appellate court really requires fundamental interpretation of a statute, and it should substantiate the answer given with relevant arguments therefor. The content of the explanation cannot be limited to quoting the thesis of a resolution but the justification must indicate a given relation between an interpretative decision taken as a result of the interpretative process and a norm that is subject to interpretation and grounds for giving this interpretation.[23] Thus, Ryszard A. Stefański[24] is right to state that 'the justification of a resolution should be treated as its integral part because

[22] R.A. Stefański, *Instytucja*, *supra* n. 9, p. 340.
[23] *Ibid*., p. 340 and the literature referred to therein.
[24] *Ibid*., p. 341 and the literature referred to therein.

a sentence alone does not fulfil a preventive function'. Not only the justification of a resolution is of key importance but also the way in which it is developed; and the strength of the resolution impact depends on that to a great extent.[25]

The above discussion leads to a conclusion that it is hard to classify as judgments the Supreme Court resolutions passed in accordance with Article 441 § 1 CPC or Article 82 § 1 Act on the Supreme Court, due to the above-mentioned criteria that are grounds for their assessment provided within the scope of judgments. They do not constitute judgments in the precise sense as those are imperative in nature and, as it has been raised earlier, adjudicate on the subject matter of particular proceedings, a procedural or an incidental issue. They are rather the Supreme Court's procedural decisions on a legal issue that requires fundamental interpretation of a statute or solving a legal issue in a situation when there are serious doubts concerning the interpretation of provisions of law being grounds for a judgment.

Resolutions express the Supreme Court's opinions concerning not only how the provisions of a statute should be interpreted; thus, they are acts of knowledge and not of will.[26] They are only similar to an imperative declaration because the interpretation provided by the Supreme Court in a given case is binding (*arg. ex* Article 441 § 3 CPC). This concerns resolutions passed in accordance with Article 441 CPC, however, a judgment in a given case in which a legal question has arisen, required fundamental interpretation of a state, and has been referred to the Supreme Court is within the competence of a court *ad quem*, which is hearing such case.

In the light of the above, it should be assumed that the Supreme Court resolutions constitute procedural decisions that are interpretative in nature and do not have features of a decision passed as a judgment of an imperative judicial act containing a solution resulting from categorisation. They do not decide on the procedural consequences of a particular established fact[27] but indicate proper interpretation of legal provisions that raise serious doubts in judicial practice.

It is emphasised in the Constitutional Tribunal case law[28] that 'in the state ruled by law, an interpreter must always first of all take into account the linguistic meaning of a legal text. If the linguistic meaning of such text is clear, then, in accordance with the *clara non sunt interpretanda* principle, there is no need to look for another, non-linguistic method of interpretation'.

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[25] For more on the topic, see *ibid*., p. 341.

[26] W. Daszkiewicz, *Proces karny. Część ogólna*, 3rd edn updated and supplemented, Poznań 1996, p. 248. In literature concerning civil procedure law, the resolutions are called 'interpretative decisions'. See S. Włodyka, *Wiążąca wykładnia sądowa*, Warszawa 1971, pp. 11–13. Kazimierz Piasecki also classifies them as decisions (although not judgments) and states that the interpretation provided in resolutions concerning particular cases have judicial features; they are 'an element of a future judgment and are a factor for a court's decision', see K. Korzan, *Orzeczenia sądowe i ich podział*, [in:] *System Prawa Procesowego Cywilnego. Postępowanie rozpoznawcze przed sądem pierwszej instancji*, Wrocław–Kraków–Gdańsk–Łódź 1987, Vol. II, p. 270 (citation after W. Daszkiewicz, *Proces karny*, *supra* n. 26, p. 247).

[27] E. Skrętowicz, [in:] R. Kmiecik, E. Skrętowicz, *supra* n. 6, p. 274.

[28] See the Constitutional Tribunal judgment of 8 June 1999, SK 12/98, OTK 5/1999.

Therefore, a rule was formulated in the doctrine[29] and case law[30] that 'specifies the sequence of application of various interpretation methods: linguistic interpretation, systemic interpretation, functional (purpose-related) interpretation, and sometimes historic interpretation used as an auxiliary method [the author's annotation]. In accordance with the *interpretatio cessat in claris* principle, it is not always necessary to apply all those methods successively, in particular there is no need to use purpose-related directives if proper interpretation results can be obtained, i.e. the meaning of a norm can be established, with the use of linguistic or linguistic and systemic directives'. It is rightly noticed in the doctrine[31] that 'the Supreme Court has repeatedly emphasised that, in accordance with the adopted principles concerning the interpretation of law, the basic method shall be linguistic (grammatical) interpretation, however, it cannot be the only one when there are doubts concerning the fairness and justice of a provision. Interpreting a text written in the legal language, an interpreter should rely on the results of the linguistic interpretation and then, if it leads to doubts that cannot be eliminated, he can use the systemic interpretation, and if this method also fails to eliminate interpretative doubts, the functional interpretation can be applied'. In some cases, the Supreme Court raises that it is not authorised to substitute for the legislator and cannot provide interpretation because it would mean typical legislation.[32] It seems that such a conclusion can be a signal sent to the legislator indicating the need to make particular amendments to the law.

The Supreme Court passes a resolution that contains an answer to a legal question in a particular case in an open session and, in other cases, in a closed session. A body that has filed a motion can also take part in the session (§ 107(1) Supreme Court Rules and Regulations). The Supreme Court resolutions, as it has already been mentioned above, are not amenable to review. In a situation when they are passed in particular cases, they are sent to particular appellate courts, which notify parties to the proceedings of their content (*arg. ex* Article 100 § 5 CPC). It is so because the provisions concerning judgments are applied to them by analogy.[33]

In the Supreme Court's practice of passing resolutions,[34] it is assumed that resolutions are not judgments in the exact sense; however, they influence lower-instance court judgments and have impact on the Supreme Court case law uniformity. In the doctrine[35] of criminal procedure, they are rightly recognised as non-instance-related judicial supervision exercised by the Supreme Court as a result of an initiative of a court of higher instance hearing an appeal. However, in the legal system in which

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[29] L. Morawski, *Wykładnia w orzecznictwie sądów. Komentarz*, Toruń 2002, pp. 116–117.

[30] See the Supreme Court judgment of 8 May 1998, I CKN 664/97, OSNC 1997, No. 1, item 7; the Supreme Court ruling of 1 July 1997, V KZ 31/99, OSNKW 1999, No. 9–10, item 63.

[31] M. Pilarska-Gumny, *Konkretne pytania prawne do Sądu Najwyższego w sprawach karnych*, Ius Novum 2, 2013, p. 74 and the opinions of the legal doctrine and the Supreme Court case law referred to therein.

[32] See justification of the Supreme Court resolution of 23 January 2020, BSA-I-4110-1/2020, LEX No. 2770251.

[33] J. Bratoszewski, *supra* n. 14, p. 185.

[34] *Ibid*.

[35] R.A. Stefański, *Instytucja*, *supra* n. 9, p. 151 and the opinions of the legal doctrine referred to therein.

the Supreme Court is a court of second instance hearing an appeal against judgments passed in a voivodship court of first instance,[36] it has been assumed that the Supreme Court resolution passed in such cases when a legal issue has raised doubts contains elements of instance-related supervision because, as a rule, a common court adjudicating in a particular case concerning an appeal usually requests it from a bench of seven judges.[37] It is true that a legal question asked in order to obtain a resolution has its source in a particular case because it arises in connection with hearing an appeal, however, this remains with no influence on the legal nature of a resolution concerning the issue, especially as it is not passed by a court of second instance. It is due to the fact that solving a legal issue in the form of a resolution takes place before a court of second instance passes a judgment on the appeal, which prevents the issue of an erroneous judgment by that court. It is rightly highlighted in the case law[38] that the role of those resolutions consists in 'preventing the issue of defective judgments that are not amenable to review within standard appellate measures […]. It is simply aimed at avoiding situations in which an appellate court, having doubts concerning the way of interpreting the provisions of law that it plans to apply, has to judge a matter on its merits and pass a final judgment despite unresolved doubts'.

Due to the above, the Supreme Court resolutions are classified in the doctrine[39] also in the category of preventive measures. This is because they constitute an important means of the Supreme Court's influence on ensuring uniformity and conformity with lower-instance courts' right to judge, and they considerably affect the consistent interpretation of law.[40]

In the light of the discussed issues, it is also necessary to consider the legal nature of the Supreme Court resolutions passed in the case of discrepancies between the interpretation of the provisions of law that are grounds for judgments issued by common or military courts or the Supreme Court (Article 83 § 1 Act on the Supreme Court). The issue was a matter of argument even in the context of the Act on the Supreme Court of 1962. There were different opinions on this issue presented in literature. According to one of them, 'resolutions were legal opinions for bodies authorised to file motions to issue them'.[41] According to Stanisław Włodyka[42], 'the Supreme Court resolutions passed in accordance with Article 29 para. 1 Act on the Supreme Court of 1962 were a measure ensuring proper judgments of the Supreme Court itself and showed elements of both a legal opinion and a means of judicial supervision, thus, from this point of view, were mixed in

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[36] M. Rybicki, *Pozycja ustrojowa Sądu Najwyższego w PRL (Geneza, ewolucja, perspektywy)*, Państwo i Prawo 5, 1980, p. 24.

[37] H. Kempisty, *Ustrój sądów. Komentarz*, Warszawa 1966, pp. 42–43.

[38] See the Supreme Court ruling of 19 February 1997, I KZP 31/97, unpublished.

[39] R.A. Stefański, *Instytucja*, *supra* n. 9, p. 152 and the opinions of the legal doctrine referred to therein.

[40] S. Włodyka, *Organizacja sądownictwa*, Kraków 1959, p. 263.

[41] M. Waligórski, *Proces cywilny. Funkcja i struktura*, Warszawa 1947, p. 696.

[42] S. Włodyka, *Organizacja sądownictwa*, *supra* n. 40, p. 275; *idem*, *Organizacja wymiaru sprawiedliwości w PRL*, Warszawa 1963, p. 166; *idem*, *Funkcje Sądu Najwyższego*, Kraków 1965, p. 136; *idem*, *Wiążąca wykładnia*, *supra* n. 26, p. 132.

nature'.[43] Marian Cieślak[44] classified those resolutions as the measures of judicial supervision over lower-instance courts' judgments. Kazimierz Marszał[45] expressed an opinion that 'resolutions passed in accordance with Article 29 para. 1 Act on the Supreme Court belong to the measures of non-instance-related supervision that let the Supreme Court supervise common and special courts' judgments and eliminate discrepancies between the interpretation of provisions in force, and their basic function is to ensure proper judgments of the Supreme Court itself'.

Article 13 para. 3 Act on the Supreme Court of 20 September 1984[46] stipulated that the Court should perform its functions inter alia by passing resolutions aimed at explaining legal provisions that raise doubts in practice or the application of which has caused discrepancies in case law. The above-mentioned Act on the Supreme Court did not determine the legal nature of resolutions passed in accordance with Article 13 para. 3. That is why, it was claimed in literature[47] that the legal nature of those resolutions was not unquestionable and, as a result, it was assumed[48] that 'resolutions passed in accordance with Article 13 para. 3 Act on the Supreme Court of 1984 were aimed at explaining legal provisions raising doubts or the application of which caused discrepancies in case law, or when particular provisions (a provision) raised doubts in case law, and at ensuring uniformity of the interpretation of law and judicial practice'. In the opinion consistently presented by K. Marszał,[49] 'the Supreme Court resolutions passed in accordance with Article 13 para. 3 Act on the Supreme Court of 1984 belonged to non-instance-related measures of supervision exercised by the Supreme Court, which were aimed to explain legal provisions raising doubts or the application of which caused discrepancies in case law. The interpretative directive included in the resolution passed in accordance with Article 13 para. 3 Act on the Supreme Court of 1984 was "a norm in a norm".' The above author took a similar stand with reference to Article 60 § 1 Act on the Supreme Court of 23 November 2002[50] and assumed that 'resolutions passed in accordance with the above-mentioned provision aim to ensure uniformity of the interpretation of law in the Supreme Court as well as in common and military courts'.[51]

According to M. Zbrojewska,[52] 'what is a characteristic feature of resolutions, passed in accordance with Article 60 § 1 Act on the Supreme Court of 2002 [the author's annotation], is the fact that they do not constitute a measure of direct judicial supervision because they are not addressed to lower courts and do not bind

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[43] S. Włodyka, *Organizacja wymiaru sprawiedliwości*, *supra* n. 42, p. 166; *idem*, *Funkcje Sądu Najwyższego*, *supra* n. 42, p. 136; *idem*, *Ustrój organów ochrony prawnej*, Warszawa 1968, p. 149; *idem*, *Wiążąca wykładnia*, *supra* n. 26, p. 132 et seq.

[44] M. Cieślak, *Pojęcie i rodzaje nadzoru w procedurze karnej na tle obowiązującego prawa*, Państwo i Prawo 8–9, 1963, p. 249.

[45] K. Marszał, *Zagadnienia ogólne procesu karnego*, Vol. I, Katowice 1984, pp. 255–256.

[46] Dz.U. No. 45, item 241.

[47] W. Sanetra, *Wyjaśnianie przepisów prawnych przez Sąd Najwyższy a zagadnienie powszechnej wykładni ustaw*, Przegląd Sądowy 4, 1992, p. 24.

[48] *Ibid*., p. 27.

[49] K. Marszał, *Proces karny*, 2nd edn amended and supplemented, Katowice 1995, p. 129.

[50] Dz.U. No. 240, item 2052, as amended.

[51] K. Marszał, *Proces karny*, *supra* n. 4, p. 190.

[52] M. Zbrojewska, *supra* n. 3, p. 174.

those courts, nevertheless, they are a form of general interpretation of law aimed at indicating a proper line of judgment'. The Supreme Court took a stand that 'resolutions passed in accordance with Article 60 Act on the Supreme Court of 2002 are a measure of judicial supervision aimed at ensuring uniformity of judgments issued by common and military courts as well as the Supreme Court'.[53] The stand should be fully approved of.

Referring to the *de lege lata* state, it should be noticed that both in the doctrine[54] and the case law[55] there is an established uniform stance that passing resolutions by the Supreme Court in accordance with Article 83 § 1 Act on the Supreme Court takes place only when there are discrepancies in the interpretation of the provisions of law that are grounds for judgments, and the explanation of those discrepancies aims to ensure uniformity of case law. The aim can be achieved thanks to the Supreme Court's interpretation of the provisions of law. In such a situation, the interpretation is not connected with a particular case and thus it is abstract in nature.

The Supreme Court provides the interpretation within the measures of non-instance-related supervision,[56] which leads to a conclusion that the Supreme Court resolutions passed in accordance with Article 83 Act on the Supreme Court constitute a measure of non-instance-related judicial supervision. Their nature is not changed by the fact that they are not addressed directly to lower-instance courts and they do not bind them, and that only resolutions passed by the full composition of the Supreme Court, joint chambers and the full composition of the chamber at the time when they are passed, have the power of legal principles binding exclusively the Supreme Court benches.[57] As a result, this means that they cannot decide in conflict with a legal principle, unless the legal state changes or the Supreme Court, following a relevant procedure, abandons the particular legal principle.

Summing up the above discussion, it should be stated that the Supreme Court resolutions do not constitute judgments in the precise sense, which are imperative in nature, adjudicating the subject matter of a particular trial both with respect to procedural and incidental issues, but they are procedural decisions of the Supreme Court resolving a legal issue that requires fundamental interpretation of a statute or resolving a legal question in a situation when doubts have been raised concerning the interpretation of provisions of law that are grounds for issuing judgments.

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[53] See justification of the resolution of seven judges of the Supreme Court of 27 October 2005, I KZP 38/05, OSNKW 2005, No. 11, pp. 4–5.

[54] K. Marszał, [in:] R. Koper, K. Marszał, J. Zagrodnik (ed.), K. Zgryzek, *Proces karny*, Warszawa 2019, pp. 175–176; K. Szczucki, *Ustawa o Sądzie Najwyższym. Komentarz*, Warszawa 2018, p. 434 et seq.

[55] See the Supreme Court ruling of 22 September 2004, III CZP 25/04, OSNC 2005, No. 7–8, item 146; the Supreme Court ruling of 25 February 2005, I KZP 33/04, LEX No. 142537; the Supreme Court ruling of 24 February 2006, III CZP 91/05, LEX No. 180669; the Supreme Court ruling of 27 January 2009, I KZP 24/08, OSNKW 2009, No. 2, item 12; justification of the resolution of seven judges of the Supreme Court of 20 June 2012, I KZP 8/12, OSNKW 2012, No. 7, item 71; resolution of seven judges of the Supreme Court of 29 October 2012, I KZP 17/12, OSNKW 2012, No. 12, item 123.

[56] K. Marszał, [in:] R. Koper, K. Marszał, J. Zagrodnik (ed.), K. Zgryzek, *supra* n. 54, p. 176.

[57] K. Szczucki, *Ustawa o Sądzie Najwyższym*, *supra* n. 54, p. 453.

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LEGAL NATURE OF THE SUPREME COURT RESOLUTIONS

Summary

The article presents the issue of the legal nature of the Supreme Court resolutions. The nature is a matter of argument in the doctrine. There are three diverse viewpoints on this issue. According to one of them, 'the Supreme Court resolutions are judgments'. Another stance is that 'the Supreme Court resolutions constitute a separate group; however, they are not court judgments that concern the subject matter of a trial because they do not adjudicate directly on its subject matter'. The third opinion is that 'the Supreme Court resolutions passed in accordance with Article 441 § 1 CPC and resolving legal issues do not belong to the category of judgments'. The analysis conducted in the article results in a conclusion that the Supreme Court resolutions do not constitute judgments in the precise sense, that are imperative in nature, that adjudicate on the subject matter of a particular trial with regard to both procedural and incidental issues, but they are the Supreme Court's procedural decisions that resolve a legal issue requiring fundamental interpretation of a statute or resolve a legal issue in a situation when doubts have been raised concerning the interpretation of provisions of law being grounds for issued judgments.

Keywords: Supreme Court, judicial supervision, non-instance-related supervision, judgment, sentence, decision, resolution

CHARAKTER PRAWNY UCHWAŁ SĄDU NAJWYŻSZEGO

Streszczenie

Przedmiotem opracowania jest charakter prawny uchwał Sądu Najwyższego. Charakter ten jest sporny w doktrynie. W tym zakresie występują trzy odmienne stanowiska. Według jednego z nich „uchwały Sądu Najwyższego są orzeczeniami". Drugie stanowisko przyjmuje, iż „uchwały Sądu Najwyższego stanowią odrębną grupę orzeczeń, nie są jednak orzeczeniami sądu, które dotyczą przedmiotu procesu, ponieważ nie rozstrzygają wprost o jego przedmiocie". Trzeci kierunek głosi, że „uchwały Sądu Najwyższego, wydawane na podstawie art. 441 § 1 k.p.k., rozstrzygające zagadnienia prawne, nie należą do kategorii orzeczeń". Przeprowadzone rozważania w niniejszym artykule prowadzą zatem do konkluzji, że uchwały Sądu Najwyższego nie stanowią orzeczeń *sensu stricto* o charakterze imperatywnym, rozstrzygającym o przedmiocie konkretnego procesu, zarówno co do kwestii procesowej, jak i w kwestii incydentalnej, lecz są decyzją procesową Sądu Najwyższego, rozstrzygającą zagadnienie prawne, wymagające zasadniczej wykładni ustawy lub rozstrzygają zagadnienia prawne w sytuacji, gdy zostały powzięte wątpliwości co do wykładni przepisów prawa będących podstawą wydanego rozstrzygnięcia.

Słowa kluczowe: Sąd Najwyższy, nadzór judykacyjny, nadzór pozainstancyjny, orzeczenie, wyrok, postanowienie, uchwała

CARÁCTER LEGAL DE ACUERDOS DEL TRIBUNAL SUPREMO

Resumen

El artículo analiza el carácter legal de acuerdos del Tribunal Supremo, que es discutido en la doctrina. Existen tres posturas diferentes. Una de ellas considera acuerdos del Tribunal Supremo como resoluciones judiciales. La segunda postura admite que los acuerdos del Tribunal Supremos constituyen un grupo separado de resoluciones judiciales, pero no son resoluciones judiciales del tribunal las que se refieren al objeto de proceso, porque no resuelven directamente sobre su objeto. Según la tercera opinión, los acuerdos del Tribunal Supremo expedidos en virtud del art. 441 § 1 del código de procedimiento penal que resuelven sobre cuestiones prejudiciales, no pertenecen a la categoría de resoluciones judiciales. El análisis llevado a cabo en el presente artículo lleva a la conclusión que los acuerdos del Tribunal Supremo no son las resoluciones judiciales *sensu stricto* de carácter imperativo que resuelven sobre objeto de proceso en concreto, tanto en cuanto a la cuestión procesal como incidental, sino que son decisiones procesales del Tribunal Supremo cuando se pronuncia sobre cuestiones prejudiciales que requieran la interpretación fundamental de la ley o sobre cuestiones prejudiciales en caso haya dudas sobre la interpretación de la ley que constituya fundamento de la resolución expedida.

Palabras claves: el Tribunal Supremo, control judicial, control fuera de la instancia, resolución judicial, sentencia, auto, acuerdo

ПРАВОВАЯ ПРИРОДА РЕЗОЛЮЦИЙ ВЕРХОВНОГО СУДА

Аннотация

Работа посвящена вопросу, вызывающему разногласия в юридической доктрине, а именно: правовой природе резолюций Верховного суда. В этом отношении преобладают три различных подхода. Согласно первому из них, «резолюции Верховного суда являются судебными решениями». Второй подход предполагает, что «хотя резолюции Верховного Суда и образуют особую группу судебных решений, они не являются судебными решениями по предмету процесса, так как в них не содержится непосредственное разрешение предмета разбирательства». Согласно третьему подходу, «резолюции Верховного суда, принятые на основании ст. 441 § 1 УПК для разрешения юридических проблем, не относятся к категории судебных решений». Рассмотрев данный вопрос, автор приходит к выводу, что резолюции Верховного суда, строго говоря, не являются судебными решениями, носящими императивный характер и разрешающими предмет конкретного процесса в процедурном или побочном аспекте. Резолюцию Верховного суда следует рассматривать как процессуальное решение по юридическому вопросу, требующему фундаментального толкования закона, либо в ситуации, когда возникли сомнения относительно толкований положений закона, на основании которых было принято судебное решение.

Ключевые слова: Верховный суд, судебный надзор, внесудебный надзор, судебное решение, приговор, постановление, резолюция

DIE RECHTSNATUR DER BESCHLÜSSE DES POLNISCHEN OBERSTEN GERICHTS

Zusammenfassung

Gegenstand der Untersuchung ist die Rechtsnatur der Beschlüsse des Obersten Gerichts (Sąd Najwyższy), der höchsten Instanz in Zivil- und Strafsachen in der Republik Polen. Über diese rechtliche Natur solcher Beschlüsse herrscht in der Rechtslehre keine Einigkeit. So werden in dieser Frage drei verschiedene Positionen vertreten. Einer von ihnen zufolge sind „Beschlüsse des polnischen Obersten Gerichts Urteile". Demgegenüber wird in der zweiten Position davon ausgegangen, dass „Beschlüsse des Obersten Gerichts eine eigene Gruppe von Urteilen darstellen, es sich dabei aber nicht um Gerichtsurteile handelt, die sich auf den Gegenstand des Verfahrens beziehen, da sie nicht unmittelbar über den Prozessgegenstand entscheiden". Die dritte Sicht ist, dass „Beschlüsse des polnischen Obersten Gerichts, die auf der Grundlage von Artikel 441 § 1 der polnischen Strafprozessordnung ergehen und über Rechtsfragen entscheiden, nicht in die Kategorie der Gerichtsurteile fallen". Die im Artikel angestellten Erwägungen führen so zu dem Schluss, dass die Beschlüsse des polnischen Obersten Gerichts streng genommen keine Gerichtsurteile mit Bindungswirkung sind, die – in Bezug auf die verfahrensrechtlichen Fragestellungen oder einen Zwischenstreit – über den Gegenstand eines bestimmten Verfahrens entscheiden, sondern einen auslegenden Beschluss des Gerichtshofs zu einer juristischen Frage darstellen, die eine grundlegende Gesetzesauslegung erfordert oder über eine Rechtsfrage entscheiden, wenn Zweifel hinsichtlich der Auslegung der Rechtsvorschriften bestehen, die der erlassenen Entscheidung zugrunde liegen.

Schlüsselwörter: polnisches Oberstes Gericht, richterliche Kontrolle, außerinstanzliche Aufsicht, Gerichtsurteil, Urteil, Entscheidung, Beschluss

NATURE JURIDIQUE DES RÉSOLUTIONS DE LA COUR SUPRÊME

Résumé

Le sujet de l'étude est la nature juridique des résolutions de la Cour suprême. Cette nature est contestée dans la doctrine. Il existe trois positions différentes à cet égard. Selon l'une d'elles, «les résolutions de la Cour suprême sont des jugements». La deuxième position part du principe que «les résolutions de la Cour suprême constituent un groupe distinct de jugements, mais ce ne sont pas des décisions judiciaires qui se rapportent à l'objet du procès parce qu'elles ne déterminent pas directement son objet». La troisième position est que «les résolutions de la Cour suprême rendues sur la base de l'art. 441 § 1 du code de procédure pénale, qui résolvent des questions juridiques, n'entrent pas dans la catégorie des jugements». Par conséquent, les considérations formulées dans cet article conduisent à la conclusion que les résolutions de la Cour suprême ne constituent pas des jugements impératifs statuant strictement sur le sujet d'un procès spécifique, tant en ce qui concerne les questions de procédure que les incidents, mais constituent une décision de procédure de la Cour suprême résolvant une question juridique, exigeant une interprétation fondamentale de la loi ou résolvant des questions juridiques dans les cas où des doutes ont surgi quant à l'interprétation des dispositions juridiques sous-tendant la décision rendue.

Mots-clés: Cour suprême, contrôle judiciaire, contrôle extrajudiciaire, décision, jugement, arrêt, résolution

CARATTERE GIURIDICO DELLE DELIBERE DELLA CORTE SUPREMA

Sintesi

Oggetto dell'elaborato è il carattere giuridico delle delibere della Corte Suprema. Tale carattere è controverso nella dottrina. In tale ambito sono presenti tre diverse posizioni. Secondo una di esse "le delibere della Corte Suprema sono sentenze". La seconda posizione sostiene che "le delibere della Corte Suprema costituiscono un gruppo distinto di sentenze, non sono tuttavia sentenze del tribunale inerenti al merito del processo, in quanto non si pronunciano direttamente circa il suo merito". La terza posizione sostiene che "le delibere della Corte Suprema, emesse sulla base dell'art. 441 § 1 del Codice di procedura penale, che si pronunciano su questioni giuridiche, non fanno parte della categoria delle sentenze". Le riflessioni condotte nel presente articolo portano alla conclusione che le delibere della Corte Suprema non costituiscono sentenze in senso stretto di carattere imperativo, che si pronunciano in merito a un determinato processo, sia per quanto riguarda le questioni procedurali che quelle incidentali, ma sono una decisione processuale della Corte Suprema, che si pronuncia su una questione giuridica che richiede un'interpretazione sostanziale della legge, oppure che si pronuncia su una questione giuridica nella situazione in cui siano stati sollevati dubbi circa l'interpretazione delle norme di legge che costituiscono la base della pronunciazione emessa.

Parole chiave: Corte Suprema, controllo della magistratura, controllo giuridico, sentenza, ordinanza, delibera

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