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**WYDZIAŁ PRAWA  
I ADMINISTRACJI**

*[University of Łódź, Faculty of Law and Administration]*

**Piotr Dębkowski**

**An appeal in cassation against decisions of provincial administrative courts**

**Abstract**

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in the Administrative Judiciary Department  
under the directorship of:  
Professor Jan Paweł Tarno  
Additional promoter Dr Magdalena Sieniuc

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Two-instance administrative court proceedings were originally based on the institution of cessation known from the civil proceedings. However, cessation is a legal remedy provided for the system of three-instance proceedings, in which it is a measure to verify judgments delivered in the second instance. In addition, cessation is considered as a legal remedy which usually is not appropriate for verification of every case resolved in court proceedings. Nevertheless, the legislator originally assumed that in the act Law on administrative court proceedings, hereinafter "LACP" an appeal in cessation would serve for appeal against the final sentences and decisions of provincial administrative courts, unless otherwise stated in special provisions (Article 173 § 1 LACP).

However, similar regulations in civil procedure referred to proceedings preceded by a substantive appeal, in which second-instance court could not just take a stance towards the appellant's objections, but it had to, irrespective of the content of the objections, carry out its own re-determinations and subsequently evaluate them with regard to substantive law. Therefore, the Court of Cassation examined legitimacy on the basis of statutory grounds of challenge after the substance of the case was cognised twice by an independent court. Therefore, it is questionable whether cognizance of the case only within the grounds of challenge set forth in the statute constituted a sufficient realisation of the principle of the system of two instances, expressed in Article 176 section 1 of the Constitution of the Republic of Poland. As stated in the regulation, referred to above, the system of two instances is a minimal requirement to be met by procedural and system-establishing acts relating to particular types of judicature, so that they could be considered as proper in the light of the standards of democratic rule of law.

In this dissertation I made an attempt to demonstrate that final court decisions, in which the court does not examine actions of public administration authority but arbitrarily resolves on admissibility of challenge, should not be challenged on the basis of the same principles as first-instance sentences. The purpose of this dissertation is to present arguments speaking for the thesis that the parties should have the possibility to lodge a complaint against all such decisions.

In the first chapter I endeavour to define the term of judicial decision. I note that it is a procedural act of court construed, in institutional approach, as appropriate bench of judges. Nevertheless, the most important part of this chapter I devote to the subject matter of court decision, as it is the most significant element that

distinguishes decisions from among other court judgments. The subject of decision is resolving procedural and incidental matters. Only in occasional cases decisions decide a case on the merits. In this chapter I also present examples of decisions settling each of the three afore-mentioned issues.

Chapter two refers directly to the basic subject of these deliberations, namely the final decisions. In this chapter I present legal definition of such decisions and mention the final decisions existing on the ground of LACP. I distinguish decisions which decide a case on the merits and those which don't decide a case on the merits. This aims to show significant differences between the final decisions and sentences. It is extremely important from the point of view of the postulate to cover those two types of court judgments with different means of appeal.

The third chapter is a preparation for evaluation of the model of challenging the final decisions, adopted in LACP. At this purpose, I devote lots of attention to the term and role of the system of two instances in judicial proceedings. I explain the difference between the means of appeal and the means of challenge to show why challenging the final decisions requires a mean of appeal and that a complaint regulated in LACP is a legal remedy sufficient for that purpose. I also present the formation of the model of instances in administrative court proceedings to signalise certain tendency consisting in accelerating and deformatizing appeal procedure in particular.

Having defined the basic terms required for proper presentation of the subject of deliberations, in the fourth chapter I may focus on detailed characteristic of an appeal in cassation. I specify the types of judgments that can be appealed against, a circle of persons capable to appeal and the term and mode of loading an appeal in cassation, its formal constructional and fiscal requirements and the requirement to prepare such an appeal by a professional attorney. I analyse a complaint according to the same pattern. This analysis is however much more general, since I focus at this point almost entirely on demonstration of differences between both means of appeal and on the benefits resulting from the application of complaint procedure towards the final decisions. Finally, I also present the other legal remedies which the parties to proceedings have at their disposal in administrative court proceedings, to expose that only a complaint may be an alternative for an appeal in cassation in the context of challenging the final first instance court decisions which are not legally binding.

The fifth chapter refers to the consequences of covering some decisions by an appeal in cassation in the context of the course of proceedings. I present one by one all initial actions which are performed by the provincial administrative court towards lodged appeal in cassation, and also I describe judicial rights of first instance courts towards an appeal in cassation. In particular, I pay attention to a wide range of legislative solutions adopted in the amendment of 2015, which in certain respects made cassation procedure and complaint procedure similar. However, the most significant is the subchapter regarding the cognisance of an appeal in cassation, which to a large degree refers to another subchapter, namely the one dedicated to constructional requirements of an appeal in cassation. Both subchapters are of key importance for these deliberations, as they indicate: legal nature of an appeal in cassation as a limited mean of appeal, binding the court of appeal by its limits and adjudicating within such limits, as well as the dominant principle of disposition. On this ground I assess if the legislator rightly stated that an appeal in cassation would be the most adequate legal remedy for challenging sentences and certain decisions of first instance courts.

The sixth chapter refers to judicial rights of the Supreme Administrative Court, namely the types of judgments which the said court may deliver after cognisance of lodged appeal in cassation. I pay attention to limited scope of judgments which can be ruled with regard to the final decision not deciding a case on its merits.

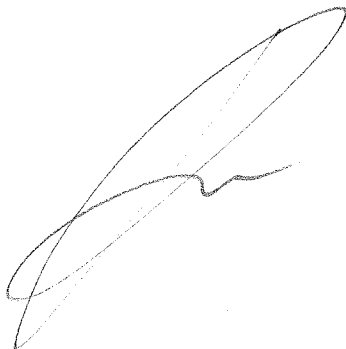
In the summary, I give positive opinion to supporting appeal proceedings on the limited legal remedy in the form of appeal in cassation, however only with reference to sentences of provincial administrative courts. The adopted model of judicial examination of administration rightly assumes that the examination of the court of cassation would not be just another "instance" investigating the correctness of an act or activity of public administration authorities. The evaluation is carried out indirectly by examining legitimacy of the challenged judgment delivered by first instance court, what determined to adopt restrictions in preparing and cognising an appeal in cassation. The thing is to have a legal discourse in the proceedings before the Supreme Administrative Court carried on by the parties and the court, not to repeat the first-instance procedure by that court. In this state of facts, an appeal in cassation has to be limited only to examination of juridical matters and the pleas prepared by professionals. In turn, access to professional legal aid, in the context of possible financial barrier, is provided by the institution of broadly-defined state aid

law, which comprises not only exemption from legal costs, but also appointment of professional attorney *ex officio*. In the light of above comments, I expressed my opinion that the model of cassation proceedings based on the principle of disposition in case of sentences is in accordance with the constitutional standards, which certainly does not breach the law.

Whereas I was critical of keeping an appeal in cassation with reference to certain final decisions. In case of these judgments, it's hard to escape the impression that the legislator's assumption does not take into consideration the fact that the legal matter, which constitutes an inducement to deliver a judgment being the subject of judicial appeal examination, usually emerges only at the stage of court proceedings. The proceedings regarding an appeal in cassation against decision does not refer to examination of public administration legitimacy, but the reasons for which the examination was not carried out. In addition, delivery of decision that rejects an appeal in cassation usually constitutes an effect of *ex officio* act of the court, since the court *ex officio* investigates admissibility of challenge. Therefore, you can safely say that the said legal discourse between the parties and the court of appeal is not preceded by multi-staged dispute concerning law or facts, based on more or less formalised legal remedies, under which the parties to proceedings can freely and easily present their arguments. In the situation, when a judicial judgment constitutes an effect of such a dispute, it is easier to come to terms with the role of the NSA [Supreme Administrative Court], which is unable to go beyond the breaches of law indicated by the author of the mean of appeal. A judgment of NSA is a peculiar culmination of existing dispute, alternatively a final settlement of the issues which lack agreement between the parties. Whereas in case of an appeal in cassation against decision, a party has no opportunity to confront its statements at earlier stages of proceedings and sometimes has no point of reference for its argumentation. The challenged decision may turn out to be insufficient in this regard, as the court delivers them *ex officio* (against the intention expressed by the appellant), if in its opinion there are prerequisites for it. As a result, in consequence of defectively formulated grounds for cassation the sense of wrong may be greater than in other cases. Certain objections, which in such a case a party has an opportunity to raise only in an appeal in cassation, may not be *de facto* examined by an independent court. This is due to the fact that a person lodging an appeal in cassation is usually unaware of its possible inadmissibility. He finds it out only upon

receipt of decision rejecting his appeal. Therefore, he has the first and only opportunity to present his standpoint in this regard and thus he should not be limited by excessively formalised nature of a mean of appeal.

The reasons presented above are only the main reasons why an appeal in cassation is not an adequate legal remedy to challenge decisions of provincial administrative courts. Detailed analysis of an appeal in cassation resulted in a conclusion that such judgments should be challenged by a complaint.

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