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Tomasz Szanciło*
ORCID: 0000-0001-6015-6769

The Role of the Supreme Court in Civil Proceedings in Poland

ABSTRACT

The Supreme Court, present in most legal systems, serves a distinct function. As a court of law than a court of fact, it does not rehear cases in another instance; instead, it reviews appeals such as cassation complaints, actions seeking a declaration of unlawfulness of a final judgement, or other extraordinary appeals. As states have a great deal of freedom in structuring their judicial systems, provided the fundamental right of access to a court is upheld, various limitations in accessing the Supreme Court are often applied. These restrictions ensure that only cases of genuine importance reach this highest judicial body.

The institution of pre-judgment serves this very purpose, allowing the Supreme Court to perform its functions unhindered. It would be possible to introduce more far-reaching restrictions, such as regarding cases involving property claims. At the same time, it is necessary to enhance the professional nature of proceedings before this court, which is achieved in part through the requirement of mandatory representation by an advocate.

Keywords: Supreme Court, cassation appeal, appeal for a declaration of unlawfulness of a final decision, extraordinary appeal, pre-judgment, obligatory assistance of an advocate.

* PhD., Professor, European Academy of Law and Administration in Warsaw, Judge of the Supreme Court of Poland, Civil Chamber, address: Ogrodowa Street 58, 00-876 Warsaw, Poland, email: t.szancilo@uksw.edu.pl

I. Introduction

The issues related to the Supreme Court concern the right to a court, which is one of the fundamental human rights expressed in several acts of international law: Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950,[1] as amended by Protocols Nos. 3, 5, 8, and supplemented by Protocol No. 2; Article 14 of the International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966;[2] in Article 47 of the Charter of Fundamental Rights of the European Union of 30 March 2010;[3] and in Article 45(1) of the Constitution of the Republic of Poland of 2 April 1997.[4] The latter consists of:

1. The right of access to a court – the right to initiate a procedure before a court;
2. The right to an adequate and fair judicial procedure, in accordance with the requirements of fairness and publicity, which entails:
   - the right to be heard,
   - the obligation to allow the parties to participate in the proceedings,
   - the obligation to disclose in a legible manner the reasons for the decision, which is intended to prevent its arbitrariness and high-handedness,
   - to ensure the predictability of its course for the parties.[5]

It is important to note in this regard that it is not clear from any act of international law how the judicial system is to be shaped – in terms of the number of instances and possible remedies – in each country. The Convention standard can be upheld even if the case is heard in only one instance,[6] and even when the instantiation of proceedings is carried out within the framework of the so-called horizontal instance. Therefore, it can be argued that the role of the Supreme Court justifies the limitations introduced by the legislator, which will be discussed below. A legal remedy that does not occur in practice, i.e., an application for the annulment of a final decision, will be omitted.

[1] Journal of Laws of the Republic of Poland of 1993, No. 61, item 284, as amended; hereinafter: EKPC.

[2] Journal of Laws of the Republic of Poland of 1977, No. 38, item 167 (appendix).

[3] OJ EU C No. 83, 389 et seq.

[4] Journal of Laws of the Republic of Poland of 1997, No. 78, item 483, as amended.

[5] See e.g. judgments of the Constitutional Tribunal of the Republic of Poland: of 16 March 1999, SK 19/98, Case law of the Constitutional Court (OTK) 1999, No. 3, item 36; of 2 October 2006, SK 34/2006, OTK-A 2006, No. 9, item 118; of 11 September 2007, P 11/2007, OTK-A 2007, No. 8, item 97; of 20 November 2007, SK 57/2005, OTK-A 2007, No. 10, item 125.

[6] See e.g. judgments of the ECtHR: of 23 February 1994, application No. 18928/91, Fredin v Sweden; of 19 February 1998, application No. 16970/90, Jacobsson v Sweden.

II. Instanstitutionality of proceedings and the Supreme Court

According to Article 176(1) of the Constitution of the Republic of Poland, court proceedings shall be "at least two-instance." It may be assumed that such standardisation (by design) preserves the standard of the right to a court, as it ensures that the decision of the court of first instance is reviewed. At the same time, it is debatable whether "instantiation" means that the first and second instance courts remain hierarchically subordinated, i.e. the so-called vertical (devolutive) model of appealing judgments, when we deal with courts situated at different levels of the judiciary, or whether appealability may be realised within the framework of the so-called horizontal (non-devolutive) instance, when appeals are heard by a different composition of the same court.[7] While horizontal appealability has its merits and, to a certain extent, implements the two-instance (or more) principle and the right to a court (in particular as regards the speed of the proceedings), it should nevertheless concern less important formal issues.

The basic model of the two-instance principle should concern the referral to a higher court to hear a case at second instance.[8] In other words, instantiation combined with devolution requires adjudication 'on the case', and to this extent the Constitution of the Republic of Poland requires a two-instance procedure.[9]

However, it is not only about the merits of the case, but also about the review of procedural decisions that end the proceedings in a case, in particular, when their subject matter is the return of the statement of claim and the rejection of the appeal lodged against the decision of the court of first instance, which ends the proceedings as a whole. This refers primarily to an order rejecting an appeal against a judgment (in procedural proceedings) or a decision on the merits (in non-litigious proceedings), but also, for example, to the rejection of an appeal against an order for payment, the rejection of a complaint against an order rejecting a statement of claim, or the rejection of a complaint against an order discontinuing proceedings.

Thus, while the introduction of non-devoluntary measures is not *a limine* inadmissible in the light of international and constitutional law, the traditional instantiation of

[7] See e.g.: Wiśniewski, 2005, 299; Łazarska 2012, 303; Michalska-Marciniak, 2013, 81 et seq.

[8] See e.g. judgments of the Constitutional Tribunal of the Republic of Poland: of 12 September 2006, SK 21/05, OTK-A 2006, No. 8, item 103; of 16 November 2011, SK 45/09, OTK-A 2011, No. 9, item 97; of 22 October 2013, SK 14/13, OTK-A 2013, No. 7, item 100.

[9] See e.g. judgments of the Constitutional Tribunal of the Republic of Poland: of 2 June 2010, SK 38/09, OTK-A 2010, No. 5, item 46; of 12 April 2012, SK 21/11, OTK-A 2012, No. 4, item 38.

proceedings, i.e. with the participation of the court of second instance, definitely better realises the principles indicated. Indeed, it is essential that the court proceedings are structured in such a way that the parties are able to present their arguments regarding the subject matter of the dispute before the courts of two instances.

The above does not mean that every decision made in civil (and more broadly, judicial) proceedings must be subject to an appeal, and even less so by means of a devolutive measure. Article 78 of the Constitution of the Republic of Poland indicates that each party has the right to challenge judgments and decisions rendered at first instance, but exceptions to this principle and the procedure for challenging are determined by law. The subjective right to appeal against judgments and decisions issued at first instance derives from this provision, while judgments issued at second instance may remain unappealed.[10] At the same time, the legislator has a certain degree of freedom to shape the means of appeal, bearing in mind, of course, the need to comply with the above standards. Only in proceedings which are not covered by Article 176(1) of the Constitution of the Republic of Poland is it indicated that it is possible to adopt a solution in which non-devoluntary legal remedies constitute the rule, e.g. in administrative (non-judicial) proceedings.[11] If, on the other hand, an appropriate remedy is provided for in the judicial proceedings, access to that remedy must not be restricted in a way that would prejudice the essence of that remedy, or in a way that is disproportionate.[12]

Two systems of appeal can be distinguished:

a) Revision – the court of second instance examines the appeal, checking the correctness of the issued decision from the point of view of the raised charges;

b) Full appeal (*cum beneficio novorum*) – the court examines the case.

The Polish legislator has shaped the appeal as a devolutive measure of a "full" character. As indicated in the case law, the purpose of the appeal proceedings is to re-examine the case within the limits of the appeal, generally in the manner in which it should be examined by the court of first instance. The court of second instance therefore considers the "case" and not the appeal itself, a consequence of which is, inter alia, the exceptional nature of the cassation ruling (overturning the contested decision

[10] Grzegorczyk P, 2016, side No. 18.

[11] Kmieciak, 2012, 11 et seq.

[12] See e.g. judgments of the ECtHR: of 23 November 1993, application No. 14032/88, Poitrimol v. France; of 15 February 2000, application No. 38695/97, Garcia Manibardo v. Spain; of 28 July 2009, application No. 8958/04, Smyk v. Poland.

and referring the case back to the court of first instance). The court of second instance cannot simply respond to the applicant's pleas, but must, irrespective of their content, make its own findings and then assess them in terms of substantive law.[13] The court of second instance hearing the case on appeal is not bound by the substantive law infringements raised in the appeal, but is bound by the procedural law infringements raised in the appeal. However, within the limits of the appeal, it shall take into consideration *ex officio* the invalidity of the proceedings.[14] Consequently, if the second instance court perceives violations of substantive law, it should rectify them within the limits of the appeal, which means that the decision of this court should comply with the substantive law, regardless of the appeal allegations in this respect.

Thus, the instantiation of proceedings is implemented within the courts of first and second instance. A party should be able to have their case heard on its merits by these courts. Against this background, the position of the Supreme Court is therefore specific. When talking about instances of civil proceedings, we are talking about ordinary legal remedies, i.e. those available against non-final judgments within ordinary courts. Meanwhile, the Supreme Court is not located within this judiciary and it is not a third instance. *De lege lata*, judicial proceedings are two-instance, with the courts of second instance in civil proceedings being the district and appellate courts. From Article 176(1) of the Constitution of the Republic of Poland, the right to appeal against a second instance court decision cannot be derived.[15] In jurisprudence, the position has become established that Article 45(1) of the Constitution of the Republic of Poland does not cover access to the Supreme Court, and that the provisions of the Constitution of the Republic of Poland provide the legislator with the freedom to create a means of appeal against judgments made in the second instance. An element of the right to a court is not the right to lodge an appeal to the Supreme Court (in civil or criminal cases), and, therefore, a party has no claim to the state to shape the applicable provisions in such a way as to ensure that the case is heard by the Supreme Court.[16] Nonetheless, to the extent that the legislature provides for access to the Su-

[13] See e.g. order of the Supreme Court (of the Republic of Poland) of 4 October 2002, III CZP 62/02, Case law of the Supreme Court of the Civil Chamber (OSNC) 2004, No. 1, item 7; judgment of the Supreme Court of 7 May 2009, IV CSK 513/08.

[14] Resolution of 7 judges of the Supreme Court – legal principle of 31 January 2008, III CZP 49/07, OSNC 2008, No. 6, item 55.

[15] See e.g. judgments of the Constitutional Tribunal of the Republic of Poland: of 11 March 2003, SK 8/02, OTK-A 2003, No. 3, item 20; of 31 March 2009, SK 19/08, OTK-A 2009, No. 3, item 29; of 12 January 2010, SK 2/09, OTK-A 2010, No. 1, item 1.

[16] See e.g. judgments of the Constitutional Tribunal of the Republic of Poland: of 6 October 2004, SK 23/02, OTK-A 2004, No. 9, item 89; of 16 January 2006, SK 30/05, OTK-A 2006, No. 1, item 2; orders

preme Court, the proceedings before that Court may be subject to evaluation from the point of view of the standards of the right to a court.[17] In other words, although access to the Supreme Court is not an element of the right to a court, if the legislator has decided to allow parties to challenge second instance decisions, even under certain conditions, the right to a court should be preserved in this respect.

III. Restrictions on Access to the Supreme Court

1. General Remarks

As highlighted, the Supreme Court is not a court of third instance: it is an extraordinary court – a court of law that does not hear the merits of the case, but considers the appeal. It does not determine the facts, and the appeal cannot raise objections that attempt to circumvent the findings of fact and the assessment of evidence made by the substantive (common) courts.

In a cassation review, the Supreme Court does not review the assessment of evidence itself, but only its legality. The applicant may challenge the manner in which the evidence was collected in violation of the rules governing the evidence procedure. The Supreme Court only decides whether the court of second instance, in applying the provisions of law, or in interpreting them, has made such material errors as to justify the annulment of the contested judgment or decision. The substantive examination of the case belongs to the court of first instance, and then, following an appeal, to the court of second instance. Not every case therefore has to be heard by the Supreme Court. As a consequence, the appeals brought before this Court are not of a universal nature, which is determined by the specific scope of control and the restrictions of *rationis materiae* and *rationis valoris* character.[18] It provides an opportunity to remove from the legal market decisions rendered in invalid or manifestly defective proceedings, and its essence is based on the protection of the public interest.

Access to the Supreme Court is not an absolute right, as it is not a *sine qua non* component of the right to a court. It may therefore be subject to various limitations, which are recognised in multiple legal systems, not only in Polish law. In the context of Article 6(1) of the ECHR, it is emphasised that any waiver of the guarantees provided

of the Constitutional Court of the Republic of Poland: of 11 September 2013, TS 83/13, OTK-B 2013, No. 6, item 606; of 9 October 2014, TS 277/13, OTK-B 2014, No. 5, item 453.

[17] Grzegorczyk and Weitz, 2016, side No. 62.

[18] Ereciński, 2009, 686.

for in that provision must be explicit and made with full awareness of its consequences, while ensuring that the party's right to legal assistance from a qualified attorney remains unaffected.[19] The framework of the study does not allow for a detailed discussion of all the restrictions, so only the most characteristic ones will be discussed.

2. Subjective Restrictions

The least restrictions apply to entities which may file an appeal to the Supreme Court against a substantive decision of a common court, or a decision ending the proceedings in a case. As regards the cassation appeal and the appeal for a declaration of unlawfulness of a final decision, there is even an extension of the subjective scope, as it may be brought by a party, but also – as a rule – by the Prosecutor General, the Ombudsman or the Ombudsman for Children, i.e. the "guardians of public order". This is reflected in the grounds for bringing the latter complaint – if the unlawfulness of the judgment is due to: for the Prosecutor General – violation of the fundamental principles of legal order; for the Ombudsman – violation of constitutional freedoms or human and civil rights; and for the Ombudsman for Children – violation of children's rights (Article 424^2 of the Code of Civil Procedure). However, the filing of a cassation appeal by a party excludes – to the contested extent – the filing of a cassation appeal by these entities.

In non-trial proceedings, we have an additional extension of the subject matter, as the indicated guardians of public order may lodge a cassation appeal – within four months from the date the decision becomes final – in cases for taking away a person subject to parental authority or guardianship, conducted on the basis of the 1980 Hague Convention (Article 519^1 para. 2^1 and 2^2 of the Code of Civil Procedure).

The introduction of the possibility of appealing against final judgments by the above-mentioned entities is an important and obvious solution, consistent with the assumption that the proceedings before the Supreme Court include primarily a public aspect, i.e., that they are to serve public purposes, such as: elimination from circulation of obviously defective judgments, supervision of uniformity of jurisprudence, etc.

On the other hand, in the case of an extraordinary appeal, there is actually a subject limitation, as it can only be brought by: a Prosecutor General, Ombudsman, or, within the scope of their jurisdiction, the President of the General Prosecutor's

[19] See: Peukert, 1985, 144; judgments of the ECtHR: of 6 December 1988, application No. 10590/83, Barberà, Messegué and Jabardo v. Spain; of 24 June 1993, application No. 14518/89, Schuler-Zgraggen v. Switzerland; of 18 October 2006, application No. 18114/02, Hermi v. Italy.

Office of the Republic of Poland, an Ombudsman for Children's Rights, Ombudsman for Patients' Rights, Chairman of the Financial Supervision Commission, Financial Ombudsman, Ombudsman for Small and Medium Enterprises, or President of the Office of Competition and Consumer Protection.[20] This means that a party who considers that there are grounds for filing an extraordinary appeal must address one of these entities (in practice, these are most often the Prosecutor General and the Ombudsman), who make a preliminary selection. Their decision determines whether the extraordinary appeal will be brought. This is important insofar as there is no pre-judgment institution (discussed below) for the filing of this appeal. If this were not the case, it is clear that the Supreme Court would be "flooded" with extraordinary appeals. It is these entities that must assess whether the grounds for filing an extraordinary appeal exist, and their decision (positive or negative) is not subject to appeal. If an extraordinary appeal is brought, the Supreme Court is not in a position to refuse to accept it for examination, with the consequence that it must examine it on its merits (assuming that it is brought in time and that all requirements are met).

3. Subject-Matter Restrictions

As the Supreme Court is not a court of third instance, not every case has to come before it to hear an appeal. A number of exceptions are therefore provided for:

I. Cases in which a cassation appeal in procedural proceedings is inadmissible (Article 398^2 of the Code of Civil Procedure):
   1. Cases concerning property rights, in which the value of the object of appeal is lower than PLN 50,000 (except for cases for compensation for damage caused by issuing a final unlawful decision), and in cases concerning labour law and social security – lower than PLN 10,000 (except for cases for granting and withholding a pension or a disability pension, and for coverage by social security);
   2. Cases concerning divorce, separation, alimony, rent or lease and infringement of possession;
   3. Concerning penalties for disciplinary action, certificate of employment and related claims, as well as concerning deprivation of rights or their equivalent;

[20] Pursuant to Article 89 para. 2 of the Act of 8 December 2017 on the Supreme Court (consolidated text Journal of Laws of the Republic of Poland of 2024, item 622).

4. Adjudicated in summary proceedings;
5. Against a judgement establishing the non-existence of marriage, or declaring a marriage invalid, if at least one of the parties has entered into matrimony after the judgement has become final;
6. In which an appeal has been dismissed against a judgement dismissing a manifestly unfounded claim (unless the cassation appeal has been lodged by an entity upholding public policy);

II. Cases in non-litigious proceedings (Article 519^1 of the Code of Civil Procedure) in which a cassation appeal is available:
   1. In the area of personal law, property law and inheritance law, whereby, in cases: (i) family, guardianship and guardianship law are only entitled in adoption cases and cases concerning the division of joint property after the cessation of joint property ownership between spouses, unless the value of the subject of the appeal is lower than PLN 150,000; (ii) are not entitled in cases concerning: forfeiture of property; administration with respect to joint ownership or usufruct; securing of the estate and inventory, disclosure of inheritance items, administration of an undisclosed estate and dismissal of the executor of a will; liquidation of joint ownership and division of the estate, if the value of the object of appeal is lower than PLN 150,000; liquidation of unclaimed deposits;
   2. For the removal of a person under parental authority or guardianship conducted on the basis of the 1980 Hague Convention;
   3. In registration proceedings only against decisions of the court of second instance on registration or deletion of an entity subject to registration.

When there is no cassation appeal, a party may request that the illegality of a final judgment or a decision on the merits of a second-instance court concluding proceedings in a case be established if damage has been caused to a party by its issuance. Exceptionally, if the unlawfulness results from the violation of fundamental principles of the legal order or constitutional freedoms or rights of a human being and a citizen, the unlawfulness of a final judgment of a court of first or second instance ending the proceedings in a case may be requested if the party has not used the legal remedies to which it is entitled, unless it is possible to amend or revoke the judgment through other legal remedies to which the party is entitled (Articles 424^1 and 519^2 of the Code of Civil Procedure). This is a rarely-used remedy, as, in most "more serious" cases, a

cassation appeal is available. Moreover, the Supreme Court refuses to accept such a complaint for examination if it is manifestly unfounded (Article 424^9 of the Code of Civil Procedure).

In the case of an extraordinary appeal, there are no subject matter limitations, except: (i) a judgment declaring a marriage non-existent, declaring a marriage invalid, or declaring a divorce, if at least one of the parties has married after such a judgment has become final; (ii) a decree of adoption (Article 90 para. 3 of the Supreme Court Act) – in these cases the extraordinary appeal is inadmissible. However, there are limitations as to the grounds for its lodging – it may be lodged if it is necessary to ensure compliance with the principle of a democratic state of law implementing the principles of social justice, provided that:

1. A final decision of a common court ending the proceedings violates the principles or freedoms and rights of a human being and a citizen set out in the Constitution of the Republic of Poland or;
2. The decision grossly violates the law by misinterpreting it or misapplying it, or;
3. There is an obvious contradiction of significant findings of the court with the content of the evidence gathered in the case

   – and the decision cannot be reversed or amended under other extraordinary means of appeal (Art. 89 para. 1 of the Supreme Court Act), provided that these allegations were not the subject of a cassation appeal admitted for review by the Supreme Court. The sole exception concerns the allegation of contradiction between the court's findings and the evidence, which cannot serve as a basis for a cassation appeal.

As can be seen, an extraordinary complaint can be brought even in a case in which the Supreme Court has previously ruled (as to a cassation appeal), which has been criticised. In practice, however, extraordinary appeals in such cases do not occur, and concern decisions of common courts in cases, for example, concerning consumers (e.g. such as to foreign currency-linked loans – denominated or indexed), or inheritance (when two conflicting orders of inheritance have been issued).

4. Obligatory Assistance of an Advocate

Pursuant to Article 87^1(1) of the Code of Civil Procedure, in proceedings before the Supreme Court, parties must be represented by attorneys or legal counsels, and in intellectual property cases also by patent attorneys (the so-called obligatory assis-

tance of an advocate). This provision regulates the postulatory capacity of parties in cassation proceedings, i.e. the capacity of a party, its body, legal representative and attorneys who are not advocates or legal advisers or, alternatively, patent attorneys, to perform procedural acts in person.[21] This applies to any appeal brought before the Supreme Court. While, before the ordinary courts, any person (party, participant in the proceedings) who has full procedural capacity may perform procedural acts on his or her own, before the Supreme Court he or she must – as a rule – be represented by a professional attorney. The filing of an appeal in person by a party lacking postulatory capacity is affected by an irremovable deficiency, and results in its rejection without a call to supplement this deficiency.[22] The same is the case when an appeal is brought by a party in person and the pleading is subsequently signed (after the deadline for bringing it) by a lawyer appointed as the party's agent.

The above does not apply to:

1. Proceedings for exemption from court costs and for the appointment of an advocate or legal adviser;
2. When a party, its body, its legal representative or its representative is a judge, a public prosecutor, a notary public, a professor, or a doctor habilitated in legal sciences, as well as when a party, its body or its legal representative is an advocate, a legal adviser or an adviser to the General Prosecutor's Office of the Republic of Poland, and in intellectual property matters a patent agent;
3. Legal representation of the State Treasury or a state legal person is performed by the General Prosecutor's Office of the Republic of Poland.

This solution is related to the professionalisation of proceedings before the Supreme Court, which is not a court of fact, but a court of law. It is intended to ensure the efficiency of the proceedings through the formulation of pleadings at the appropriate level. Since a pleading is filed by a professional representative, i.e. one who has obtained the relevant professional qualifications (advocate, legal adviser, patent agent), it is assumed that its formal and substantive level is much higher than a pleading filed by a person who does not have such qualifications and skills.

[21] Gil, 2025, thesis No. 1.

[22] See e.g. orders of the Supreme Court: of 5 October 2010, IV CZ 67/12; of 23 February 2012, V CZ 132/11; of 30 November 2023, II UZ 71/22; of 5 August 2024, III CZ 105/24; of 14 November 2024, I CSK 3518/24.

A consequence of the obligatory assistance of an advocate is also the possibility of refusal to prepare and file an appeal by an *ex officio* representative. In such a case, he/she is obliged to immediately notify the party and the court thereof, no later than within two weeks from the date of notification of his/her appointment as a legal aid attorney *ex officio*, together with his/her opinion on the lack of grounds for filing such a motion (Article 118 para. 5 of the Code of Civil Procedure). It is emphasised that, as a rule, the obligatory assistance of an advocate can and should lead to favourable outcomes for both the parties to civil proceedings and the court.[23]

In general, therefore, the role of a professional attorney in the Supreme Court proceedings is fundamental. This is because, while until the final conclusion of the proceedings, and even somewhat longer,[24] every civil law entity has postulatory capacity, the coercion in question is implemented from the moment of filing an appeal to the Supreme Court – with the exceptions indicated. In practice, it happens that parties do not comply with this requirement, filing pleadings on their own, treating the Supreme Court as another instance court where the case can be heard on merits, which obviously has no justification or legal basis.

5. Pre-Judgment (Pre-Court)

This is an institution unknown to the proceedings before the common courts. 'Pre-judgment' (pre-court) is not a code term: it is a legal language term, used in the literature and case law. It refers to two extraordinary remedies brought before the Supreme Court: a cassation appeal and an appeal for a declaration of unlawfulness of a final decision (the latter is brought relatively rarely, so the following will refer to a cassation appeal, but the arguments will refer to both).

In essence, a pre-judgment is a kind of "limitation" on the admissibility of the appeal of the parties to the Supreme Court, allowing for the refusal to accept the cassation appeal for examination.[25] The essence of it is the right to refuse to accept these appeals for examination and thus to terminate the case without a substantive examination of the complaints indicated. A sort of selection of cases is made. At this stage, therefore, the Supreme Court does not enter into the merits of the contested decision, but, acting single-handedly in a closed session, assesses whether an action brought in

[23] See e.g. Jarocha, 2025, 211.

[24] A party or his or her non-professional representative may himself or herself, submit a request for a statement of reasons for a decision of the court of second instance, and then apply for the appointment of an *ex officio* representative to represent him or her before the Supreme Court.

[25] See e.g. Zembrzuski, 2011, 91 et seq.

a civil case should be examined on the merits by a three-person panel of the court. It is thus a 'preliminary court,' so to speak.[26]

The Supreme Court's decision to accept or refuse to accept a cassation appeal for examination is not subject to any appeal. If the cassation appeal is accepted for examination, the panel that will consider it on merit is bound by this, and therefore cannot refuse to accept it for examination (this does not exclude, however, the rejection of the appeal).

The consequence of the above is that the applicant is obliged to include in the cassation appeal a request for its acceptance for examination and a justification for the appeal (Article 398^4 para. 2 of the Code of Civil Procedure). In accordance with Article 398^9 para. 1 of the Code of Civil Procedure, the Supreme Court accepts the cassation appeal for examination if one of the following prerequisites (cassation grounds) occurs:

1) There is an important legal issue in the case – it is a new issue, not yet resolved in the jurisprudence, the resolution of which may contribute to the development of the law. In such cases, the applicant is obliged to present an abstract issue together with arguments leading to divergent legal assessments, and demonstrate that it has not been resolved in the jurisprudence hitherto, and that its resolution is important not only for the resolution of this particular case, but also for other similar cases, contributing to the development of the law. The issue cannot be casuistic and serve to provide the applicant with an answer as to the legal classification of specific elements of the factual basis of the contested decision.[27] There is therefore no relevant legal issue in the case, nor is there a need for interpretation of the law if the Supreme Court has already taken a position on the legal issue or on the interpretation of the law, and has expressed its view in previous judgments, and there are no circumstances that justify a change of that view[28];
2) There is a need to interpret legal provisions giving rise to serious doubts or causing divergences in judicial decisions – it is necessary to indicate the provision of law the interpretation of which gives rise to doubts, determine the scope of the necessary interpretation, and demonstrate that the interpretation doubts are of a serious nature and require the Supreme Court to

[26] Gudowski, 1999, 37.

[27] See e.g. orders of the Supreme Court: of 30 April 2015, V CSK 598/14; of 15 April 2021, I CSK 720/20; of 15 March 2023, I CSK 6274/22; of 23 January 2025, I CSK 2630/22.

[28] See e.g. orders of the Supreme Court: of 19 March 2012, II PK 294/11; of 26 November 2024, I CSK 2723/24.

take a stance. If the basis for the motion in this respect is the assertion of discrepancies in judicial decisions resulting from different interpretations of a provision by courts, it is necessary to indicate the divergent decisions, analyse them, and demonstrate that the discrepancy results from different interpretations of the provision[29];

3) There is an invalidity of the proceedings – the invalidity of the proceedings constitutes an autonomous and sufficient ground for accepting the cassation action for examination[30]; this ground differs from the others in that, irrespective of whether the appellant has invoked the invalidity of the proceedings in the cassation appeal, the Supreme Court takes into consideration *ex officio*, within the limits of the appeal, the question of the invalidity of the proceedings before the court of second instance,[31] and invalidity of the proceedings at the first instance if the plea in cassation is based on the failure of the second instance court to consider the invalidity of the proceedings at the first instance.[32] This refers to situations where: (a) a court action was inadmissible; (b) a party lacked judicial or procedural capacity, a body appointed to represent him or her, a legal representative, or if the party's representative was not duly authorised; (c) there is a case pending between the same parties concerning the same claim, or if such a case has already been finally judged; (d) the composition of the adjudicating court was inconsistent with the provisions of law, or if a judge excluded by law took part in the examination of the case; (e) a party has been deprived of the possibility to defend its rights; (f) a district court has ruled in a case in which a regional court has jurisdiction regardless of the value of the subject matter of the dispute (Article 379 of the Code of Civil Procedure);

4) The cassation appeal is obviously justified – it is necessary to demonstrate a qualified form of a violation of substantive or procedural law consisting of its obviousness, visible prima facie, using basic legal knowledge, and this

[29] See e.g. orders of the Supreme Court: of 24 February 2012, II PK 274/11; of 15 April 2021, IV CSK 617/20; of 11 December 2024, I CSK 2930/24.

[30] Zembrzuski, 2008, 294.

[31] See e.g. judgments of the Supreme Court: of 21 November 1997, I CKN 825/97, OSNC 1998, No. 5, item 81; of 10 May 2000, III CKN 416/98, OSNC 2000, No. 12, item 220; of 7 June 2013, II CSK 720/12; orders of the Supreme Court: of 12 June 2020, V CSK 22/20; of 9 October 2020, I CSK 32/20.

[32] See e.g. judgment of the Supreme Court of 13 September 2012, V CSK 384/11; order of the Supreme Court of 23 January 2025, I CSK 2630/22.

obvious violation must result in the issuing of a manifestly incorrect decision[33]; the infringement must therefore be flagrant.

This definition of cassation grounds achieves the following objectives for justice and the public interest:

- to catch complaints brought against genuinely defective and incorrect judgments;
- to concentrate on the most important, complicated, precedent-setting cases, and thus those most likely to contribute to the development of the law and the unification of jurisprudence;
- to control the number of cases coming before the Supreme Court, which prevents unlimited appeals and streamlines civil proceedings.

The acceptance of a cassation appeal for review is therefore permitted only on specified, qualified grounds, and this catalogue is exhaustive. It is not sufficient to refer to any circumstances which, according to the applicant, justify the acceptance of the cassation appeal for examination. The use of vague and indefinite concepts ('substantial issue,' 'serious doubts,' 'obvious grounds') favours a more flexible regulation of the cassation pre-judgment.[34] The criteria for accepting a cassation appeal more or less involve an element of judgement, and, as such, fall within the Supreme Court's discretionary competence.[35] Nevertheless, it is accepted that the pre-judgment is a rational regulator of access to the Supreme Court that does not violate constitutional rights and guarantees. In doing so, it does not limit the right of a party to initiate a cassation review, but creates a limitation 'within' the cassation proceedings[36].

In the case of an appeal for a declaration of unlawfulness of a final decision, the basis for refusing to take it into consideration is, as indicated above, its obvious unfoundedness. Unlawful in this sense is only a decision whose irregularity is flagrant, of a qualified, elementary and obvious nature. The decision must be contrary to fundamental and non-differentiated provisions, to generally accepted standards of decision-making, or to a particularly grossly erroneous interpretation or misapplication of the law. The grounds for upholding the action are that the decision is vitiated

[33] See e.g. orders of the Supreme Court: of 8 October 2015, IV CSK 189/15; of 25 August 2021, II CSK 155/21; of 5 April 2023, I CSK 6859/22; of 23 January 2025, I CSK 3415/24.

[34] Zembrzuski, 2022, thesis No. 17.

[35] Wiśniewski, 2021, thesis No. 3.

[36] See e.g. judgment of the Constitutional Tribunal of the Republic of Poland of 31 March 2005, SK 26/02, OTK-A 2005, No. 3, item 29; Ereciński, 2016, thesis No. 1.

by an established defect of a fundamental and obvious nature.[37] It is therefore not a question of any misconduct on the part of the ordinary court. In practice, it is difficult to demonstrate a gross and obvious misconduct by this court.

IV. Conclusions

The study identifies the most important restrictions on access to the Supreme Court. Undoubtedly, the restrictions are indeed significant, but they cannot be said to violate the right to a court. They are justified by the role of the Supreme Court and the specificity of the proceedings before it. It is not an ordinary court, within the instantiation of civil proceedings, but a court of extraordinary character. There is no legal remedy against its rulings (although there are attempts in practice to use a complaint for the resumption of proceedings when it comes to Supreme Court rulings). The limitations outlined are of a different nature, but their primary objectives are to professionalise the proceedings before the Supreme Court and to limit the impact of appeals to the "court of law", so that it deals with cases that actually require interference. Meanwhile, in practice, parties often treat appeals to the Supreme Court (in particular the most commonly used cassation appeal) as a means of initiating another, third instance, in order for that court to hear the case under the rules applicable to courts of first and second instance.

The range of cases in which a cassation appeal can be brought is too broad. This applies in particular to property claims, in respect of which the lower limit of appeal has been set too low – the amounts of PLN 50,000 (in general) and PLN 10,000 in labour and social insurance cases do not result in the proper selection of cassation appeals, especially since, in the case of so-called division cases, this limit is PLN 150,000. Since these limits were introduced several years ago, taking into account changes in the value of money, increases in the prices of goods and services, in particular the value of real estate, inflation over this period, etc., as well as the role of the Supreme Court, it seems reasonable to raise the lower limit for property cases to at least PLN 150,000, for labour cases to PLN 50,000, and for division cases to PLN 250,000. The distinction between labour cases is important, as labour disputes typically involve relatively small monetary claims. Setting the base threshold too low would therefore unduly restrict the Supreme Court's ability to intervene and shape case law in this area.

[37] See e.g. order of the Supreme Court of 15 January 2025, I CNP 23/24.

References

Ereciński T., Comment of Article 398[2], in: Kodeks postępowania cywilnego. Komentarz. Część pierwsza. Postępowanie rozpoznawcze. Część druga. Postępowanie zabezpieczające, edited by T. Ereciński, Wydawnictwo Prawnicze LexisNexis, Warsaw, 2009.

Ereciński T., Comment of Article 398[9], in: Kodeks postępowania cywilnego, Komentarz, Tom III, Postępowanie rozpoznawcze, edited by T. Ereciński, Wolters Kluwer Polska, Warsaw, 2016.

Gil I., Comment of Article 87[1], in: Kodeks postępowania cywilnego, Komentarz, edited by E. Marszałkowska-Krześ and I. Gil, Legalis, 2025.

Grzegorczyk P., Comment of Article 176, in: Konstytucja RP. Tom II, Komentarz do art. 87–243, edited by M. Safjan and L. Bosek, Wydawnictwo C.H. Beck, Warsaw, 2016.

Grzegorczyk P., Weitz K., Comment of Article 45, in: Konstytucja RP. Tom I, Komentarz do art. 1–86, edited by M. Safjan, L. Bosek, Wydawnictwo C.H. Beck, Warsaw, 2016.

Gudowski J., Kasacja w świetle projektu Komisji Kodyfikacyjnej Prawa Cywilnego (z uwzględnieniem aspektów historycznych i prawnoporównawczych), Przegląd Legislacyjny, No. 4, 1999.

Jarocha A., Potrzeba nowego kształtu przymusu adwokacko-radcowskiego w KPC – bariery i wyzwania, Monitor Prawniczy, No. 4, 2025.

Kmieciak Z., Instancyjność postępowania administracyjnego w świetle Konstytucji RP, Państwo i Prawo, No. 5, 2012.

Kodeks postępowania cywilnego. Komentarz, edited by P. Rylski, Legalis, 2022.

Łazarska A., Rzetelny proces cywilny, Wolters Kluwer Polska, Warsaw, 2012.

Michalska-Marciniak M., Zasada instancyjności w postępowaniu cywilnym, Wydawnictwo Prawnicze LexisNexis, Warsaw, 2013.

Peukert W., Comment of Article 6, in: J.A. Frowein and W. Peukert, Europäische Menschenrechtskonvention. EMRK-Kommentar, N. P. Engel Verlag, Kehl-Strasbourg-Arlington, 1985.

Wiśniewski T., Problematyka instancyjności postępowania sądowego w sprawach cywilnych, in: Ars et usus. Księga pamiątkowa ku czci Sędziego Stanisława Rudnickiego, Wydawnictwo Prawnicze LexisNexis, Warsaw, 2005.

Wiśniewski T., Comment of Article 398[9], in: Kodeks postępowania cywilnego. Komentarz. Tom II. Art. 367-505[39], edited by T. Wiśniewski, Wolters Kluwer Polska, Warsaw, 2021.

Zembrzuski T., Dostępność skargi kasacyjnej w procesie cywilnym, Wydawnictwo Prawnicze LexisNexis, Warsaw, 2008.

Zembrzuski T., Skarga kasacyjna. Dostępność w postępowaniu cywilnym, Wydawnictwo Prawnicze LexisNexis, Warsaw, 2011.

Zembrzuski T., Comment of Article 398[9], in: Kodeks postępowania cywilnego. Komentarz, edited by P. Rylski, Legalis, 2022.

Legal acts

Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950, Journal of Laws of the Republic of Poland of 1993, No. 61, item 284.

Code of Civil Procedure of 17 November 1964, consolidated text, Journal of Laws of the Republic of Poland of 2024, item 1568, as amended.

International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, Journal of Laws of the Republic of Poland of 1977, No. 38, item 167 (appendix).

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

Charter of Fundamental Rights of the European Union of 30 March 2010, OJ EU C, No. 83, 389 et seq.

Act of 8 December 2017 on the Supreme Court, consolidated text, Journal of Laws of the Republic of Poland of 2024, item 622.

Case law

Judgment of the ECtHR of 6 December 1988, application No. 10590/83, Barberà, Messegué and Jabardo v. Spain.

Judgment of the Constitutional Tribunal of the Republic of Poland of 24 June 1993, application No. 14518/89, Schuler-Zgraggen v. Switzerland.

Judgment of the ECtHR of 23 November 1993, application No. 14032/88, Poitrimol v. France.

Judgment of the ECtHR of 23 February 1994, application No. 18928/91, Fredin v Sweden.

Judgment of the Supreme Court of 21 November 1997, I CKN 825/97, OSNC 1998, No. 5, item 81.

Judgment of the ECtHR of 19 Fabruary 1998, application No. 16970/90, Jacobsson v Sweden.

Judgmentt of the Constitutional Tribunal of the Republic of Poland of 16 March 1999, SK 19/98, OTK 1999, No. 3, item 36.

Judgment of the ECtHR of 15 February 2000, application No. 38695/97, Garcia Manibardo v. Spain.

Judgment of the Supreme Court of 10 May 2000, III CKN 416/98, OSNC 2000, No. 12, item 220.

Order of the Supreme Court of 4 October 2002, III CZP 62/02, OSNC 2004, No. 1, item 7.

Judgment of the Constitutional Tribunal of the Republic of Poland of 11 March 2003, SK 8/02, OTK-A 2003, No. 3, item 20.

Judgment of the Constitutional Tribunal of the Republic of Poland of 6 October 2004, SK 23/02, OTK-A 2004, No. 9, item 89.

Judgment of the Constitutional Tribunal of the Republic of Poland of 31 March 2005, SK 26/02, OTK-A 2005, No. 3, item 29.

Judgment of the Constitutional Tribunal of the Republic of Poland of 16 January 2006, SK 30/05, OTK-A 2006, No. 1, item 2.

Judgment of the Constitutional Tribunal of the Republic of Poland of 12 September 2006, SK 21/05, OTK-A 2006, No. 8, item 103.

Judgment of the Constitutional Tribunal of the Republic of Poland of 2 October 2006, SK 34/2006, OTK-A 2006, No. 9, item 118.

Judgment of the Constitutional Tribunal of the Republic of Poland of 18 October 2006, application No. 18114/02, Hermi v. Italy.

Judgment of the Constitutional Tribunal of the Republic of Poland of 11 September 2007, P 11/2007, OTK-A 2007, No. 8, item 97.

Judgment of the Constitutional Tribunal of the Republic of Poland of 20 November 2007, SK 57/2005, OTK-A 2007, No. 10, item 125.

Resolution of seven judges of the Supreme Court – legal principle of 31 January 2008, III CZP 49/07, OSNC 2008, No. 6, item 55.

Judgment of the Constitutional Tribunal of the Republic of Poland of 31 March 2009, SK 19/08, OTK-A 2009, No. 3, item 29.

Judgment of the Supreme Court of 7 May 2009, IV CSK 513/08.

Judgment of the ECtHR of 28 July 2009, application No. 8958/04, Smyk v. Poland.

Judgment of the Constitutional Tribunal of the Republic of Poland of 12 January 2010, SK 2/09, OTK-A 2010, No. 1, item 1.

Judgment of the Constitutional Tribunal of the Republic of Poland of 2 June 2010, SK 38/09, OTK-A 2010, No. 5, item 46.

Order of the Supreme Court of 5 October 2010, IV CZ 67/12.

Judgment of the Constitutional Tribunal of the Republic of Poland of 16 November 2011, SK 45/09, OTK-A 2011, No. 9, item 97.

Order of the Supreme Court of 23 February 2012, V CZ 132/11.

Order of the Supreme Court of 24 February 2012, II PK 274/11.

Order of the Supreme Court of 19 March 2012, II PK 294/11.

Judgment of the Constitutional Tribunal of the Republic of Poland of 12 April 2012, SK 21/11, OTK-A 2012, No. 4, item 38.

Judgment of the Supreme Court of 13 September 2012, V CSK 384/11.

Judgment of the Supreme Court of 7 June 2013, II CSK 720/12.

Order of the Constitutional Court of the Republic of Poland of 11 September 2013, TS 83/13, OTK-B 2013, No. 6, item 606.

Judgment of the Constitutional Tribunal of the Republic of Poland of 22 October 2013, SK 14/13, OTK-A 2013, No. 7, item 100.

Order of the Constitutional Court of the Republic of Poland of 9 October 2014, TS 277/13, OTK-B 2014, No. 5, item 453.

Order of the Supreme Court of 30 April 2015, V CSK 598/14.

Order of the Supreme Court of 8 October 2015, IV CSK 189/15.

Order of the Supreme Court of 12 June 2020, V CSK 22/20.

Order of the Supreme Court of 9 October 2020, I CSK 32/20.

Order of the Supreme Court of 15 April 2021, IV CSK 617/20.

Order of the Supreme Court of 15 April 2021, I CSK 720/20.

Order of the Supreme Court of 25 August 2021, II CSK 155/21.

Order of the Supreme Court of 15 March 2023, I CSK 6274/22.

Order of the Supreme Court of 5 April 2023, I CSK 6859/22.

Order of the Supreme Court of 30 November 2023, II UZ 71/22.

Order of the Supreme Court of 5 August 2024, III CZ 105/24.

Order of the Supreme Court of 14 November 2024, I CSK 3518/24.

Order of the Supreme Court of 26 November 2024, I CSK 2723/24.

Order of the Supreme Court of 11 December 2024, I CSK 2930/24.

Order of the Supreme Court of 15 January 2025, I CNP 23/24.

Order of the Supreme Court of 23 January 2025, I CSK 2630/22.

Order of the Supreme Court of 23 January 2025, I CSK 3415/24.