

THE ROLE OF THE SUPREME COURT IN POLAND IN OBEYING THE CIVIL LEGAL RULES PROTECTING DEMOCRACY

*Joanna STUDZINSKA**

Abstract

There are different functions of the Supreme Court in Poland such as the control of legality and correctness of an issued ruling, and the examination of, above all the extraordinary means of appeal, which are: cassation complaints, complaints to declare a legally binding decision unlawful. Especially nowadays the Supreme Court is the very important court to assure the obedience of the civil legal rules protecting democracy. The Supreme Court plays also the very important role explaining the character of legal norms. Placement of the complaint to the Supreme Court within the regulations of the chapter on the appeal, and not, as previously, in the chapter devoted to the cassation, is significant in terms of the construction. The complaint proceedings in the Supreme Court creates a mechanism within the framework of which the Supreme Court not only examines the matter but controls the 2nd instance court whether a decision by which the proceedings are terminated does not infringe the law, and in the case of finding such infringement, generally, it "cancels" such decision. It is, therefore, worth being better acquainted with very important role of the Supreme Court assure the obedience of the civil legal rules protecting democracy.

Keywords: *the Supreme Court, a civil cassation complaint, polish legal system, the extraordinary means of appeal, the jurisdiction of the Supreme Court*

JEL Classification: [K4, K41]

1. The position of the Supreme Court in the polish legal system

The Supreme Court is the supreme judicial body in the structure of public and military courts. There is the special rank given by the legislator to the Supreme Court and it is demonstrated by the fact that a specific provision of the Constitution specifies the role of the Supreme Court as the authority exercising oversight over the activities of common and military courts in the scope of adjudication - art. 183 of the Constitution of the Republic of Poland¹. Therefore, the Supreme Court has the great importance in the Polish justice system. Contrary to the common law system, the judgments issued by the Supreme Court are not universally binding for all courts in Poland, nevertheless the very great authority that this authority enjoys, undoubtedly affects the

* PhD., Assistant Professor at the Kozminski University in Warsaw.

¹ The Constitution of the Republic of Poland of 2 April (1997), as last amended in (2009), <http://legislationline.org/documents/action/popup/id/16683/preview> (in English).

unification of the jurisprudence. Also this features of the Supreme Court, together with a high level of legal knowledge, determined that the Court fulfilled the role of "court over trial", i.e. the recognition of cassation against final court decisions (Ereciński, (2011).

In turn, the Supreme Court's power to adjudicate on the resumption of civil proceedings results from interfering with the principle of stabilization of judgments issued by the most important judicial authorities, i.e. the court of appeal and the Supreme Court (see more Sanetra, (1999).

There are also other competences of the Supreme Court that are a consequence of various ratio legis.

The important regulation of the Supreme Court is the art. 183 para. 1 of the Constitution of the Republic of Poland. The administration of justice is a function of all courts, whereas the exercise of supervision in the area of case-law is assigned only to the Supreme Court. This supervision has the character of judiciary supervision. The Supreme Court exercises it by examining cassation appeals and other remedies, and not by applying administrative means, which is to supervise the case². Therefore, it is a supervision of a special character, characterized by striving to ensure uniformity of judicial decisions. Ordinary judiciary control boils down to identifying appeals (appeal, complaint). This form of supervision also includes the so-called an objection from art. 65 of the Act on the Supreme Court³. Pursuant to this provision, the Supreme Court, in the event of establishing an obvious picture of the provisions when considering an issue, irrespective of other powers, points out the failure of the competent court. Before pointing out the infringement, the Supreme Court may request explanations. Finding and pointing out the infringement does not affect the resolution of the case.

The Supreme Court notifies the President of the competent court about the failure to comply. Supervision in this mode is possible when recognizing ordinary and extraordinary appeals. On the one hand, the outlook is of a preventive nature, because its aim is to draw attention to the future, on the other hand, the quasi-disciplinary character, because it concerns specific judges ruling in a given case.

The special judiciary of the Supreme Court, covers its supervision by means of extraordinary appeals and supervision exercised by adopting resolutions resolving legal issues. This form of supervision is particularly important for ensuring legal certainty and certainty in applying the law. Although discrepancies in jurisprudence are something natural, nevertheless they can not exceed a certain level, because then legal certainty is threatened, which may be assessed as a state colliding with the clause of a democratic state of law (Sanetra (2004).

² The judgement of the Supreme Court of 21 May (2008) r., I UK 17/08, Lex nr 491454.

³ Act of 23 November (2002) on the Supreme Court, Journals of Law, Item .

Ensuring an adequate level of uniformity of judicial decisions is a key task of the Supreme Court, therefore the legislator provided for the possibility of adopting resolutions by the Supreme Court that settle legal issues (Article 60 of the Act on the Supreme Court and Article 390 of the Civil Procedure Code). However the role of the Supreme Court in cassation proceedings is not to respond to the parties' doubts and verify valid court decisions⁴.

The role of the Supreme Court is expressed, *inter alia*, in the protection of the entire corpus iuris by ensuring the correctness and uniformity of the interpretation and application of the law. In this respect, the nature of the Supreme Court's action takes two basic forms: preventive - including the adoption by the Supreme Court of resolutions regarding the interpretation and application of the law, since their purpose is to remove discrepancies in interpretation in order to unify the practice; corrective - consisting in replacing erroneous judgments with Supreme Court rulings or their supervision (Piasecki (2005)).

In addition to exercising supervision, the Supreme Court also performs other activities specified in the Constitution of the Republic of Poland and laws (Article 183 (2) of the Constitution of the Republic of Poland). One can count on recognition of election protests and determination of the validity of elections to the Sejm and Senate and election of the President of Poland, as well as the validity of the national referendum and constitutional referendum (Article 1 point 2 of the Act on the Supreme Court), recognition of election protests in elections to the European Parliament (Article 1 point 2a of the Act about the Supreme Court), issuing opinions on bills and other normative acts on the basis of which courts decide and function, as well as other acts to the extent that the Supreme Court deems it advisable (Article 1 point 3 of the Act on the Supreme Court). It should be mentioned that only the Supreme Court has the power to invalidate final judgments issued by courts in cases which due to a person or subject matter were not subject to judicial decisions at the time of adjudication, if the ruling can not be moved in the manner provided for in relevant procedural acts (Articles 64 of the Act on the Supreme Court). According to art. 1 point 4 of the Act on Supreme Court

The Supreme Court also performs other activities specified in statutes. In this regard, it can be mentioned, for example, that the Supreme Court plays the role of a disciplinary court of second instance in disciplinary cases of common and military court judges, it recognizes cassations in disciplinary matters of prosecutors, notaries, lawyers and legal advisors.

The Supreme Court shall be a judicial body appointed to perform administer justice by means of ensuring, as part of its supervisory duties, compliance with the law and uniformity of judicial decisions of common and military courts by hearing final appeals (cassation) and other appeals, adopting resolutions to adjudicate questions of law, determining other cases specified in

⁴ The judgement of the Supreme Court of 10 February 2015 r. IV CSK 463/14, LEX nr 2255328.

laws; hear electoral petitions and ascertain the validity of the elections to the Sejm and Senate, the election of the President of the Republic of Poland as well as the validity of the national and constitutional referendum hear electoral petitions concerning elections to the European Parliament; give opinions on draft laws and other normative acts of law which form the basis for rendering decisions by the courts and their operations as well as other laws to the extent that it deems advisable; perform other acts provided for by laws⁵.

The Supreme Court settles issues that raise legal doubts. An application with a question to the Supreme Court in a specific case may be directed by the courts of appeal. The Supreme Court interprets unclear provisions and indicates how to interpret the law in force. The appellate court is then bound by the answer given by the Supreme Court.

A request to clarify the interpretation of the right to the Supreme Court may also be made by the First President of the Supreme Court, the Commissioner for Citizens' Rights and the Prosecutor General and, within its jurisdiction, the General Prosecutor's Office of the Republic of Poland, the Ombudsman for Children, Chairman of the Social Dialogue Council, Chairman of the Financial Supervision Commission and Financial Ombudsman.

The Supreme Court gives opinions on statutes and other normative acts. This is the non-judgmental competence of the Supreme Court, which may have a significant impact on the course of the legislative process. The body gives its opinion on bills and other normative acts on the basis of which courts decide and function. In addition, if the Supreme Court considers it to be expedient, it may also give its opinion on other laws in the scope it specifies.

The Supreme Court shall consider cassation appeals against the decisions of the Tribunal for Sports Affairs at the Polish Olympic Committee. The First President of the Supreme Court is the Chairman of the State Tribunal The President of the Republic of Poland, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Audit Office, members of the National Broadcasting Council, persons whom the prime minister entrusted with the Prime Minister may stand for the violation of the Constitution or statute in connection with the position held or in the scope of his office managing the ministry and the Supreme Commander of the Armed Forces.

2. The complaints in civil matters that are the forms of access to the Supreme Court in Poland

The Supreme Court in Poland, because of its functions, i.e., the control of legality and correctness of an issued ruling, examines, above all, the extraordinary means of appeal, which are: cassation complaints, complaints to declare a legally binding decision unlawful. In civil procedure, an appeal to the

⁵ Art. 1 of the Act of 23 November (2002) on the Supreme Court, Journal of Laws, Item 499.

Supreme Court has always been an exception to the rule, and by 2 July 2000 it was available exclusively when lodged against a 2nd instance court decision rejecting a cassation. The essence of the complaint, as any other means of appeal, is to render effective the right of a party (appellant) to implement an appropriate means of control (Zembrzuski (2013).

At present, a complaint to the Supreme Court in Poland serves to control the non-final decisions not on merits, i.e. neither judgments nor orders for payment as a means of appeal against the 2nd instance court decisions which can be appealed in the light of art. 394.1 of the Polish Code of Civil Procedure, (*CCP*). Such decisions which conclude a matter are, among others: decisions rejecting a lawsuit on procedural grounds, appeals discontinuing proceedings (Obrębski (1999). An exception to a situation in which a decision on merits can be appealed is provided in art. 394.1 § 1.1 of CCP which is “an appeal against a judgment”.

The institution of the complaint in civil proceedings after the amendment of the civil procedure code dated 16 September 2011⁶ is therefore not uniform, viewing the appeal, at least, from the perspective of a horizontal complaint or a complaint against a cassation decision (Broniewicz 2001, Studzińska 2015).

Pursuant to the Polish Code of Civil Procedure, a complaint to the Supreme Court can be filed against 2nd instance court decision by which a cassation is rejected and against a 2nd or 1st instance court decision by which a complaint of declaration of unlawfulness a legally binding decision. In the matters is which a cassation complaint can be filed, a complaint can be filed also against a 2nd instance court decision which concludes the proceedings, except for decisions rejecting the lawsuit on procedural grounds or discontinuing proceedings, and also decisions issued as a result of the examination of a complaint against a 1st instance court decision.

A complaint to the Supreme Court can also be filed against a 1st or 2nd instance court decision or against a 2nd instance court decision of the same court but sitting in a different panel. It must, however, be noted that a complaint filed with the Supreme Court does not constitute a specific means of appeal which is different from that filed with the 2nd instance court, and is characterized by being devolutive and suspensive. In such procedure, the Supreme Court controls appealable decisions and acts as the 2nd instance court, which overlaps with the model of an appeal filed with the 2nd instance court. In the majority of events, a complaint filed with the Supreme Court serves to challenge and verify the correctness of decisions with regard to procedural issues (Zieliński 2016).

An exceptional character of the complaint to the Supreme Court is confirmed in a rather narrow catalogue of decisions which can be appealed under that procedure, even through the scope thereof, throughout recent years, has become extended. Due to the fact that the Supreme Court decisions are non-

⁶ The act of 16 September (2011) on the amendment of the Polish Code of Civil Procedure act, Journal of Laws No 233, item 1381.

appealable, a complaint which can be filed against those decisions is final because a decision delivered as a result of examination thereof cannot be further appealed.

The complaint filed with the Supreme Court is „exceptional” in its character. Art. 394¹ of CCP was introduced by the amending act dated 22 December 2004⁷ on the basis of which crucial changes were introduced in the system of the means of appeal which also relate to the change of the character of cassation appeal. In the present normative context a situation in which the Supreme Court reviews a complaint of the 2nd instance court decision is exceptionally conspicuous.

The Supreme Court, but for one exception resulting from art. 390 § 1 of CCP, is never a 2nd instance court. Art. 394.1 of CCP constitutes an exception to the above described principle because it provides for a situation in which it is the Supreme Court that examines the complaint (Bladowski (2006)). The provision expressly states that that court operates as a body which controls (to a limited extent) decisions which conclude the proceedings and which have been issued by the 2nd instance court. Those are decisions of regional or appeal courts which operate as the 2nd instance courts.

The Supreme Court which reviews a complaint does not operate as the 2nd instance court⁸. According to the established case-law and the legal doctrine, an instance in which the Supreme Court examines in civil proceedings as the 2nd instance court may be the circumstances resulting from art. 390 of CCP (transferring the matter for reconsideration).

Those decisions of the 2nd instance court which relate to the proceedings can be appealed to the Supreme Court by a cassation complaint or a complaint only in the circumstances expressly described in the provisions (art. 398.1 par 1 and art. 394.1 par 1 and 2 CCP respectively). A complaint to the Supreme Court against other decisions does not apply.

Admissibility of a complaint against a decision other than that rejecting the complaint on procedural grounds depends, in the first place, on whether the complaint was filed in a matter in which a cassation complaint is allowed. Therefore, even those decisions which meet the remaining requirements - the 2nd instance court decisions which conclude the proceedings - are not always appealable to the Supreme Court. In that view, admissibility of a complaint is assessed individually in each matter. If a complaint has been filed in the proceedings in which a cassation complaint cannot be filed, that means that the complaint fails to comply with the first requirement of admissibility.

The criterion of a decision which "concludes the proceedings" is general and refers to the entire category of decisions⁹.

⁷ The act of 22 December (2004) on the amendment of the act of civil proceedings code and of the act on the common courts, Journal of Laws (2005) , no 13, item 98.

⁸ The Supreme Court (hereafter the "SC") decision dated 12 October (2007), case file no IV CZ 91/07, Lex no 485889.

⁹ Decision dismissing motions to restore dates to file the appeal, cassation, to file a demand to be served a copy of the 2nd instance court judgment with justification, etc., are not considered in the

The legal doctrine lacks a uniform definition of that notion and thus some claim that the court issues a decision which concludes the matter being viewed as a certain completeness to be assessed, when it rules on the entire proceedings, and there are no conditions to enable passing of a judgment, which means the resolution of the matter on merits (Erciński (1996), whereas the others point out that such decisions conclude the matter when the continuation of the proceedings after these decisions have been issued is not further possible (Wiśniewski (1996).

The conditions by which a decision qualifies to conclude the proceedings have already been explained in a number of the Supreme Court decisions¹⁰, there is, however, unanimity as regards the notion of a decisions concluding the proceedings (Obrębski,(1999). According to the duality of these may be the following decisions: decisions which, if they become final, cannot be resolved on merits by the 2nd instance court if on the date of issuing such a decision the court is not required to further examine the matter; or decisions which ascertain that an event has occurred which causes non-admissibility to continue the proceedings aiming at resolution of the matter on the merits by the 2nd instance court (Erciński (2012).

The Supreme Court reviews a complaint against the 2nd instance court decisions in the panel composed of three judges in camera¹¹. Concurrently, admittance by the Supreme Court of a complaint results in the appealed decision being overturned. In consequence, the Supreme Court can resolve on the merits of the matter or it can remand it to the 2nd instance court for reconsideration. In the remainder of instances, however, the Supreme Court sits in the panel of one judge. A proper application of this regulation means that the Supreme Court examines an appeal in panel of three judges, in other matters, however, it conducts appellate proceedings in the panel of one judge. Those other matters are the situations in which, e.g., a complaint is overturned, appellate proceedings are discontinued or suspended (to the contrary see: Zieliński (2016).

Formal requirements for a pleading and a complaint under Article 394.3 of the CCP also apply to a complaint filed with the Supreme Court. Therefore, a complaint, similarly to every single pleading should contain, among others,

reported cases as the decisions which conclude the proceedings. The SC resigned from a traditional approach that a decision by which the date has not been restored can sometimes also conclude the proceedings in the decision dated 11 August (1999), I CKN 367/99 (OSNC 2000, no 3, item 48 and OSP 2000, notebook 6, item 93, together with a critical gloss by P. Osowy and P. Pełczyński, and also J. Smólski, PS 2000, no 9, p. 135 and subsequent). In the resolution of seven judges dated 31 May 2000, III ZP 1/2000 (OSNC 2001, no 1, item 1) the Supreme Court ruled that a cassation (now a cassation complaint) of a 2nd instance court decision dismissing an appeal of a 1st instance court decision dismissing a motion to restore the date for filing an appeal does not apply.

¹⁰ E.g., a decision on the award of costs of the proceedings does not constitute such example (see: the judgement of the Supreme Court of 20 December (1996), I CZ 30/96, OSNC (1997), no 3, item 34).

¹¹ The judgement of the Supreme Court of 19 December (1938), C III 1549/37, Zb. Orz. ("The collection of caeslaw") (1939) , no III, item 101.

designation of the court, names and surnames of the parties, of statutory representatives or attorneys, signatures (of the parties or the statutory representatives, or attorneys), and where the pleading is filed by an attorney - a power of attorney attached, a list of exhibits, citation of evidence to support a demand, text (content), subsequent pleadings in the matter and – a file reference number, an indication of a decision being appealed, a motion for change or reversal thereof, justification of the appeal together with an indication of new facts and evidence (optionally). New facts and evidence may be adduced even if they could have been filed in the 1st instance proceedings (Góra – Błaszczkowska (2006)). An obligation that a complaint filed with the Supreme Court be drafted by an advocate or a legal advisor is stipulated in Art. 87.1 of CCP and if it is drafted in breach of this regulation, it is to be rejected as inadmissible¹².

In judicial decisions of the Supreme Court the following are deemed inadmissible appeals filed with the Supreme Court: preliminary injunction orders¹³, a decision included in the appeal court judgment on the costs incurred in the 1st instance court proceedings¹⁴, the 2nd instance court decision on the costs of non-paid legal assistance¹⁵, a decision on the refusal of a waiver from court costs¹⁶, a decision on the dismissal of a motion to have a deadline reinstated to file a motion to draft the justification of the 2nd instance court judgment and service of the copy thereof together with justification¹⁷, contrary to a decision dismissing a motion to serve a judgment together with justification which is subject to an appeal¹⁸, the 2nd instance court decision on the return of the court fee¹⁹, the 2ns instance court decision dismissing a motion to suspend enforcement of a binding decision by filing a cassation, by the time of termination of the cassation proceedings,²⁰ the 2nd instance court decision on the rejection of a motion to restore the deadline for filing a cassation - such decision can be controlled within the examination of an appeal of a decision to reject a cassation²¹, a 2nd instance court decision dismissing an appeal of a first

¹² The Judgement of the Supreme Court of 16 March (2006), III CZ 5/06, unpublished.

¹³ The Judgement of the Supreme Court of 12 March (2003), III CZ 18/03, IC 2003, no 12, p. 47.

¹⁴ The Judgement of the Supreme Court of 23 June (2010), II CZ 45/10, Biul.SN 2010, journal 9, item 12.

¹⁵ The Judgement of the Supreme Court of 15 April (2010), II CZ 118/09, Palestra (2010), journals 5-6, item 237.

¹⁶ The Judgement of the Supreme Court of 8 October (2009), II PZ 14/09, LEX no 559943; the judgement of the Supreme Court of 23 June (2009), II PZ 3/09, LEX no 521927.

¹⁷ The Judgement of the Supreme Court of 19 April (2006), I UZ 3/06, OSNP (2007), journal. 9-10, item 145.

¹⁸ The Judgement of the Supreme Court of 24 September (2003), I CZ 100/03, LEX no 602194.

¹⁹ The Judgement of the Supreme Court of 12 December (2007), V CZ 74/07, OSNC (2009), journal 2, item 31.

²⁰ The Judgement of the Supreme Court of 17 July (2006), I UZ 11/06, OSNP (2007), journal. 15-16, item 236.

²¹ The Judgement of the Supreme Court of 4 March (2005), II UZ 72/04, OSNP (2005), journal 20, item 325.

instance decision dismissing an appeal²², a 2nd instance court decision dismissing a motion to correct or interpret a judgment²³ or a 2nd instance court decision in the matter of award to the State Treasury of the costs of unpaid *ex officio* legal assistance in appeal proceedings²⁴.

3. The civil cassation complaint

The Supreme Court does not adjudicate in cases, but it exercises control over courts of general jurisdiction and it examines whether they do or do not infringe legal acts with their judgments. The institution of cassation complaint allows the Supreme Court to act as a link between the courts of general jurisdiction and it provides coherent guidelines as to how to apply the law. One of the most basic extraordinary appellate measures in Polish civil proceedings is a cassation complaint, enabling access to the Supreme Court, allows for engaging in polemics with regard to the manner of a propriate application and interpretation of the law. The Supreme Court is not the third instance court allowing for the presentation of one's own point of view and opinions on a given matter (Zembrzuski 2014).

Proper and efficient functioning of cassation proceedings requires the adoption of numerous mechanisms leading to the limitation of access to the Supreme Court. A cassation complaint is regulated in articles 398.1 – 398.21 of the Polish Code of Civil Procedure. As far as the cassation complaint is concerned, the access to the Supreme Court in Poland is shaped at two levels, i.e. the admissibility of a complaint and the acceptance thereof for examination (Zembrzuski 2011).

As a result of the abovementioned restrictions in the access to the Supreme Court, it examines only the cases of significant complexity and gravity. These mechanisms protect the Supreme Court against an excessive number of cassation complaints which would be filed on a daily basis. The admissibility of cassation complaint is dependant on exhausting the course of instance as cassation complaint applies to law binding decisions which are final in the case pronounced by the court of second instance.

The above regulation emphasises that cassation complaint refers exclusively to decisions of the greatest legal gravity (Gapska 2013).

To lodge an appeal by means of cassation complaint, it is necessary to exclude the possibility of continuing the proceedings and giving a decision concerning the subject matter. That's why submission of a cassation complaint is dependent on the exhaustion of the so-called course of the instance. In Polish civil procedure there is no possibility of submitting a cassation complaint if the

²² The Judgement of the Supreme Court of 22 April (2002), I PKN 386/01, OSNP (2004), journal 6, item 101.

²³ The Judgement of the Supreme Court of 12 March (2003), I PZ 162/02, OSNP (2004), journal 14, item 245.

²⁴ The SC decision dated 17 November (2009), III CZ 53/09, OSNC (2010), no 5, item 79.

appeal instance was omitted by a party (the so-called *leap-frog procedure*). The legal validity of a judgment of a court of the second instance is the precondition for the admissibility of a cassation complaint (Zembrzuski, 2011).

Among legally binding decisions which are final and given by the court of second instance, according to art. 398.1 CCP the documents mentioned in detail are judgements (excluding the judgements which revoke the judgement of first instance court and referring the case for re-examination²⁵, as the judgements are not final²⁶), decisions rejecting the suit, decisions of discontinuance of the proceedings. It is very important that there are the limitations of *ratione materiae*, so it make possible to conduct a qualitative decision-making policy by means of excluding specific types of cases from the control of the Supreme Court. These exclusions are of an enumerative character and they constitute a catalogue of non-cassation cases. It is assumed that some cases do not require the examination by the Supreme Court, because the priority should sometimes be granted to the efficiency and rapidity of the proceedings (Ereciński, 1994).

The access to the Supreme Court is dependent on the appropriate formulation of a cassation complaint. A party is obliged to take into account the structural (qualified) and formal (regular) requirements (Błaszczak, 2008). The complaint should be written in Polish, and in principle it should be submitted by an attorney or a legal advisor. When the party undertakes any of the above actions it has no legal effects. When the regulations concerning compulsory representation by a lawyer are infringed, the cassation complaint is inadmissible and is subject to be rejected (Gapska 2013). The right of the party to initiate the cassation proceedings is not dependant on prior lodging of a measure of appeal concerning the decision of the court of first instance (Michalska 2003).

The right to recognition of the cassation complaint is not the absolute one. Admissible cassation complaints which were not rejected are subject to the procedure of preliminary cassation acceptance in order to accept them for consideration. This pertains to the selection of complaints conducted for the purpose of advisability of their essential examination, i.e. whether there is a need to express an opinion in the case by the highest court instance. This selection is performed exclusively by the Supreme Court. The preliminary acceptance is of a *sine partes* character. This is a preliminary proceedings. The court issues a decision on either the acceptance or refusal of examination of the complaint. Exclusively accepted complaints will be subject to substantive control. Cassation complaint as a measure of appeal verifies if the appealed decision does not violate the law.

²⁵ All kinds of judgements i.e. final, separate, interlocutory, complementary, cumulative are subject to cassation appeal. See among others Michalska (2001), Zieliński (2001).

²⁶ The judgement of the Supreme Court of December 18th, (1996) I CKN 28/96, OSNC (1997) no 4, item 44.

The legal bases of cassation i.e. violation leading to appeal is the core of cassation complaint. Adopting *de lege lata* the list of violations means that there is limited system of cassation in Polish proceedings (Gapska, 2013). Thus, only some violations are controlled by the court of cassation. At present the system is to check whether the decision is against the law.

4. The changes of the status of the Supreme Court in Poland

The current role and status of the Supreme Court makes its role very important for the unification of the jurisprudence. The main changes introduced by the new Act²⁷ in comparison to the 2002 Supreme Court Act relate primarily to the re-organization of the four existing Chambers of the Supreme Court²⁸ into five Chambers²⁹. This will notably include the establishment of two new chambers i.e., the Extraordinary Control and Public Affairs Chamber, which would also take over the “public affairs” jurisdiction of the former Labour Law, Social Security and Public Affairs Chamber and a new special Disciplinary Chamber. These two new chambers, and particularly the Disciplinary Chamber, possess several features which distinguish them from other Supreme Court chambers³⁰. According to the Article 26, the new Disciplinary Chamber within the Supreme Court will deal with disciplinary cases against Supreme Court judges and other legal professionals where this is provided by separate legislation, a responsibility already falling within the competence of the Supreme Court under the current system. As the Article 26 states, the jurisdiction of the Disciplinary Chamber shall include disciplinary cases against Supreme Court judges; disciplinary matters for which the Supreme Court is competent under separate statutes and complaints concerning overly lengthy proceedings before the Supreme Court.

However, the jurisdiction of the Supreme Court provided in Article 1 of the new Act remains largely the same as the existing jurisdiction prescribed in the 2002 Supreme Court Act currently in force, with two differences, as the introduction of so-called “extraordinary cassation complaints” and the narrowing down of the Supreme Court’s power to review draft legislation and provide opinions as the article 1 of the Draft Act and Article 1 of the 2002 Supreme Court Act states.

According to the article 25 of the new Act, the jurisdiction of the Extraordinary Control and Public Affairs Chamber shall include the hearing of

²⁷ The Act of 8 December (2017) on the Supreme Court, Journal of Laws (2018), Item 5.

²⁸ According to the Article 3 para 1 of the (2002) Supreme Court Act there are the Civil Chamber, Criminal Chamber, Labour Law, Social Security and Public Affairs Chamber and Military Chamber.

²⁹ According to the Article 3 par 1 of the Act of 8 December (2017) there will be the Civil Chamber, the Criminal Chamber (which will take over matters previously falling within the jurisdiction of the Military Chamber), the Labour Law and Social Security Chamber, the Extraordinary Control and Public Affairs Chamber and the Disciplinary Chamber.

³⁰ Opinion on certain provisions of the draft act on the Supreme Court of Poland (as of 26 September 2017), Warsaw, 13 November (2017), Opinion-Nr.: JUD-POL/315/2017 [AIC], <http://www.legislationline.org/>.

extraordinary complaints, hearing electoral protests and protests against the validity of national and constitutional referendums as well as ruling on the validity of elections and referendums, other matters of public law, including competition protection, energy, telecommunications and rail transport regulation cases and also cases where appeals against decisions by the President of the National Broadcasting Council have been lodged, appeals against resolutions of the National Council of the Judiciary and complaints concerning overly lengthy proceedings before common and military courts.

The new procedure introduces an additional form of appeal against final court decisions, including the Supreme Court's own decisions³¹, "where this is necessary to ensure the rule of law and social justice" (Article 86 par 1). According to the Explanatory Statement to the Act, this responds to emerging demands to restore a form of extraordinary revision that used to be in place but there is no explanation why this new procedure would be needed in addition to the usual appeal and cassation process by which lower court decisions may be challenged. There are some judgements and opinions of the European Court of Human Rights in which the Court stated, that "one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question"³², so the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law. The grounds of the extraordinary appeals stated in Article 86 par 1 are broad and it can be "rule of law" of the national and international levels for the purposes, for example, of assessing the degree of respect for the rule of law in any given country, it remains a multi-faceted and broad concept. According to the Article 86 par 3 of the new Act, an extraordinary complaint shall be lodged within five years after the contested judgment has become final. It is not permissible, however, to lodge an extraordinary complaint more than six months after the judgment becomes final or the cassation has been adjudicated, if this is to the detriment of a defendant in a criminal case. A range of specified public office-holders can submit extraordinary complaints as the General Public Prosecutor, who is also the Minister of Justice,⁵⁰ a group of 30 deputies or 20 Senators and the Commissioner for Human Rights will be entitled to bring an extraordinary complaint, as will, for cases falling within their jurisdictions, and certain other public-office holders³³ as the Ombudsperson for Children, the Patient's Ombudsperson, the Chair of the Polish Financial Supervision Authority, the Financial Ombudsperson and the President of the Office of the General

³¹ Article 91 pars 2-3 of the Act of 8 December (2017).

³² European Court of Human Rights (ECtHR), *Brumărescu v. Romania* (Application no. no. 28342/95, judgment of 28 October 1999), par 61, <http://hudoc.echr.coe.int/fre?i=001-58337>; and *Ryabykh v. Russia* (Application no. 52854/99, judgment of 24 July 2003), pars 51-52, <http://hudoc.echr.coe.int/eng?i=001-61261>.

³³ Article 86 para 2 of the Act of 8 December (2017).

Counsel to the Republic of Poland. The Explanatory Statement to the new Act specifies that the new procedure aims to protect the constitutional rights and freedoms of citizens against possible infringements by court judgments.

Conclusions

The role of the Supreme Court in Poland such as the control of legality and correctness of an issued ruling, and the examination of, above all the extraordinary means of appeal, which are: cassation complaints, complaints to declare a legally binding decision unlawful is very important. Especially nowadays the Supreme Court is the very important court to assure the obedience of the civil legal rules protecting democracy. The Supreme Court plays also the very important role explaining the character of legal norms. The complaint proceedings in the Supreme Court creates a mechanism within the framework of which the Supreme Court not only examines the matter but controls the 2nd instance court whether a decision by which the proceedings are terminated does not infringe the law, and in the case of finding such infringement, generally, it "cancels" such decision.

Therefore, the right to file a complaint to the Supreme Court cannot be absolute and cannot be deemed to be similar to the right to trial. In the case of decisions which do not terminate the proceedings (the secondary decisions) a complaint can be filed only when a provision expressly states so. The evolution of the character of the cassation complaint in Poland and the access to the Supreme Court has brought them closer to the standards adopted in other member states of the European Union. The transformation of the cassation complaint into an extraordinary appellate measure, as well as the previously existing limitations, are not inconsistent with the solutions proposed in the recommendations of the Committee of Ministers of the Council of Europe. The development of conditions of admissibility of cassation complaints, or selecting admissible complaints during the preliminary cassation acceptance procedure is also not an isolated phenomenon.

It is worth to emphasize that the new measure as “extraordinary appeal” and the wide scope of the Supreme Court’s “extraordinary appeals” jurisdiction and the mechanism by which it is to be exercised raise serious concerns as to their compatibility with key rule of law principles, in particular the principles of legal certainty and access to justice.

Bibliography

1. Bładowski B., (2006), *Zażalenie w postępowaniu cywilnym*, ("The complaint in civil proceedings") Kraków.
2. Błaszczak Ł., (2008), “Dopuszczalność skargi kasacyjnej w procesie cywilnym ze względu na wymagania formalne i konstrukcyjne”, cz. 1, [Admissibility of the cassation complaint in civil law proceedings on account of formal and structural requirements], part 1, *Radca Prawny* (3), 6-15.

3. Broniewicz W., (2001), "Istota i rodzaje zażalenia w postępowaniu cywilnym", ("The essence and types of complaints in civil proceedings"), *Przegląd Sądowy* (1), 19-23.
4. Ereciński T., (1994), "Kilka uwag o modelu kasacji w sprawach cywilnych" [Some remarks on the model of cassation in civil cases], *Studia Iuridica* (XXI), Z zagadnień współczesnego prawa cywilnego [From the issues of the modern civil law], 194.
5. Ereciński T., (1996), *Apelacja i kasacja w procesie cywilnym (według ustawy z 1 marca 1996 r.)*, ("The appeal and cassation in civil proceedings (pursuant to the act dated 1 March 1996)") Warszawa.
6. Ereciński T., (2012), "Komentarz do art. 394.1 k.p.c." ("The commentary to art. 394.1 of CPC [in:] *Kodeks postępowania cywilnego. Komentarz. Cz. 1, Postępowanie rozpoznawcze*, ("The civil proceedings code. The commentary. Part 1. The examination proceedings") vol. II, edit. T. Ereciński, Warszawa.
7. Ereciński T., (2011), "Rola Sądu Najwyższego w systemie sądów powszechnych", *IUSTITIA* (4), 179-181.
8. Gapska E., (2013), "Cassation Complaint in Polish Civil Rocedure", *Law and Forensic Science* (6), 79.
9. Góra – Błaszczkowska A., (2006), *Apelacja, zażalenie, wznowienie postępowania, skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia. Komentarz*, ("The appeal, complaint, reopening of the proceedings, complaint of declaration of a legally binding decision to be unlawful. The commentary") (2006).
10. Grzegorzczak P., (2012), "Środki zaskarżenia w postępowaniu cywilnym w świetle ustawy nowelizującej z 16 września 2011 r. – ogólna charakterystyka zmian", ("The appeal means in civil proceedings in the light of the amending act dated 16 September (2011) - general changes characteristics"), *Przegląd Sądowy* (4),.
11. Kolakowski K., (2006), "Komentarz do art. 394.1 k.p.c." ("The commentary to art. 394.1 of CPC") [in:] *Kodeks postępowania cywilnego. Komentarz do art. 1- 505.14* ("The civil proceedings code. The commentary to art. 1- 505.14 ") vol. I, editor. K. Piasecki, Warszawa.
12. Michalska M., (2001), "Warunki wniesienia kasacji", *Monitor Prawniczy* (21), 1073 – 1076.
13. Michalska M., (2003), *Legitymacja do wniesienia kasacji w postępowaniu cywilnym*, *Palestra* (5-6), 39 - 49.
14. Obrębski R., (1999), "Pojęcie postanowień kończących postępowanie w sprawach cywilnych", ("The notion of decisions concluding the proceedings in civil matters"), *Przegląd Sądowy* (11-12), 124-145.
15. Piasecki K., (2005), *Organizacja wymiaru sprawiedliwości w Polsce*, Kraków.
16. Sanetra W., (2004), *Rola i obowiązki polskiego Sądu Najwyższego w regulowaniu i administrowaniu władzą sądowniczą*, *Przegląd Sądowy* (3), s. 6-12.
17. Sanetra, (1999), *Sąd "Najwyższy w systemie wymiaru sprawiedliwości"*, *Przegląd Sądowy* (7-8), 6-11.
18. Studzińska J., (2015), *Zażalenie kasatoryjne i zakres jego rozpoznania* ("The complaint against the cassation judgement and the scope of its recognition") [w:] *Wokół problematyki środków zaskarżenia w postępowaniu cywilnym* („Around the appeal measurements in civil procedure”), rEd. M. Michalska – Marciniak, Sopot.
19. Wiśniewski T., (1996), *Apelacja i kasacja. Nowe środki odwoławcze w postępowaniu cywilnym*, ("The appeal and cassation. New means of appeal in civil proceedings") Warszawa.
20. Zembrzuski T., (2010), *Głos w dyskusji* ("The voice in the discussion") [in:] T. Ereciński, K. Weitz, *Orzecznictwo Trybunału Konstytucyjnego a kodeks postępowania cywilnego. Materiały Ogólnopolskiego Zjazdu Katedr i Zakładów Postępowania Cywilnego*, ("The Constitution Tribunal case-law and the Civil proceedings code. The

- materials from the annual gathering of the civil proceedings cathedras and departments") Serock next to Warszawa, 24-26 September 2009, Warszawa.
21. Zembrzusi T., (2011), *Skarga kasacyjna. Dostępność w postępowaniu cywilnym*, [Cassation complaint. The availability in civil proceedings], Warszawa.
 22. Zembrzusi T., (2013), *Charakter zażalenia* ("The character of the complaint") [in:] *System prawa procesowego cywilnego. Środki zaskarżenia*, ("The civil procedural law system. The means of appeal") editor. J. Gudowski, vol. III, part 1, Warszawa.
 23. Zembrzusi T., (2014), *Access to the Supreme Court*, http://colloquium2014.uw.edu.pl/wp-content/uploads/sites/21/2014/01/ZEMBRZUSKI_-Access-to-the-Supreme-Court_-Polish.pdf.
 24. Zieliński A. (in:) *Kodeks postępowania cywilnego, t. 1, Komentarz do artykułów 1-50514*, ("The civil proceedings code, vol. 1, The Commentary to art. 1-50514, editor A. Zieliński, Warszawa (2016).
 25. Zieliński A., (2001), "Sporządzanie kasacji cywilnej po nowelizacji KPC", *Monitor Prawniczy* (1), 10.