

An address of the First President of the Supreme Court of the Republic of Poland

I. General information on the Supreme Court

The Supreme Court of the Republic of Poland constitutes an essential and specific part of the judicial power in Poland. The judicial power is created by courts and tribunals, and the Constitution of the Republic of Poland includes the following in the definition of courts: the Supreme Court, common courts, administrative courts and military courts. Tribunals include: Constitutional Tribunal and State Tribunal. The Supreme Court exercises judicatory supervision over the judiciary of common courts (adjudicating in the areas of civil, family and tutelary law, labour and social insurance, criminal and disciplinary cases as well as in the areas of protection of competition and consumers, and some other public affairs) and over the judiciary of military courts.

Administrative courts (The Supreme Administrative Court and provincial courts) both in their organizational structure and adjudicating activity are independent of the Supreme Court.

The Constitutional Tribunal is also independent of the Supreme Court, however the Supreme Court has direct contacts with the tribunal (for instance, in relation to the exchange of information on judiciary) as well as formal relations in connection with questions asked by panels of the Supreme Court to the Constitutional Tribunal concerning the conformity of legal articles to be the basis of court adjudications with the norms of higher order, as well as in connection with exercising powers of the First President of the Supreme Court within the scope of putting forward various motions to the Constitutional Tribunal, i.e. motions allowed by the Constitution of the Republic of Poland.

The Supreme Court is responsible for providing the State Tribunal with proper conditions for functioning both in the organizational and financial sense. The First President of the Supreme Court is *ex officio* Chairman of the State Tribunal.

Apart from its fundamental activity related to exercising of the judiciary, the Supreme Court has specific competences, which include mainly the authority to examine protests related to elections to the Sejm, Senate, European Parliament and the office of the President of Poland,

as well as to state the validity of the elections, and the authority to examine protests related to all-Poland or constitutional referendums and to state the validity of such referendums. In the matters related to the aforementioned elections and referendum, the Supreme Court stays in touch with the National Election Commission.

The Supreme Court (in appropriate panels) is a disciplinary court of first and second instance for judges of the Supreme Court, and a disciplinary court of second instance for judges of common courts and judges of military courts.

The Supreme Court has its representatives in the composition of the National Judiciary Council, defined in the Constitution of the Republic of Poland as a body which guards the independence of courts and judges, and Council's powers include the exclusive right to put forward motions to the President of the Republic of Poland regarding the appointment of judges, with the exception of positions of judges of the Constitutional Tribunal and the State Tribunal.

The Supreme Court has the right to express opinions on drafts of normative acts (including those drawn up by entities being in the composition of the legislative and executive branches), and it is obligatory to submit to the Supreme Court for its approval drafts of such acts which influence the functioning and adjudication of courts.

Individual cases of cassation petitions, petitions against unlawful decisions, petitions against protraction of proceedings, and other legal remedies can be lodged to the Supreme Court by (apart from the parties acting through representatives in proceedings at law) prosecutors, sometimes only by Attorney General or Chief Military Attorney, Ombudsman (acting on their own initiative or upon the motion of the offices they are obliged to cooperate with, such as Children's Ombudsman, Insurance Ombudsman), the National Judiciary Council (in disciplinary cases concerning judges). Some individual cases can be lodged to the Supreme Court by "official entities" acting as parties in certain proceedings, such as disciplinary representatives, President of the Office of Competition and Consumer Protection, President of Energy Regulatory Office, President of the Office of Electronic Communications, President of Office of Rail Transport.

In the form of resolutions, the Supreme Court answers to legal questions asked by panels of the Supreme Court as well as common courts and military courts, which are relevant to specific cases suspended at these courts as the courts which examine means of review, i.e. questions concerning the interpretation of the law.

Upon the motion of the First President of the Supreme Court, Ombudsman, Attorney General as well as Insurance Ombudsman (within the scope of competence of the office), the Supreme Court decides in the form of resolutions the divergences emerging in the interpretation of the law in the jurisdiction of common courts, military courts and/or the Supreme Court.

II. General information on basic legal remedies brought to the Supreme Court

A. Proceedings related to cassation petitions or final appeals (in the Civil Chamber and the Chamber of Labour and Social Insurances) are regulated by the Code of Civil Procedure and those related to cassation petitions or final appeals (in the Criminal Chamber and the Military Chamber) are regulated by the Code of Criminal Procedure. Apart from significant similarities, both procedures are marked by certain differences. Neither of them stipulates the possibility of own hearing of evidence by the Supreme Court. In principle, these are written procedures. The proceedings resulting from this kind of remedies are two-stage proceedings. Cassation petitions, to which the Code of Civil Procedure applies, are lodged through the court of second instance, which carries out preliminary proceedings concerning their admissibility solely in respect of form. Subsequently, the proceedings are carried out at the Supreme Court, which re-examines the plaint in respect of form and assesses the grounds for accepting it for trial by the Supreme Court (selection of cassation petitions). The cassation petition is examined at the sitting in camera. As an exception, the Supreme Court tries the petition in open court if there is a legal issue in the case and the petitioner applied for trial proceedings, or when the Supreme Court regards it necessary. The cassation petitions to which the Code of Criminal Procedure applies, are lodged through the president of court of appeals, who examines their admissibility in respect of form. This does not apply to cassation petitions lodged by the Attorney General or the Ombudsman, who refer them directly to the Supreme Court. All cassation petitions are also examined in respect of form by the Supreme Court, which leaves them without adjudication in the event of stating their inadmissibility. With no formal obstacles, the petition of cassation of judgment is referred to adjudication at hearing, while the petition of cassation of decision is referred to adjudication at sitting.

However, regardless of whether the cassation petition was lodged against a judgment or decision, in the event of establishing manifest legitimacy or manifest groundlessness of the cassation petition during preliminary proceedings at the Supreme Court, such a petition can be adjudicated at the sitting without the participation of parties.

B. Proceedings related to petitions for ascertainment of unlawfulness of a valid court decision (stipulated in the Code of Civil Procedure). The aforementioned notes on cassation petitions are also applicable here, with the exception that explanatory proceedings relating to the emergence of damage resulting from the court judgment being the subject of the petition can be carried through at the Supreme Court.

C. Proceedings related to petitions against the protraction of court proceedings (stipulated in the Act of 17 June 2004 on the petition against infringement of the right of a petitioner to have the case examined in court proceedings without unreasonable delay – Journal of Laws of 2004, No. 179, position 1843 as amended – with additional application of the Code of Civil Procedure or the Code of Criminal Procedure, depending on the kind of proceedings the petition concerns). Such petitions are lodged through the court (president of the court) whose sluggishness is the subject of the petition. The court (president of the court) does not examine the admissibility of the petition. It is obliged to immediately refer the petition to a superior court together with the case files and a possible reply to the petition. The Supreme Court assesses the admissibility and possible validity of this type of petition if it concerns sluggishness of proceedings at the Supreme Court, a court of appeals or a district military court. If the Supreme Court ascertains sluggishness of court proceedings, it indicates the deadline until which the case should be settled as well as it can award an amount of up to PLN 10,000.00 for the petitioner whose petition was considered.

III. The mechanism of filtering (selection) of cases referred to the Supreme Court where the Code of Civil Procedure applies, and deciding in such cases

In the cases to which the Code of Civil Procedure applies, only valid judgments or decisions (passed in legal proceedings) concerning a dismissal of a suit or discontinuance of legal proceedings adjudged by a court of second instance as well as some decisions concerning the substance of a case adjudged by a court of second instance in non-litigious proceedings are subject to the procedure of cassation petition. This procedure does not embrace decisions of

the court of second instance to remand the case to the court of first instance for re-examination as the decisions do not close the proceedings in the case. Additionally, legal articles stipulate limitations on account of the subject matter of the case (*ratione materiae*) and on account of the value of the subject of petition (*ratione valoris*).

The cassation petition is allowed for examination by the Supreme Court on the condition that the petitioner proves the existence of at least one out of four circumstances listed in the article 398⁽⁸⁾ of the Code of Civil Procedure, which are as follows:

- a) the case includes a substantial legal issue,
- b) there is a need for interpretation of legal articles which are seriously questionable or which cause divergences in the judicature of courts,
- c) nullity of legal proceedings occurs (circumstances listed enumeratively in article 379 of the Code of Civil Procedure),
- d) the cassation petition is clearly legitimate and justified (in the context of acceptable objections, that is breach of substantive law through its incorrect interpretation or wrong application, or breach of regulations of proceedings if this inadvertence could affect the result of the case; at the same time, the objection of breach of regulations of proceedings cannot concern the establishment of facts or weighing up the evidence).

Failure to prove the right number is a basis to decline the cassation petition (petition against unlawful decision)

In the cases to which the Code of Civil Procedure applies, the examination of circumstances justifying the acceptance of cassation petition for adjudication takes place at the Supreme Court. The decline to accept the cassation petition (petition against unlawful decision of the court) for the reasons listed in the aforementioned article 398⁽⁸⁾ of the Code of Civil Procedure, is decided by one judge during a sitting *in camera*. Today, it is assumed that a decision to decline the acceptance of cassation petition for adjudication should include reasons.

The court which transmits the cassation petition examines the petition only in respect of form (for instance, keeping the deadline, drawing up by an authorized entity), whether the petition includes appropriate objections relevant to cassation as well as an application for acceptance for adjudication. Reasons examined by the court which transmits the cassation petition can become a basis for declining the cassation petition by this court or the Supreme Court.

The scope of decisions which are subject to appeal within the procedure of petition against unlawfulness of a valid court decision is broader than the scope of decisions subject to appeal within the procedure of cassation procedure. (The subject of such a petition can also be for instance valid decisions of the court of first instance upon fulfilling additional requirements, and in practice after establishing that certain infringements of law are at the same time infringements of the Constitution.) Apart from requirements similar to those which are to be met in the cassation petition, the petition against unlawfulness of a valid court decision should also meet other specific requirements (for instance, damage done to the petitioner as a result of adjudging a decision being the subject of the petition should be made believable). This kind of petition is not used against decisions which can be (or ..., with certain exceptions ... could have been) reversed or altered by means of existing legal remedies, as well as against decisions against which the cassation petition was lodged, and against decisions of the Supreme Court.

The cassation petition (and so the petition for ascertainment of unlawfulness of a valid decision) cannot be based on the objection of defectiveness of fact establishment or erroneous appraisal of evidence performed by the court whose decision is the subject of the petition.

In accordance with the Code of Civil Procedure, the cassation petition (the petition for ascertainment of unlawfulness of a valid decision) which was not declined, is examined on its merits, in principle within the limits of the petition.

It is a general rule that allowing of the cassation petition leads to the reversal of the appealed decision in part or in full and to remand the case for re-examination at an appropriate court.

In the cases to which the Code of Civil Procedure applies, at the request of the petitioner the Supreme Court can decide on the merits (without remanding the case for re-examination) in the event of consideration of the objection of breach of substantive law (when the objection turned out to be evident), and at the same time there were no objections as to the breach of proceedings provisions or they were presented but turned out to be groundless.

IV. The mechanism of filtering (selection) of cases referred to the Supreme Court where the Code of Criminal Procedure applies, and deciding in such cases

In the cases to which the Code of Criminal Procedure applies, only valid judgments of courts of appeals are subject to the procedure of cassation petition unless the cassation petition is lodged by the Attorney General (Chief Military Attorney) or the Ombudsman. The object of cassation petitions lodged by these bodies can also be valid judgements of the court of first instance. Additionally, depending on the petitioning body and the type of objections, there are some other limitations, which are described below.

As far as cases examined in the rigour of the Code of Criminal Procedure are concerned, a cassation can be filed only due to infringements listed in article 439 of the Code of Criminal Procedure (prerequisites of nullity of legal proceedings) or due to some other infringements than those listed in this article, as long as these other infringements had features of flagrant breach of law, and at the same time could have had a significant effect on the contents of judgment. Cassation cannot be filed only because of the incommensurability of punishment.

Additionally, article 523 § 2 through § 4 of the Code of Criminal Procedure provides that:

§ 2. A cassation for the benefit of the accused can be filed solely in the event of sentencing the accused to deprivation of liberty without conditional suspension for fiscal offence.

§ 3. A cassation to the injury of the accused can be filed solely in the event of acquittal of the accused or discontinuance of proceedings for the reasons described in article 17 § 1 items 3 and 4 (that is in connection with discontinuance of proceedings due to insignificant social danger, when the act provides that the perpetrator is not liable to penalty) and due to insanity of the perpetrator,

§ 4. Limitations provided in § 2 and 3 do not concern the cassation:

- 1) filed due to violations described in article 439,
- 2) in the event defined in article 521, (that is when the cassation is filed by the Ombudsman or Attorney General (Chief Military Attorney)).

In the cases to which the Code of Criminal Procedure applies, the president of court to which the cassation was filed declines its acceptance if it does not meet requirements demanded from pleadings, if it was filed by an unauthorized person or after the time limit, or was based on legal grounds not stipulated in the act.

In the cases to which the Code of Criminal Procedure applies, a refusal of acceptance of the cassation for examination is decided in the form of disposition of the president of the court which intermediates in referring of the cassation petition, and after handling over the case files to the Supreme Court, the refusal is decided by this court.

All cassation petitions are subject to the selection procedure regardless of the type of case or the body which files them.

In accordance with the Code of Criminal Procedure, the cassation petition which was not declined, is examined on its merits.

It is a general rule that there is no separate or additional hearing of evidence at the Supreme Court. This rule is not applicable in disciplinary proceedings where the Supreme Court acts as a court of first or second instance, as well as in cases examined at the Supreme Court – the Military Chamber in the proceedings where the Chamber acts as a court of second instance against judgments of district military courts.

This rule is not applicable in other cases where as a result of juridical question of the court of appeals, the Supreme Court assumes the case for examination in its own scope.

In the cases where there is no prohibition to carry out *its own* hearing by the Supreme Court, the Supreme Court, relying on factual findings which formed the basis of the decision of the court of appeals (or also a court of first instance), has still the right (in principle, within the limits of the appeal) to indicate the qualified defectiveness of proceedings or significant *gaps* in hearing of evidence, and – while overruling the judgment of the court of appeals or judgments of courts of both instances – indicate the necessity to institute supplementary proceedings or new proceedings (in the event of nullity of proceedings) in order to establish facts which are essential for deciding in a given case.

It is a general rule that allowing of the cassation petition leads to the reversal of the appealed decision in part or in full and to remand the case for re-examination at an appropriate court.

In the cases to which the Code of Criminal Procedure applies, the Supreme Court can decide on the merits, acquitting the condemned person (if the condemnation turned out to be

evidently wrong) or discontinuing the proceedings (if there were obstacles to the continuation of proceedings).

These rules are also applicable in other cases which are not related to the examining of cassations.

V. Selected statistical data

In 2006, 8,883 cases (in 2005 – 9,334), in that 1,034 cassation petitions and cassations (in 2005 – 6,505) came in to the Supreme Court. The majority of cassation petitions (cassations) was lodged into the Civil Chamber – 2,490 (in 2005 – 3,024), to the Criminal Chamber – 1,865 (in 2005 – 1,837), to the Labour, Social Insurance and Public Affairs (in 2005 – 1,617), and to the Military Chamber – 34 (in 2005 – 27). The above data show that there was a decrease in the number of cassation petitions lodged to the Civil Chamber, while there was a slight increase in the number of this kind of legal remedies for the remaining chambers.

In 2006, the Supreme Court examined 9,144 cases (in 2005 – 10,106), in that 6,313 cassation petitions and cassations (in 2005 – 7,158) and 1,128 complaints (in 2005 – 1,512). The remaining number of settled matters is formed by: legal issues (248), appeals from decisions of district military courts (39), petitions for ascertainment of unlawfulness of a valid decision (695) and others, including cases related to the competition and consumer protection, complaints about protraction of proceedings, petitions for revival of proceedings, petitions for referring the case to another court, petitions for pardon.