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The concept of an objection against the cassation decision of the appeal body. Direction in which this concept evolves

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Abstract

As of 1 June 2021, four years have passed since the institution of objections to the cassation decision of the administrative appeal body was introduced into the proceedings before administrative courts. The new formula for the review of cassation decisions has been raising concerns from the very beginning. This article examines whether these concerns remain valid after the regulation has been in force for four years and whether the institution of objection has met the expectations placed in it by the legislator. The analysis covers three main *differentia specifica* of the objection institution, i.e. the limited group of participants in the proceedings, the limited scope of judicial review of cassation decisions and the limited application of the principle of two-instance court proceedings.

Keywords: objection, cassation decision, two-instance decision, right to access to court, speed of proceedings, efficiency of proceedings

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Instytucja sprzeciwu od decyzji kasatoryjnej organu odwoławczego. Kierunek rozwoju regulacji

Streszczenie

1 czerwca 2021 r. minęły cztery lata od wprowadzenia do postępowania przed sądami administracyjnymi instytucji sprzeciwu od decyzji kasatoryjnej organu odwoławczego. Nowa formuła kontroli decyzji kasatoryjnych budziła od samego początku wątpliwości. W tym artykule rozważono, czy wątpliwości pozostają aktualne po czterech latach obowiązywania regulacji i czy instytucja sprzeciwu spełniła oczekiwania pokładane w niej przez ustawodawcę. Rozważania obejmują trzy główne *differentia specifica* instytucji sprzeciwu, tj. ograniczony krąg uczestników postępowania, ograniczone granice kontroli sądowej decyzji kasatoryjnej oraz ograniczone zastosowanie zasady dwuinstancyjności postępowania sądowego.

Słowa kluczowe: sprzeciw, decyzja kasatoryjna, decyzja kasacyjna, dwuinstancyjność, prawo do sądu, szybkość postępowania, sprawność postępowania

1. Preliminary notes

On 1 June 2021, four years have passed since the institution of objection to the cassation decision of the appeal body was introduced into the proceedings before administrative courts[3], i.e. decision issued on the basis of Article 138(2) of the Polish Code of Administrative Procedure in which the appeal body repeals the decision in its entirety and refers the case for rehearing to the first instance authority (referred to in literature as the 'cassation decision'). The objection has become a means of challenge separate from a complaint, intended only for cassation decisions. In the case of other decisions of the appeal body, a complaint remains an appropriate means of challenge.

The purposes of the changes was to limit the issue of cassation decisions by appeal bodies and to ensure faster and more efficient mode of judicial review of these decisions[4]. The new formula for the review of cassation decisions has been raising concerns from the very beginning[5].

This article examines whether these concerns remain valid after the regulation has been in force for four years and whether the institution of objection has met the expectations placed in it by the legislator.

While assessing the effects of the regulation, the authors has focused primarily on cases from the scope of real properties. First of all, in these cases the phenomenon of excessive and unjustified issue of cassation decisions was particularly noticeable. Secondly, the importance of the institution of objection for cases concerning real properties is confirmed by current statistics. The vast majority of proceedings based on objections concern cases from the scope of real properties[6].

The consideration covers three main *differentia specifica* institutions of objection. Within each of the three areas the authors consider whether the changes have brought the desired effects and whether the legislator should take into account further modifications of the discussed regulation.

First of all, the reasonableness of changes has been considered on the subjective level, as in the proceedings initiated as a result of an objection the circle of participants in the proceedings was limited in relation to the general rules applicable in the proceedings initiated as a result of a complaint. These changes

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3 On 1 June 2017, the Polish Act of 7 April 2017 amending the Code of Administrative Procedure and certain other acts entered into force (Journal of Laws of 2017, item 935). This Act introduced into the Polish Act on proceedings before administrative courts (Journal of Laws of 2019, item 2325; hereinafter referred to as the Act on proceedings before administrative courts) the institution of objection to a decision issued on the basis of Article 138(2) of the Polish Act of 14 June 1960 – the Code of Administrative Procedure (Journal of Laws of 2021, item 735; hereinafter referred to as the Code of Administrative Procedure). In Part III of the Act on proceedings before administrative courts, Chapter 3a *Objection to a decision* was added.

4 Compare the justification of the government draft act amending the Code of Administrative Procedure and certain other acts of 28 December 2016, paper no. 1183 (8th term Sejm).

5 Compare W. Kręcisz, *Institution of Objection to the Cassation Decision Issued on the Basis of Article 138(2) of the Polish Code of Administrative Procedure – Critical Reflections,* 'Scientific Journals of Administrative Courts' (Zeszyty Naukowe Sądownictwa Administracyjnego) 2019, no. 3, p. 26-42; compare M.J. Czubkowska, J. Siemieniako, *Objection as a Way to Reduce the Number of Cassation Decisions,* 'Scientific Journals of Administrative Courts' (Zeszyty Naukowe Sądownictwa Administracyjnego) 2018, no. 4, p. 50-71; compare also the views of the doctrine referred to therein.

6 On the basis of own analysis of judgements of provincial administrative courts placed in the Central Database of Administrative Court Judgements. For the verification 50 random judgements from 2019 and 2020 were selected. 44 from the analysed judgements concerned cases related to real properties (including also cases from the scope of spatial development and construction law).

have been raising controversies since the very beginning[7]. Critical comments were in particular expressed on the basis of examples of cases in which parties having adverse interests participate (which is characteristic for cases connected with real properties). In these cases the limitation of the circle of participants in the proceedings initiated as a result of an objection may lead to a situation in which only one of two parties having adverse interests is the participant in the proceedings initiated as a result of an objection. This issue is discussed in detail in point 2. below.

Secondly, the reasonableness of changes on the subjective level in the form of limiting the scope of judicial review of cassation decisions was considered. According to the legislator's intention, the judicial review was to be targeted and limited to the verification whether the administration authority correctly determined premises for repealing the decision and referring the case for rehearing to the first instance authority. In cases resulting from an objection, the full examination of legality of the administrative proceedings was excluded. However, in practice of issuing rulings serious doubts concerning the line of review of cassation decisions have arisen. This issue is expressed in the following question – as the administrative court examines only the correctness of issuing the cassation decision, is the judicial review limited to the verification of premises from Article 138(2) of the Code of Administrative Procedure or should it concern all circumstances related to the issue of such a decision, including the review of the provisions of substantive law? This issue is discussed in detail in point 3. below.

Thirdly, references were made to the legislator's decision concerning the limitation of the principle of two-instance proceedings initiated as a result of an objection. In the case of this mode, the right to lodge a cassation complaint is applicable only in the situation of repealing the objection by a provincial administrative court. The judgement upholding the objection cannot be challenged. This regulation introduces a significant disproportion of procedural rights in cases in which parties having adverse interests participate. This issue is discussed in detail in point 4. below.

As an off-side remark it should be noted that the legislator has introduced a number of changes of a formal and organisational nature, in the form of e.g. shortening deadlines for performing individual activities by the parties and the administrative court. Changes concerning the parties, such as shortening the deadline for lodging this means of challenge to fourteen days (compare Article 64c(1) of the Act on proceedings before administrative courts), in comparison with thirty days in the case of a complaint (compare Article 53(1) of the Act on proceedings before administrative courts), were of insignificant importance for improving the efficiency of judicial review of cassation decisions. The introduction of the deadline of thirty days for examining the objection by the court from the date of receipt of the objection to the decision as well as the introduction of the default procedure for examining the objection at a closed-door session in practice were of a much greater importance (compare Article 64d(1) of the Act on proceedings before administrative courts). Although the deadline is not mandatory, it results from the authors' observations that cases resulting from an objection are examined much faster than cases

[7] Compare MJ. Czubkowska, J. Siemieniako, *op.cit.,* p. 50-71; compare also the views of the doctrine referred to therein.

resulting from complaints.

2. Subjective scope of proceedings initiated as a result of an objection

Pursuant to the principle expressed in Article 33 of the Act on proceedings before administrative courts, each person may participate in the proceedings initiated as a result of a complaint if the result of the proceedings concerns their legal interest. It also concerns individuals who participated in the administrative proceedings, but did not lodge the complaint (on the basis of Article 33(1) of the Act on proceedings before administrative courts they are participants of the proceedings as parties by virtue of law), as well as those that did not participate in the administrative proceedings (they are admitted to participate in the proceedings on the basis of a court decision pursuant to Article 33(2) of the Act on proceedings before administrative courts). This regulation constitutes an important procedural guarantee that if the result of the proceedings concerns a given person's legal interest, this person has the right to participate in the proceedings and to defend their rights.

This principle has not been repeated in the case of proceedings initiated as a result of an objection. In proceedings initiated as a result of an objection to the cassation decision, the provision of Article 33 of the Act on proceedings before administrative courts does not apply, which is stipulated directly in Article 64b(3) of the Act on proceedings before administrative courts. It means that the circle of parties to the proceedings initiated as a result of an objection is limited to the appellant (party lodging the objection) and the second instance authority which issued the decision on the basis of Article 138(2) of the Code of Administrative Procedure. Therefore, in cases in which several parties participated in the administrative proceedings, a party to the proceedings initiated as a result of an objection will be only this party that will lodge the objection. This solution raises controversies particularly in cases in which parties having adverse interests participate[8]. Pursuant to this solution, a party to the proceedings initiated as a result of an objection does not have to be a person at whose motion the reviewed administrative proceedings were pending. For example, a party to the proceedings initiated as a result of an objection will not be an investor requesting the issue of a decision on the building permit if the objection to the cassation decision is lodged by the owner of the real property located within the planned facility impact zone; also a party will not be an entity entitled to compensation for expropriation if the cassation decision is contested by the entity obliged to pay it.

The legislator did not consider as necessary that all parties to the administrative proceedings should participate in the proceedings initiated as a result of an objection, assuming that '[in] the proceedings initiated as a result of an objection the court assesses only whether Article 138(2) of the Code of Administrative Procedure was violated. It will not rule on rights or obligations of the parties, but it will only assess the fulfilment in the case of formal conditions for the issue of a cassation decision'[9]. Although the objection is not a measure aimed at

[8] Compare MJ. Czubkowska, J. Siemieniako, *op.cit.,* p. 50-71; compare also the views of the doctrine referred to therein.

[9] Compare the justification of the government draft act amending the Code of Administrative Procedure and certain other acts

the substantive and legal review of a decision (discussed in detail in point 3. below), in the authors' opinion the limitation of the circle of parties to the proceedings initiated as a result of an objection is not sufficiently substantiated.

Firstly, the fact that the court in the proceedings initiated as a result of an objection does not review fully the legality of the administrative proceedings does not mean that the judgement of the court in the proceedings initiated as a result of an objection does not affect the party to the administrative proceedings not participating in the court proceedings. According to the authors, the statement of the court as to the cassation decision affects at least indirectly each party to the administrative proceedings, while in some cases such a statement may directly – contrary to the legislator's assumptions – 'rule on rights or obligations of the parties'[10]. In cases in which parties having adverse interests participate, the cassation decision will be usually in favour of only one of the parties. The natural consequence of this situation is that one of the parties will strive to eliminate the decision from legal circulation, and the other party will strive to 'maintain it in force'. The disproportion of procedural rights is expressed by the fact that the party dissatisfied with the cassation decision may lodge an objection to it, and if the objection is repealed, it may lodge a cassation complaint. The party satisfied with such a decision does not participate by virtue of law in the proceedings initiated as a result of an objection, does not take a position in them and has no possibility to appeal to the Supreme Administrative Court against the judgement of the provincial administrative court upholding the objection. At the same time, a final judgement of the court issued in the case resulting from an objection will be binding in relation to the administrative proceedings. In accordance with the provision of Article 170 of the Act on proceedings before administrative courts, the judgement will be binding not only for the parties and the court which has issued it, but also for other courts and state authorities, and in cases provided for in the Act also for other individuals.

Secondly, even if one accepts that the proceedings initiated as a result of an objection has been carried out in such a way as not to violate rights of individuals not participating in them, the party to the administrative proceedings interested in the repeal of the objection (maintenance in force of the cassation decision) should be able to participate in the court proceedings at least in order to be able to check whether the line of review is maintained[11]. In current conditions, the party not lodging the objection not only does not participate in the proceedings initiated as a result of an objection, but also they have legally and actually limited access to information about these proceedings. The party not lodging the objection is not informed about its submission, does not receive the objection and their possibility to become acquainted with the content of the objection is hindered (the party to the administrative proceedings that has not lodged the objection has access to court

of 28 December 2016, paper no. 1183 (8th term Sejm).

10 For example, such a situation can take place in the proceedings concerning compensation for expropriation if the reason for issuing the cassation decision is the establishment of incorrect determination of the compensation amount. In such a case, the court in the proceedings initiated as a result of an objection will assess whether the appeal body has concluded properly that the compensation was determined incorrectly. This assessment will have a decisive impact on the compensation amount.

11 It was possible to find in the case law examples when the line of review was exceeded to the detriment of the person statutorily deprived of the right to participate in the court proceedings (compare e.g. judgement of the Provincial Administrative Court in Białystok of 15 December 2017, II SA/Bk 719/17).

files only under the rules applicable to third parties).

In practical terms, the party that has not lodged the objection (and it may be even the originator) is excluded from part of the process leading to the resolution of a given administrative case. The period of exclusion depends on the period of the objection examination by the provincial administrative court, and in the case of a cassation decision, also by the Supreme Administrative Court. The practice shows that this period may in total exceed one year.

Thirdly, just at the system level there are doubts as to the reasonableness of introducing the changes which are to facilitate the proceedings at the expense of the limitation of the individual's right to access to court. This issue due to its complex nature should be discussed in a separate study. Certainly, however, if the legislator has chosen such a solution, the benefits in the form of facilitating the proceedings must be adequate and proportionate to any reduction of other system values. In the case of the institution of objection, we may speak about a probable violation of the indicated proportion. In the authors' opinion, the limitation of the circle of parties does not have a significant impact on the efficiency of proceedings initiated as a result of an objection. As a rule, they are written proceedings (the court examines the objection to the decision at a closed-door session (compare Article 64d(1) and Article 182(2a) of the Act on proceedings before administrative courts), and therefore the participation of more parties would cause in the majority of cases only the extension of the proceedings by the time necessary to take position in the case (submit the answer to the objection). At the same time, the extension of the circle of individuals entitled to participate in the proceedings initiated as a result of an objection does not pose a 'risk of extending' the court proceedings by the proceedings before the Supreme Administrative Court. The legislator has included the possibility to lodge a cassation complaint against the judgement upholding the objection (compare Article 151a(3) in connection with Article 151a(1) of the Act on proceedings before administrative courts). Therefore, the party that would participate in the written court proceedings and submit only their position against the repeal of the cassation decision could not lodge a cassation complaint and 'extend' the proceedings if the provincial administrative court upheld the objection and repealed the cassation decision. Of course, there may be cases in which the necessity to deliver the objection to all participants in the administrative proceedings may cause a delay. However, it does not seem that (single) problems with the delivery could constitute a valid basis for limiting the right to participate in the proceedings.

Therefore, it is questionable whether the current regulation of the proceedings initiated as a result of an objection does not limit values protected by the Constitution, such as the right of an individual to access to court or the principle of equality before the law.

In the authors' assessment, the strict limitation of the circle of participants in the proceedings caused by an objection to the appellant and the second instance authority is too far-reaching and is not sufficiently substantiated in the postulate concerning the efficiency of the court proceedings. At least those individuals who have taken part in the administrative proceedings and in whose interest the maintenance in force of the cassation decision is, i.e entities referred to in Article

33(1) of the Act on proceedings before administrative courts, should be given a legal opportunity to participate in the proceedings initiated as a result of an objection. For the purposes of the efficiency of the court proceedings, the right to take the position in the proceedings initiated as a result of an objection (i.e. to submit the answer to the objection) may be limited by a final date. Such a solution in the scope of determining the parties to the proceedings initiated as a result of an objection should allay the doubts as to the compliance of the regulation with the basic act.

3. Objective scope of judicial review in proceedings initiated as a result of an objection

As already mentioned above, according to the legislator's intention the proceedings initiated as a result of an objection are proceedings 'of an incidental nature, whose object is limited to formal issues'[12]. While forming the institution of objection, the legislator drew on the institution of complaint lodged with the Supreme Court – as indicated in the justification of the draft act introducing the institution of objection to the Act on proceeding before administrative court (compare Article 394^1(5) of the Polish Act of 17 November 1964 – the Code of Civil Procedure, Journal of Laws of 2020, item 1575). As indicated, 'the objection will not be a legal measure aimed at reviewing the substantive and legal basis of a decision or the correctness of the application by the second instance authority of the provisions of procedural law not connected with cassation grounds. The objection will be targeted at repealing the decision and referring the case for rehearing'. These intentions were expressed in the provision of Article 64d of the Act on proceedings before administrative courts, pursuant to which 'while examining the objection against a decision, the court only assesses the existence of premises for issuing the decision referred to in Article 138(2) of the Polish Act of 14 June 1960 – the Code of Administrative Procedure'.

However, in the case law and the doctrine doubts have arisen as to whether the judicial review should be limited the verification of premises from Article 138(2) of the Code of Administrative Procedure or whether it should concern all circumstances related of the issue of such a decision, including the review of the provisions of substantive law.[13].

Pursuant to the first of the views, the objection cannot serve the purpose of reviewing the substantive and legal basis of a decision or the correctness of the application by the second instance authority of the provisions of procedural law not

12 Compare the justification of the government draft act amending the Code of Administrative Procedure and certain other acts of 28 December 2016, paper no. 1183 (8th term Sejm).

13 Example illustrating the above issue. In the case concerning compensation for expropriation of a real property, the first instance authority determines the compensation. According to the person entitled to the compensation, it was determined in an incorrect amount. According to the other party to the proceedings obliged to pay the compensation, the compensation is not due as a rule. The appeal body issues a cassation decision, considering that the first instance authority should determine again the amount of the compensation. The party obliged to pay it lodges an appeal, stating that the cassation decision is incorrect as the decision of the first instance authority should have been repealed and the merits of the case should have been decided (the payment of the compensation should have been rejected). In such a situation, a question should be asked whether the court may examine the correctness of the cassation decision also through the prism of the provisions of substantive law (i.e. whether the compensation is due as a rule), or whether it should only assess if the appeal body has correctly considered that the compensation was determined in an incorrect manner and that this defect cannot be remedied at the stage of the appeal proceedings.

connected with cassation grounds[14]. The objection is a measure targeted only at premises for the repeal of the cassation decision, and the review performed by the administrative court within this measure is of a formal nature, limited to the determination whether the premises for the issue of the cassation decision were fulfilled in the case. Therefore, in the proceedings initiated as a result of an objection the only essential matter is to examine whether the premises for the issue of the cassation decision referred to in Article 138(2) of the Code of Administrative Procedure were fulfilled – i.e. whether (I) the decision of the first instance authority was issued with a violation of the provisions of the proceedings and whether (II) the scope of the case which must be explained has a significant impact on its resolution[15]. This review is based on the assumption that the cassation decision does not shape the substantive and legal relationship (the case is referred for rehearing), therefore the court should not take a position in this scope (the court does not have the power to refer to the merits of the case and judge it since as a result of the repeal of the decision of the first instance authority the case is referred back to this authority for re-examining).

In accordance with the other view, the administrative court should examine all premises for the issue of the cassation decision, not only the premises indicated in Article 138(2) of the Code of Administrative Procedure[16]. According to the supporters of this concept, as the legislator in Article 64e of the Act on proceedings before administrative courts indicates that the court examines premises for the issue of the decision under Article 138(2) of the Code of Administrative Procedure, it is unjustified to limit this review only to premises from Article 138(2) of the Code of Administrative Procedure, but the review should also concern all premises (circumstances) connected with the issue of such a decision, including the review of the provisions of substantive law in a given case[17]. This view was also presented by the Supreme Administrative Court[18]. However, in the case law this opinion is not frequent.

The justification of this view points out the close relationship between substantive law and the assessment of the correctness of the cassation decision. This opinion is correct in the sense that as a rule without previous review of the application of the substantive law it is impossible to assess whether the explanatory proceedings were conducted in an exhaustive manner or whether they require supplementation in the scope affecting the resolution of the case. Therefore, from the point of view of the efficiency of the proceedings it may appear that performing the assessment of the application in the case of the substantive law is more appropriate than limiting only to the formal review from the point of view of premises from Article 138(2) of the Code of Administrative Procedure. Against the background of the above example

14 Similarly e.g. the Supreme Administrative Court in judgement of 23 January 2020, II OSK 3847/19; in judgement of 2 December 2020, II OSK 2789/20; in judgement of 5 November 2019, II OSK 3238/19 and the Provincial Administrative Court in Kraków in judgement of 24 February 2020, II SA/Kr 90/20.

15 Similarly e.g. the Supreme Administrative Court in: judgement of 15 January 2019, I OSK 4292/18; judgement of 16 March 2018, II OSK 548/18, judgement of 27 August 2018, II OSK 2226/18; judgement of 10 May 2018, II OSK 1030/18.

16 R. Hauser, M. Wierzbowski (ed.), *Polish Act on Proceedings before Administrative Courts. Commentary.* 7th edition, Warsaw 2021, commentary to Article 64e of the Act on proceedings before administrative courts.

17 *Ibidem.*

18 Compare e.g. judgements of the Supreme Administrative Court: of 22 January 2020, I GSK 2234/19; of 13 February 2019, II OSK 132/19; of 26 November 2019, II OSK 3311/19.

from the case for compensation for expropriation, it should be stated that in order to ensure the efficiency of the proceedings the court within the proceedings initiated as a result of an objection should assess whether the compensation is due as a rule. As if in the court's opinion the compensation was not due, referring the case for rehearing and determining again the amount of compensation would be purposeless.

In the authors' assessment, although the application of the second discussed view may be justified in some cases by pragmatic reasons, this view seems to be contrary to the essence of the institution of objection.

First of all, extending the limits of review of the cassation decision results in the increase in the risk of violating the right of the party to the administrative proceedings that does not participate in the court proceedings initiated as a result of an objection. Therefore, the performance of any substantive assessments and imposing them on such a party for the future (Article 153 of the Act on proceedings before administrative courts) would constitute a violation of their right to access to court (Article 45(1) of the Constitution) and international standards connected with the functioning of the state under the rule of law.

Secondly, although currently an opinion prevails that the objective limits of the proceedings initiated as a result of an objection are determined by inviolable interests of the party that does not participate in the proceedings[19], even if the catalogue of individuals entitled to participate in the proceedings initiated as a result of an objection was extended – which is advocated by the authors of this article – the review of cassation decisions still should be limited to the assessment of the fulfilment of premises indicated in the provision of Article 138(2) of the Code of Administrative Procedure.

If the limits of the proceedings initiated as a result of an objection were extended, a question about the reasonableness of this institution, due to its nature almost identical with the institution of complaint, should be asked. It the possibility of judicial review in the scope affecting directly the rights and obligations of the parties is accepted, it should be also necessary to introduce procedural guarantees similarly as in the case of a complaint, concerning e.g. examining the case by three judges, after the trial, with full rights to instance review of the judgement of the provincial administrative court. In such a case, differences between the objection and the complaint would be illusory.

And thirdly, the *ratio legis* of the institution of objection was expressed in the introduction of a simplified formal procedure within which the court only assesses the fulfilment in the case of formal conditions for the issue of the cassation decision. According to the legislator's assumption, the objection was not to be a measure aimed at reviewing the substantive and legal basis of a decision or the correctness of the application by the second instance authority of the provisions of procedural law not connected with cassation grounds. Although in single cases such a formal review may not lead to the acceleration of the resolution of the entire administrative case, in the majority of cases the review limited to premises from Article 138(2) of

[19] Compare e.g. judgement of the Supreme Administrative Court of 23 April 2020, II OSK 775/19, and judgement of 5 November 2019, II OSK 3238/19.

the Code of Administrative Procedure seems to be sufficient.

Therefore, the original character of the institution of objection postulated by the legislator should not be changed, only with this reservation – already mentioned above – that all entities referred to in the provision of Article 33(1) of the Act on proceedings before administrative courts should participate in the proceedings initiated as a result of an objection.

4. Instance review of the judgement of the provincial administrative court issued in the case initiated as a result of the objection submission

In order to implement the principle of the speed of proceedings within the institution of objection, the full standard of two-instance court proceedings has been waived. The cassation complaint may be lodged only against the judgement repealing the objection. If the objection is upheld, the cassation complaint cannot be lodged (compare Article 151a(3) in connection with Article 151a(1) of the Act on proceedings before administrative courts). In the authors' assessment, if the legislator decide to introduce a derogation from the principle of two-instance proceedings, it should exclude the instance review entirely. Only such a solution would fully fulfil the postulate of the speed of proceedings, and at the same time it would be compliant with the principle of equality before the law.

While forming the institution of objection, the legislator was guided mainly by the interest of the party dissatisfied with the cassation decision. It did not notice that this interest may be justified, may result from the conviction that the cassation decision is defective, as well as it may be instrumental, dictated only by the attempt to delay referring the case for rehearing to the first instance authority. Within current legal frameworks, the person dissatisfied with the cassation decision may first lodge an objection to the provincial administrative court, and then lodge a cassation complaint against the judgement repealing the objection to the Supreme Administrative Court, delaying for many months the continuation of the administrative proceedings.

The interest of the party to the administrative proceedings satisfied with the cassation decision was not taken into account at all. Such a person – as outlined above – was under the Act excluded from the participation in the proceedings initiated as a result of an objection, while they may be even the party at whose motion the administrative proceedings were pending. The possibility to lodge a cassation complaint (implicitly by the appeal body) in the case when the objection is upheld was also excluded, which indirectly also limits rights of the party to the administrative proceedings satisfied with the cassation decision.

Such a disproportion of procedural rights, in particular taking into account cases with parties having adverse interests, is not sufficiently substantiated. The restoration of the full procedural balance should be considered, rather than the full restoration of two-instance proceedings, while changes should consist in complete exclusion of the cassation review of judgements in proceedings initiated as a result of an objection.

Important system arguments are raised in favour of the maintenance of the full two-instance proceedings, including the argument concerning the system role of

the Supreme Administrative Court as an authority carrying out judicial supervision over activities of administrative courts. Nevertheless, the principle of two-instance administrative proceedings does not have an absolutely superior character towards other procedural values, including the requirements concerning the speed and simplicity of proceedings. In some (exceptional) situations, the principle of two-instance proceedings may be limited in favour of other rights, including the right to efficient administration.

Assuming that the proceedings initiated as a result of an objection retain its character of ancillary proceedings, limited at targeted review of the cassation decision in terms of premises from Article 138(2) of the Code of Administrative Procedure, in such proceedings the principle of two instances could give way to the principle of the speed of proceedings. In particular that the parties to the administrative proceedings retain rights to two instances and full judicial review of the legality of the administrative proceedings at their later stage in the case of the issue of a decision on the merits of the case. In this meaning, the principle of two-instance proceedings is upheld but at a later stage of the administrative proceedings.

5. Summary

The legislator's decision on the introduction of a dedicated procedure to contest cassation decisions should be approved of. The limits of review of cassation decisions must remain narrow, pursuant to the legislator's intention, so that this procedure could serve its intended purpose. Regulations concerning the circle of participants in the proceedings initiated as a result of an objection and the scope of the instance review require reconsideration. According to the authors, the full exclusion of the instance review in the proceedings initiated as a result of an objection will lead to significant acceleration of these proceedings without the risk of violating essential procedural guarantees applicable in the state under the rule of law. In turn, the extension of the circle of participants in the proceedings initiated as a result of an objection to all parties to the administrative proceedings will not cause a significant delay in the proceedings initiated as a result of an objection and will essentially contribute to maintaining important procedural guarantees applicable in the state under the rule of law.

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2. B. Dauter, M. Niezgódka-Medek, A. Kabat, *Polish Act on Proceedings before Administrative Courts. Commentary,* LEX/el. 2019.
3. J.G. Firlus, T. Woś, *Objection to the Cassation Decision Issued on the Basis of Article 138(2) of the Polish Code of Administrative Procedure,* 'Review of Public Law' (Przegląd Prawa Publicznego) 2017, no. 6, p. 82-98.
4. P. Gołaszewski, *Amendment to the Polish Code of Administrative Procedure and the Polish Act on Proceedings before Administrative Courts of 07/04/2017* (part IV) 'Monitor Prawniczy' 2017, no. 18, p. 969.
5. R. Hauser, M. Wierzbowski (ed.), *Polish Act on Proceedings before Administrative Courts. Commentary.* 7th edition, Warsaw 2021.
6. H. Knysiak-Sudyka, *Complaint and Cassation Complaint in Court and Administrative Proceedings. Commentary and Case Law,* 4th edition, Warsaw 2018.
7. W. Kręcisz, *Institution of Objection to the Cassation Decision Issued on the Basis of Article 138(2) of the Polish Code of Administrative Procedure – Critical Reflections,* 'Scientific Journals of Administrative Courts' (Zeszyty Naukowe Sądownictwa Administracyjnego) 2019, no. 3, p. 26-42.
8. W. Piątek, *Court and Administrative Proceedings, Complaint against the Resolution of the Commune Council, Mode of Self-Control. Gloss to the Resolution of the Supreme Administrative Court of 16 February 2018, I OZ 130/18,* 'Case Law of Polish Courts' (Orzecznictwo Sądów Polskich) 2018, no. 12, p. 130.

Case law

1. Judgement of the Supreme Administrative Court of 16 March 2018, II OSK 548/18.
2. Judgement of the Supreme Administrative Court of 10 May 2018, II OSK 1030/18.
3. Judgement of the Supreme Administrative Court of 27 August 2018, II OSK 2226/18.
4. Judgement of the Supreme Administrative Court of 15 January 2019, I OSK 4292/18.
5. Judgement of the Supreme Administrative Court of 13 February 2019, II OSK 132/19.

6. Judgement of the Supreme Administrative Court of 5 November 2019, II OSK 3238/19.
7. Judgement of the Supreme Administrative Court of 26 November 2019, II OSK 3311/19.
8. Judgement of the Supreme Administrative Court of 22 January 2020, IGSK2234/19.
9. Judgement of the Supreme Administrative Court of 23 January 2020, II OSK 3847/19.
10. Judgement of the Supreme Administrative Court of 23 April 2020, II OSK 775/19.
11. Judgement of the Supreme Administrative Court of 2 December 2020, II OSK 2789/20;
12. Judgement of the Supreme Administrative Court in Białystok of 15 December 2017, II SA/Bk 719/17.
13. Judgement of the Supreme Administrative Court in Kraków of 24 February 2020, II SA/Kr 90/20.