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Summary of the doctoral dissertation entitled "Opposition to the cassation decision in administrative court proceedings" prepared by Jakub Turski under the supervision of dr hab. Mariusz Bogusz, professor at the University of Gdańsk

The subject of the doctoral dissertation is the legal institution of the objection, which, in accordance with Article 3 § 2a and Article 64a of the Act of 30 August 2002 – the Code of Administrative Court Procedure[1] (hereinafter: "PPSA"), serves as a means of appeal before an administrative court against the decision issued on the basis of Article 138 § 2 of the Act of 14 June 1960 – the Code of Administrative Procedure[2] (hereinafter: "KPA"). The discussed means of appeal was introduced into the system of administrative court proceedings on 1 June 2017 under the Act of 7 April 2017 amending the Act – the Code of Administrative Procedure and certain other acts[3] (hereinafter: "the 2017 amendment" and/or "amending act").

The objection to the decision was to constitute, in accordance with the legislative intent behind the 2017 amendment, an instrument for combating the excessive length of administrative proceedings. One contributing factor to this excessive duration was the overly frequent issuance by the authorities of the decision specified in Article 138 § 2 of KPA, i.e. the decision to annul the decision of the first instance body in its entirety and to refer the case to that body for reconsideration (the so-called "cassation decision"). As a means of initiating court-administrative proceedings, the objection replaced a complaint, which had previously been the only institution for challenging administrative decisions and other forms of public administration activity subject to the jurisdiction of administrative courts (see: Article 3 § 2 of PPSA).

The main objective of the dissertation is to analyze and legally evaluate the institution of the objection to a cassation decision. The dissertation analyzes the construction of the objection as a procedural appeal initiating court-administrative proceedings. The main research

[1] Consolidated text: Journal of Laws of 2024, item 935, as amended.
[2] Consolidated text: Journal of Laws of 2024, item 572, as amended.
[3] Journal of Laws, item 935.

objective of the dissertation (analysis and legal evaluation of the institution of the objection to the decision) corresponds to the specific objectives of the dissertation, which include:

1) analysis of the legal status of the objection to the decision as a means of appeal initiating administrative court proceedings;
2) analysis and legal assessment of the subject of the appeal by objection to the administrative court, i.e. the cassation decision and the grounds for its issuance;
3) analysis and legal assessment of the structure of the entity entitled to file the objection;
4) analysis and legal assessment of the remaining conditions for the admissibility of filing the objection to the decision;
5) analysis and legal evaluation of the proceedings resulting from the filing of the objection: its preliminary, examination and adjudication stages, as well as the admissibility and course of cassation and appeal proceedings;
6) identifying the features that differentiate the objection from a complaint, particularly from one filed against the decision.

The first chapter is an introduction to further considerations and contains general remarks on the principle of complaint and the right to a court in administrative court proceedings. It presents basic terminological clarifications on the concept of an appeal and related concepts. The first chapter presents the genesis of the objection to the decision in administrative court proceedings: the historical development of the assumptions of the appealability of cassation decisions to the administrative court, the institutions of cassation rulings in the civil procedure system and criminal procedure and *the ratio legis* of the objection, as well as key elements of the legal structure of the objection and the proceedings triggered by the objection.

The second chapter covers the legal characteristics of the subject of the objection (subject of the appeal). Both the legal nature of the cassation decision and the grounds for its issuance are discussed. Issues concerning the admissibility of appealing the justification of the cassation decision, filing the objection to the so-called partial cassation decision and the issue of the non-existence of the cassation decision in the context of the admissibility of the objection are also discussed.

The third chapter contains an analysis of the qualification of the entity for filing the objection. It also discusses the procedural consequences of filing the objection by an entity that is not legitimized to do so.

The fourth chapter addresses the remaining conditions for the admissibility of the objection and the consequences of failing to meet them.

The fifth chapter contains the legal characteristics of the proceedings initiated by the objection. It includes an analysis of the preliminary stage, the examination stage and the adjudicatory stage of the administrative court proceedings on the objection. Chapter five also discusses the issue of the inadmissibility of filing an appeal against the judgment upholding the objection, and also analyzes issues related to the proceedings before the Supreme Administrative Court.

Each chapter begins with introductory issues and ends with considerations included in the summary. In addition, the work includes an introduction and conclusion, a list of abbreviations and a bibliography. The conclusion presents a recapitulation of the considerations made, and also formulates *de lege ferenda* postulates.

The basic research method used in the work is the dogmatic (formal-dogmatic) method. Additionally, the dissertation applies the historical-legal method, the axiological method, and the comparative legal method. The historical-legal method was used in connection with citing the rules for the control of cassation decisions before the 2017 amendment came into force. The axiological method was used due to the strongly emphasized procedural values that the objection is to serve, i.e. the speed of administrative and administrative court proceedings [4]. An important research method adopted in the work is the comparison of the legal regulation concerning the objection with the legal regulation concerning the complaint, and especially the complaint against the decision. The results of these comparisons reflect the specific legal nature of the objection and justify its introduction to the system of administrative court proceedings.

The considerations made allow us to state that the basic features distinguishing the objection from a complaint include:

1) a narrowly defined subject matter of the appeal, which constitutes only one type of decision of the second instance body: the decision issued on the basis of Article 138 § 2 of KPA (Article 3 § 2a in connection with Article 64a of PPSA);
2) narrowly defined legitimacy to file the objection, available only to the party to the administrative proceedings in which the appealed cassation decision was issued (substantive legitimacy), excluding the right to file the objection by entities with formal legitimacy;

[4] On the axiological method of researching law, see e.g. P. Wszołek, *On research methods used in the science of administrative law for the purpose of knowing law as a normative statement*, PPP 2011, no. 7-8, pp. 14-15.

3) a shortened, 14-day deadline for filing the objection (Article 64c § 1 of the Code of Administrative Procedure);
4) different scope of formal content requirements for the objection (obligation to include a request for a repealed decision with a simultaneous lack of obligation to specify the infringement of the law or legal interest – *see*: Article 64b § 2 of PPSA);
5) a shortened, 14-day deadline for submitting the case files to the court (Article 64c § 3 of PPSA) or the objection together with the case files (Article 64c § 4 of PPSA);
6) failure to apply the requirement to exhaust appeal remedies, because this requirement is, so to speak, fulfilled *ex definitione* in the case of a cassation decision being filed as a decision of an appeal body;
7) exclusion of the obligation to file a written statement in response to the objection;
8) a shortened, 14-day deadline for the exercise of self-control powers by the body in response to the objection (Article 64c § 5 of PPSA);
9) introducing a catalogue of the types of decisions that the body may issue, taking into account the objection in its entirety in the self-control mode;
10) relaxation of the formal requirements for examining a case solely on the basis of a copy of the objection in the event that the body fails to forward the objection to the court: the court then examines the objection obligatorily, ex officio, without a separate request from the complainant, even if the factual and legal circumstances presented in the objection raise justified doubts (Article 64c § 7 of PPSA);
11) no possibility of applying the provisions on the possibility of staying the execution of decisions specified in Article 61 § 2 – 6 of PPSA;
12) no possibility of examining the objection in the simplified procedure regulated in Articles 119 – 122 of PPSA;
13) exclusion of the right to participate in the proceedings initiated by the objection of the participants specified in Article 33 of PPSA (Article 64b § 3 PPSA);
14) narrowly defined scope of the examination of the objection limited only to the assessment of the existence of grounds for issuing a cassation decision (without assessment of other aspects of the administrative case that are not related to the grounds for issuing a cassation decision);
15) narrowly defined scope of the grounds for upholding the objection, limited only to establishing a violation of Article 138 § 2 of KPA (a violation of other provisions of law that does not result in a violation of Article 138 § 2 of KPA does not lead to upholding the objection);

16) no connection between the premise for upholding the objection and the specific type of impact of the violation of Article 138 § 2 of KPA on the outcome of the case;
17) inadmissibility of partial annulment of the cassation decision in the event of upholding the objection;
18) limiting the scope of the courts' adjudicative competences consisting in excluding the admissibility of a judgment on determining the invalidity of the decision, on discontinuing administrative proceedings, on obliging the body to issue the decision indicating the manner of resolving the case, on removing from circulation acts or actions taken in the proceedings other than a cassation decision;
19) the possibility of imposing a fine on the authority if the objection is upheld;
20) inadmissibility of filing a cassation appeal against a judgment upholding the objection;
21) the principle of confidentiality of the examination both in the proceedings before the provincial administrative court and in the proceedings before the Supreme Administrative Court (with the possibility of referring the case for examination at a hearing);
22) the principle of a one-person bench when considering the objection and when considering a cassation appeal against a judgment dismissing the objection (with the possibility of increasing the bench to three judges if the case is referred to a hearing);
23) setting thirty-day deadlines for considering the objection (which does not apply if the objection is referred for consideration at a hearing) and for considering a cassation appeal against a judgment dismissing the objection.

In view of the above, it should be recognized that, in comparison to the institution of a complaint, the objection constitutes a remedy of a special nature, which initiates accelerated and simplified administrative court proceedings. Almost all of the distinguished elements of the legal structure of the objection are intended to streamline the objection procedure by speeding it up or simplifying it in relation to the complaint procedure. The evaluation of individual legislative solutions varies depending on their impact on procedural efficiency and fairness.

A positive attitude should be given to those regulations within which the acceleration or simplification of the proceedings does not take place at the expense of the procedural guarantees of the individual, while the limitation of the aforementioned guarantees is not disproportionate to the assumed objectives and the resulting speed of the proceedings. For example, one can approve the shortening of the deadlines for the parties' procedural actions (see: Article 64c § 1, § 3, § 4, § 5 of PPSA) or the definition of a catalogue of admissible decisions of a self-review

decision. An extremely important and beneficial element of the effectiveness of the objection for the complainant is the introduction of a deadline for its consideration by the court of first instance, as well as the introduction of a deadline for the consideration of a cassation appeal against a judgment dismissing the objection.

Some of the solutions limit the effectiveness of the objection, but they are a consequence of the simplifications provided for by the legislator. For example, it can be argued that limiting the scope of the objection examination or limiting the court's adjudicative competences in the event of upholding the objection reduces the effectiveness of the legal regulation of the objection. On the other hand, the indicated simplifications are "trade-off" for the accelerated nature of the examination of the objection, and this by a single-member panel. In this context, the proportion between the "gains" and "losses" resulting from the various solutions to the objection is not shaken, and the simplifications of the proceedings should be adequately compensated by the guarantee of a quick conclusion of the proceedings.

Some of the solutions adopted for the objection are based on directionally correct assumptions, but require clarification by the legislator. For example, the principle of confidentiality of the objection examination, subsequently upheld in the proceedings before the Supreme Administrative Court, does not raise any constitutional objections. However, the principle of procedural justice may be compromised by the departure from the principle of collegiality of the adjudicating panel related to that confidentiality and absence of clearly defined criteria for referring the objection to a hearing. By introducing the provisions of Article 64d § 1 and Article 151a § 3 of PSSA while at the same time not derogating from the regulations of Article 153 and Article 170 PPSA, the legislator creates the ground for a situation in which, at a closed session, a court issues a single-person panel (more prone to error than a collegial panel) ruling upholding the objection with an obvious and flagrant violation of the law, which will not be subject to appellate review, and moreover – will bind the bodies and courts adjudicating in the case. Such consequences are unacceptable in a democratic state of law. In order to prevent them, the provisions of PPSA should be amended in the direction described in detail in the doctoral dissertation.

There is a group of solutions that introduce excessive, disproportionate simplifications and are burdened with a contradiction with the Constitution of the Republic of Poland. This category includes: the institution of mandatory adjudication by the court solely on the basis of a copy of the objection (Article 64c § 7 of PPSA), inadmissibility of participation in the proceedings by objection of entities whose legal interest is affected by the outcome of the court proceedings (Article 64b § 3 of PPSA), or exclusion of the right to file a cassation appeal against

a judgment upholding the objection (Article 151a § 3 of PPSA). The solutions cited should be derogated from the legal system and replaced with adequate mechanisms described in the work, which will not harm the concept of simplified and accelerated proceedings.

Although the preventive influence on the authorities so that they do not abuse their cassation competences depends on many legal and extra-legal factors, the structure of the objection allows – together with other mechanisms – the co-realisation of this goal. Faster judicial and administrative control and the possibility of applying a fine provided for by law are factors that make the objection a more effective means of initiating the review of decisions issued on the basis of Article 138 § 2 of KPA. This speed, which characterises the objection, also means that from the perspective of the interests of the complainant, the objection appears as a more effective procedural instrument than the complaint.

Despite some critical remarks, the legislator's decision to introduce a new (special) remedy initiating simplified and accelerated proceedings deserves approval. However, there is no doubt that changes to some elements of its construction are necessary.

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