

Cassation complaint - a remedy in the administrative justice system from the perspective of the dispositional principle

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Abstract

The paper deals with the cassation complaint as one of the remedies in the administrative justice system from the perspective of the dispositional principle, which is the driving force of administrative court proceedings. However, the application of the dispositional principle in cassation complaint proceedings is limited compared to proceedings before an administrative court. Such limitations arise from the nature of cassation proceedings. The paper will focus on the provisions of the Administrative Procedure Code governing cassation complaints, to what extent they limit the principle of disposition, and whether such a limitation is justified.

Keywords: administrative justice, Administrative Procedure Code, cassation complaint, dispositional principle

Introduction

In administrative court proceedings, since it is a litigation by nature, the dispositional principle manifests itself in the fact that the protection of public subjective rights is not imposed on the litigants against their will. It is guaranteed through the fact that proper legal proceedings can be initiated. It is not their duty. The freedom of disposition of the holders of subjective rights does not consist only in deciding whether to use the possibility of judicial protection, but it is also up to them how they define the subject of the proceedings. One of the disposal rights of the participants in the proceedings is the possibility to challenge the court decision with some of the remedies which, as arrangements of procedural law, give the participants the opportunity to initiate remedial proceedings. For this reason, it is impossible for the court itself to start the remedial proceedings without a party's proposal. The dispositional principle corresponds not only to the legislation of the initiation of corrective proceedings, but also to the definition of its subject as well as the termination of the proceedings. However, in the case of remedial proceedings, some procedural acts, through which the participants in the proceedings deal with the proceedings as a whole or with its subject matter, may be limited and the dispositional principle suppressed, precisely because it is a remedial proceeding. Pursuant to the Administrative Procedure Code (hereinafter referred to as the APC), the remedies are a cassation complaint and an action for retrial. In both cases, these are extraordinary remedies, as they go against valid court decisions. Both of these arrangements are based on the principle enshrined in § 5 sec. 5 APC, according to which proceedings before the administrative court

can be started only on the basis of a proposal.² In this paper, I will focus on the cassation complaint in the administrative court as one of the remedies from the point of view of the dispositional principle and on the extent to which the current legislation complies with the dispositional principle.

1. Cassation complaint and its admissibility

A cassation complaint is a remedy in the administrative court, directed against the valid decision of the administrative court³. According to the explanatory memorandum to Act no. 162/2015 Coll. Administrative Procedure Code, the introduction of a cassation complaint was considered the most fundamental proposed change, which replaced the arrangement of appeal, as the appeals system proved to be unsuitable for the administrative judiciary and did not prove itself in the practice of the Supreme Court, since even in the remedial proceedings the administrative court fundamentally solved questions of law and not of fact. The fact that the cassation complaint in the administrative court replaced the arrangement of appeal should have enabled the Supreme Court (now the Supreme Administrative Court) to pay more attention to the resolution of interpretation problems that are disputed between individual administrative courts. Also, it should have ensured a uniform interpretation of laws throughout the territory of the Slovak Republic to achieve a better predictability of the law.⁴

The introduction of a cassation complaint as a remedy against valid decisions of regional courts (now administrative courts) was based on the aim and purpose of judicial review of the decisions of public administration bodies on the individual rights of participants in administrative proceedings. This aim is to achieve the protection of the rights of the participants. The administrative judiciary itself is based on the cassation principle, which serves as a guarantee that the court does not replace the decision-making authority of public administration bodies with its own activities.⁵ Similar to a lawsuit, a cassation complaint is a procedural act by which the complainant disposes not only of the proceedings on the cassation

² Despite the fact that in the provision of § 5 of the Administrative Procedure Code, which is entitled "Basic principles of action", the legislator based the dispositional maxim, in contrast to the previously used term dispositional principle, and the authors of the commentary strictly expressed the opinion that they consider the differentiation between the terms principle and maxim to be outdated, unnecessary and they can only use the term maxim, I do not consider the terms principle and maxim to be synonymous. I believe that the maxim as a basis, a pillar of objective law is stable and unchanging, in contrast to a principle which, despite the still high degree of abstraction, is connected to a more concrete content and has the ability to be flexible, it can be weakened or strengthened, or even broken. However, for the purposes of this article, I will use the term dispositional principle, which will be synonymous with the term dispositional maxim as stated by the APC. (Geffertová, 2020).

³ The Administrative Court in Bratislava, the Administrative Court in Banská Bystrica and the Administrative Court in Košice are materially responsible for proceedings and decisions in the administrative court, unless this law provides otherwise (§ 10 APC).

⁴ Explanatory memorandum to Act no. 162/2015 Coll. Administrative Procedure Code

⁵ Explanatory report to Act no. 162/2015 Coll. Administrative Procedure Code

complaint, but also the subject of the proceedings.⁶ The admissibility of a cassation complaint is the most significant sign of access to proceedings before the Supreme Administrative Court. The APC based it in the form of a general clause. A cassation complaint is admissible against any valid decision of the administrative court⁷. Exceptions to this general admissibility are established by the APC. A cassation complaint is inadmissible if:

- it relies on reasons other than those listed in § 440,
- it is based on reasons that the complainant did not apply in the proceedings before the administrative court in which the challenged decision was issued, although he could have done so,
- it goes only against the reasons for the decision of the administrative court.

It is also inadmissible against the valid decision of the administrative court in electoral matters.⁸ In addition, it cannot be filed even against the Supreme Administrative Court decision. The admissibility of a cassation complaint against the resolution is defined negatively in the APC⁹.

2. Cassation complaint - entities

Entities who are entitled to file a cassation complaint are defined in § 442 APC. First of all, they are the parties to the proceedings. The prerequisite is that it is decided against them. According to § 32 sec. 1 APC the parties to the proceedings are plaintiff, defendant and other parties.

⁶ Štajgr stated (1946, p.93) that the dispositional principle is manifested both in the initiation and in the course of the proceedings. It is possible to distinguish between the disposition of the proceeding and the disposition of the subject matter of the proceeding. At the commencement of the proceedings both these dispositions completely overlap. In the course of the proceedings, however, the two types of disposition can already be distinguished. Although his statements refer to an action in civil proceedings, they are also relevant and applicable to an action in administrative proceedings, since administrative proceedings are by nature litigation.

⁷ In administrative justice, the court's judgment and resolution in the main matter become valid when delivered to the last of the parties.

⁸ In matters of the permanent list of voters and the list of voters, in matters of registration of candidate lists for elections to self-governing bodies, in matters of registration of candidate lists for elections to self-government bodies of municipalities, cities and town districts.

⁹ A cassation complaint is not admissible against the resolution,

- a) which regulates the conduct of proceedings,
- b) against whom a complaint is admissible,
- c) on recognition or non-recognition of the status of a person participating in the proceedings,
- d) on the authority, jurisdiction, administrative fine according to § 78, on the remuneration of an expert, interpreter and translator,
- e) concerning the suspensive effect of the lawsuit,
- f) on the extension of the deadline according to § 250 sec. 2 and § 262 sec. 2
- g) which suspends the proceedings due to the filing of a preliminary question,
- h) on the amount of compensation for legal costs
- i) on the temporary suspension of the generally binding regulation, its part or any of its provisions.

1. The plaintiff is:

- a natural person or a legal entity who claims that, as a participant in administrative proceedings, they were deprived of their rights or interests protected by law by a decision of a public administration body or by a measure of a public administration body.
- the prosecutor, if the public administration body did not comply with his protest and did not cancel the contested decision or measure.
- the interested public, if they claim that the public interest in the field of the environment has been violated.¹⁰

2. The defendant is the public administration body designated by the APC, unless the APC stipulates otherwise.

3. Other parties are those:

- who were parties to the administrative proceedings,
- to whom, due to the inseparable community of rights and obligations with the plaintiff or parties to the administrative proceedings, the decision of the administrative court must also apply,
- who are designated as participants by law.

In addition to the parties to the proceedings, the Administrative Procedure Code also allows a person participating in the proceedings to file a cassation complaint under § 41 sec. 2 APC¹¹. Even in this case, the above-mentioned prerequisite for filing a cassation complaint applies, i.e. it must be decided against this person. The law allows the cassation complaint to be filed by the so-called omitted complainant, i.e. the one who claims that they should have been a party to the proceedings and the administrative court did not deal with them as a party to the proceedings.

The Administrative Procedure Code also includes the general prosecutor among the entities authorized to file a cassation complaint. The general prosecutor is entitled to file it against the decision of the administrative court issued in proceedings in which the prosecutor

¹⁰ The above applies in actions regulated in the third part of the APC, i.e. in proceedings on administrative actions, on administrative actions in matters of administrative punishment, on administrative actions in social matters and on administrative actions in matters of asylum, detention and administrative expulsion.

¹¹ § 41 sec. 2 APC: The administrative court may, on a motion by resolution, grant the status of a person participating in the proceedings to a person who was not a party to the administrative proceedings and who

- a) were directly affected by them rights or interests protected by law by the issuance of the challenged decision of the public administration body or measure of the public administration body,
- b) were directly affected by them rights or interests protected by law by not issuing a decision by a public administration body or a measure by a public administration body,
- c) may be directly affected by its rights or interests protected by law by the annulment of the contested decision of the public administration body or measure of the public administration body,
- d) may be directly affected by them rights or interests protected by law by the issuance of a new decision by a public administration body or a measure by a public administration body in the main matter according to the judgment of the administrative court.

was entitled to enter, but did not enter. The commentary literature considers this power of the general prosecutor as one of the means of ensuring unification of case law (Hanzelová et al., 2016, p. 513). However, the range of subjects defined in this way is problematic in relation to the principle of disposition as a means of protecting the subjective rights of natural persons or legal entities and has the effect of limiting or even a breaking it.

Almost all above-mentioned subjects are authorized to file a cassation complaint for the purpose of protecting public subjective rights. If an interested person is entitled to file a cassation complaint, it must be stated that the field of the environmental protection is an area that concerns everyone, therefore the protection of the public interest in that field also provides protection for the subjective rights of individual natural persons or legal entities. In this regard, the dispositional authorization of the interested public to file a cassation complaint is one of the possibilities of fulfilling the obligation arising from Art. 44 sec. 2 of the Constitution of the Slovak Republic, according to which everyone is obliged to protect and improve the environment and cultural heritage (Geffertová, 2020).

I addressed the issue of establishing the admissibility of filing a cassation complaint by the defendant in a separate article (Geffertová, 2018), so I will only mention that the public administration body as a defendant is entitled to file a cassation complaint. Although this authorization is a manifestation of the dispositional principle, it does not, in this case, serve as a means of protecting the subjective rights of natural or legal persons. Rather, it is an expression of the right to a fair trial. Through it, the equality of the participants in the proceedings, the adversarial nature of the proceedings and the related "equality of arms" are ensured.

The only exception to the circle of subjects authorized to file a cassation complaint are the prosecutor and the general prosecutor. As already mentioned above, the prosecutor can also be the plaintiff in proceedings regulated in the APC. In addition, however, the prosecutor is entitled to enter any proceeding before the administrative court (even if he did not initiate it). In the proceedings in which he entered, he has the status of a party to the proceedings. Related to this authorization is the authorization of the general prosecutor, who is entitled to file a cassation complaint in proceedings in which the prosecutor was authorized to enter, but did not enter. Based on the provision of § 61 APC, the lawsuit is a procedural act in the case of the prosecutor. He uses this act to exercise his authority to protect legality. If his measures, as outlined in a special regulation, were not complied with, even if his lawsuit was decided against him, a cassation complaint, to which he is entitled to file, becomes a procedural act aimed at protecting legality. I consider the entrenchment of the general prosecutor as a remedial subject to file a cassation complaint to be a significant limitation of the dispositional principle as a means of protecting subjective rights. Of course, even the cassation complaint filed by the general prosecutor is a proposal that starts the proceedings, but it is not based on the principle

of protection of public subjective rights, but on the principle of protection of legality. The protection of a non-subjective rights actually means the protection of an objective rights, i.e. legality. And not every illegality has to reach such a force that it is necessary to use the administrative judiciary as a tool for protection. However, the creators of the APC put the principle of legality protection together with the principle of public interest protection on the same level as the principle of public subjective rights protection. This approach is not in accordance with the opinion of the Constitutional Court.

The Constitutional Court considers the sole purpose of administrative justice to be the protection of subjective rights, while the protection of legality, as well as the protection of public interest, are only criteria that help achieve this purpose.¹² Thus, the authorization of the general prosecutor cannot be considered as a manifestation of the implementation of the dispositional principle as a means of protecting public subjective rights. This also follows from the way of identifying the decisions of the administrative court against which he can file a cassation complaint. Pursuant to § 442 sec. 1 APC general prosecutor can file a cassation complaint against the decision of the administrative court issued in proceedings in which the prosecutor was authorized to enter but did not enter. And according to § 46 of the APC, the prosecutor is entitled to enter any proceedings before the administrative court. It is clear from the above that if the prosecutor has claimed his authority arising from the provision of § 46 APC and entered the proceedings, he acquires the status of a party to the proceedings according to § 48 APC, and as such is entitled to file a cassation complaint against the court's decision. However, if he did not apply his authorization and did not enter the proceedings, the general prosecutor can file a cassation complaint. Nevertheless, their purpose is not to provide protection to public subjective rights, but rather an interest in legality. When we consider the purpose of administrative justice as I stated above, such a position of the prosecutor and the general prosecutor in administrative judicial proceedings is inadequate and substantially restricts the dispositional rights of the parties to the proceedings. In this context, I would also point to the opinion of the Constitutional Court¹³, according to which part of the fundamental right under Art. 46 sec. 1 of the Constitution of the Slovak Republic is not only the right of "everyone" to demand the protection of their rights in an independent and impartial court through the procedure established by law, but also to decide that this method of protecting their rights is no longer considered appropriate by the participant in the court proceedings. It is an expression of freedom of disposition, which may be impaired by the procedure of the prosecutor, or of the general prosecutor.

¹² Ruling of the Constitutional Court of the Slovak Republic File Ref. III. ÚS 502/2015 of 06 October 2015

¹³ Ruling of the Constitutional Court of the Slovak Republic, File Ref. I. ÚS 30/97 of 22 May 1997

The powers of the prosecutor and the general prosecutor formulated in this way give the impression that the principle of protection of public subjective rights is being suppressed in favour of the principle of legality, that, is contrary to the purpose of administrative justice, as formulated in § 2 sec. 1 APC, according to which the administrative judiciary provides protection to the rights and interests of natural persons or legal entities in the field of public administration.

3. Requirements of a cassation complaint

As already mentioned above, the basic manifestation of the dispositional principle in the administrative judiciary is that proceedings can only be started on the basis of a proposal. In the case of remedial proceedings, this proposal is a cassation complaint, which, like all filings in terms of the APC, must contain the requirements established by law. In addition to general details, such as the designation of the administrative court to which the cassation complaint is addressed, the designation of the person who files the cassation complaint, the designation of which matter it concerns and what it pursues, and the complainant's signature, the cassation complaint must contain the designation of the contested decision, the date when the contested decision was delivered to the complainant, a description of the decisive facts, so that it is clear to what extent and for what reasons it is submitted according to § 440 APC (points of complaint) and a draft statement of the decision (draft complaint).

Just as it is at the disposal of the subject whether to bring an action and how to define the subject matter of the action, it is also part of the complainant's dispositive power to determine the subject matter of the cassation proceedings (Lavický, 2015). However, in the case of a cassation complaint, this authorization is limited by the exhaustively determined reasons for the cassation complaint (§ 440 APC). This gives the subject of the proceedings a legal barrier, which the party to the proceedings must not exceed. A cassation complaint can only be justified by the fact that the administrative court violated the law in the proceedings or in making the decision by:

- a) the matter was not within the jurisdiction of the administrative courts,
- b) the person who acted as a party to the proceedings did not have procedural subjectivity,
- c) the party to the proceedings did not have the capacity to act independently before the administrative court in full and did not have a legal representative or procedural guardian acting for them,
- d) a valid decision has already been made on the same matter or proceedings have already started on the same matter,
- e) the matter was decided by a disqualified judge or an improperly staffed administrative court,

- f) the procedural irregularity prevented the participant from exercising his procedural rights to such an extent that the right to a fair trial was violated,
- g) decided on the basis of an incorrect legal assessment of the matter,
- h) deviated from the established decision-making practice of the court of cassation,
- i) did not respect the binding legal opinion expressed in the annulment decision on the cassation complaint or
- j) the submission was unlawfully rejected.

The reason for the cassation complaint mentioned in letter g) to i) is defined in such a way that the complainant states the legal assessment of the matter, which he considers to be incorrect, and states what the incorrectness of this legal assessment consists of. The reason for the cassation complaint cannot be defined by the complainant pointing to his submissions before the administrative court.

The consequence of the dispositional principle¹⁴ is that the court is generally bound by the cassation complaint, which establishes the framework within which the court of cassation can move in the proceedings. This framework is defined by:

- the scope to be reviewed, i.e. specifying the decision and, in the case of several statements, also the statement against which the cassation complaint is directed,
- reasons (see already mentioned § 440 APC), in the light of which the court of cassation must review the decision
- a proposal on how the court should decide on the complaint.

The possibility to dispose with one's cassation complaint in the sense of the possibility to change its scope and reasons follows from the provisions of § 445 sec. 2 APC, which stipulates that points of complaint can only be changed until the deadline for filing a cassation complaint has expired. APC under the term points of complaint in § 445 sec. 1 letter c) understands the decisive facts, from which it is clear to what extent and for what reasons, according to § 440, the cassation complaint is filed. The concept of points of complaint does not only include reasons according to § 440, but also facts determining the scope of a cassation complaint. Commentary literature (Baricová et al., 2018, p. 1693) reached the same conclusion that not only the reasons but also the scope cannot be changed after the deadline for filing a cassation complaint has expired, but it is based on different assumptions. It states that the APC does not contain an explicit normative provision stating that the scope in which the complainant challenges the decision can only be extended until the deadline for filing a cassation complaint has expired. Therefore, when assessing this question, it is necessary to proceed from the provision of § 62 sec. 1 in conjunction with § 452 APC. Provision § 452 sec.

¹⁴ Since the dispositional principle is an expression of the need to determine whether and about what is to be acted upon, thereby setting out the boundaries and limits within which it is acted upon (Štajgr, 1946, p. 96).

2 of the APC in relation to the amendment of the claim must be interpreted in such a way that the amendment of the claim is no longer admissible in the cassation proceedings (as well as its withdrawal, because the decision of the regional court is already final) and does not apply to the amendment - the extension of the scope of the cassation complaint, which can be amended only until the deadline for filing a cassation complaint expires.

I do not agree with the opinion in the commentary literature, which under the term points of complaint includes only reasons in the sense of § 440 APC, as the APC uses the term reasons in several other places (e.g. in § 453 sec. 2 APC - On the reasons given by the party to the proceedings after the deadline for filing a cassation complaint has expired, the court of cassation does not consider it.), but only in § 445 APC used the term points of complaint as a summary title in sec. 1 letter c) for facts from which the scope and grounds of the cassation complaint are obvious. Subsequently, in sec. 2 stipulated that points of complaint can only be changed until the deadline for filing a cassation complaint has expired.

The definition of the scope of the cassation complaint is also an expression of the dispositional principle. In the cassation complaint, the complainant must describe the decisive facts in order to make it clear to what extent he or she is challenging the decision (Hanzelová et al., 2016, p. 520). It is up to the complainant whether to challenge the entire sentence with a cassation complaint, or all statements of the decision, or only some of them.

According to the provisions of § 453 of the APC, although the court of cassation is bound by the scope of the cassation complaint and the points of complaint, this provision also regulates exceptions to this obligation, thereby limiting the principle of disposition. The court of cassation is not bound by the scope of the cassation complaint if the decision on the challenged statement depends on a statement that was not affected by the cassation complaint. The court of cassation is also not bound by the points of complaint if the contested decision was issued in proceedings in which the administrative court was not bound by the points of complaint. Well, the court of cassation is not bound by the complaint. Any statutory exception allowing the court of cassation to depart from the framework established by the cassation complaint is an exception to the dispositional principle. It must therefore be justified by another interest worthy of protection, such as the public interest in the proper administration of justice, which will prevail in such a situation (Lavický, 2015).

4. Withdrawal of the lawsuit and withdrawal of the cassation complaint

Withdrawal is another dispositional act in cassation complaint proceedings. In the provisions governing cassation complaint proceedings, the Administrative Procedure Code distinguishes between the withdrawal of a claim and the withdrawal of a cassation complaint. As part of cassation complaint proceedings, the APC does not allow the parties to the proceedings to use dispositional procedural acts consisting in the amendment and withdrawal

of the claim (§ 452 sec. 2 APC). This restriction is based on the fact that in the cassation complaint proceedings, a valid decision of the administrative court is being decided, therefore it is no longer possible to change or withdraw the claim. This legislation corresponds to the principle of legal certainty.

On the other hand, the Administrative Procedure Code allows the withdrawal of a cassation complaint. The complainant is entitled to withdraw the cassation complaint, i.e. he can continue to dispose of the proceedings on the cassation complaint. In the event that he withdraws only part of the cassation complaint, he would also dispose of the subject of the cassation complaint proceedings. Withdrawal of a cassation complaint is a definitive procedural act, i.e. that it is not possible to revoke such an act, as long as it was carried out in a legally relevant manner. For that reason, the court of cassation stops the proceedings by resolution. The decision contested by the cassation appeal thus remains unchanged.

Conclusion

Based on the above, we can state that even in cassation complaint proceedings, the parties to the proceedings retain the substantial majority of disposal actions consisting in the possibility of dealing with the proceedings themselves as well as with the subject of the proceedings. Unlike proceedings before an administrative court, this freedom of disposition is to some extent limited by the provisions of the APC, which create the framework in which these rights of the participants are exercised. The freedom of disposition of the parties to the proceedings is most strongly manifested at the initiation of proceedings on a cassation complaint, because only based on a proposal (cassation complaint) can the proceedings on it begin. The disposition of the subject of the proceedings is affected by the determination of the admissibility of the cassation complaint. It is regulated in the form of a general clause, i.e. a cassation complaint is admissible against any valid decision of the administrative court (§ 439 APC). It is clear from the above that the admissible subject of a cassation complaint is not only decisions on the merits, or decisions that end the proceedings, unless the APC stipulates otherwise. However, in the case of resolutions, the APC limits this freedom of disposition by a negative legal definition. The possibility of defining the subject of the proceedings by means of an exhaustive calculation of the reasons for the cassation complaint is also limited. When dealing with the subject of the proceedings, the complainant is also limited in terms of time, as the scope and grounds of the cassation complaint can only be changed during the period designated for filing the cassation complaint. In the further course of the proceedings, the principle of disposition is applied to a lesser extent. The court of cassation is not unconditionally bound by the subject of the proceedings as defined by the complainant. He is entitled to exceed it or expand (§ 453 APC). Such restrictions result from the nature of cassation proceedings.

A cassation complaint as a remedy against a valid decision cannot be conceived as a filing without any barriers, as it could contribute to unnecessary delays in the proceedings.

I see the greatest limitation of the dispositional principle in the case of a cassation complaint in the authorization of the general prosecutor. This significantly interferes with the disposition of the participants in the proceedings and disrupts their freedom of disposition. I do not consider it to be sufficiently justified in contrast to the above-mentioned limitations of the dispositional principle.

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