Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

Articles

Studia Iuridica Lublinensia vol. 31, 4, 2022
DOI: 10.17951/sil.2022.31.4.127-138

Tomasz Demendecki
Maria Curie-Skłodowska University, Poland
ORCID: 0000-0001-6150-6337
tomasz.demendecki@umcs.pl

Some Remarks on the Cassation Appeal in the Court Proceeding in Public Procurement Cases

Kilka uwag na temat skargi kasacyjnej w postępowaniu sądowym w sprawach z zakresu zamówień publicznych

ABSTRACT

The study presents the general characteristics of the cassation appeal in public procurement cases. In this respect, the new statutory regulation – the Public Procurement Law of 2019 – significantly changed the nature of the legal remedy in question, providing for giving the legitimacy to bring the case for entities directly interested in resolving the case – the parties to the proceedings, in addition to the previously authorised President of the Public Procurement Office. As a result, the cassation appeal in public procurement cases finally has a chance to be included in the category of legal remedies. The article contains a broad description of the cassation appeal in public procurement cases, with particular stress put on the requirements for being effectively submitted. The study also refers to the very examination of an action regarding public procurement. The author presents the analyses in a methodological way.

Keywords: cassation appeal; party to the proceeding; appeal requirements; public procurement; legal remedies

CORRESPONDENCE ADDRESS: Tomasz Demendecki, PhD, Dr. Habil., Professor at the Maria Curie-Skłodowska University, Faculty of Law and Administration, Institute of Legal Sciences, Maria Curie-Skłodowska University (Lublin), Plac Marii Curie-Skłodowskiej 5, 20-031 Lublin, Poland.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

INTRODUCTION

In the system of legal remedies (extraordinary means of challenge) against rulings issued in proceedings brought against a decision of the National Appeals Chamber (Pol. *Krajowa Izba Odwoławcza*) in public procurement cases, a cassation appeal occupies an important place.[1] The relevant regulation contained in Article 590 of the Act of 11 September 2019 – Public Procurement Law[2] is both a rudimentary regulation and *lex specialis* in relation to Article 398[1] of the Code of Civil Procedure.[3] The cassation appeal is an extraordinary means of challenge which was introduced into the Polish legal system in its present form by the Act of 22 December 2004 amending the Act – Code of Civil Procedure and the Act – Law on the System of Common Courts.[4] In principle, by fulfilling a specific public-law function it serves the purpose of controlling the correctness of law application, without constituting an instrument for verification of correctness of factual findings for the decision being challenged.

In the opinion of J. Gudowski, the protection of the public interest in the course of hearing a cassation appeal consists not so much in the Supreme Court correcting each and every defective ruling, as this function is fulfilled by other appropriate legal remedies, but in the Supreme Court creating such jurisdictional conditions so that all cases in proceedings under the judicial supervision of the Supreme Court may be correctly resolved with the aim to keep the case-law uniform and based on the correct interpretation of the law.[5] This view should be absolutely accepted; in fact, it used to be presented already by scholars of civil procedure of the inter-war Poland, in particular in the studies of M. Waligórski.[6]

---

[1] Undoubtedly, this measure can also be included in the category of legal remedies in public procurement cases. Differently, under the previously applicable Act of 29 January 2004 – Public Procurement Law (consolidated text, Journal of Laws 2019, item 1843, as amended [hereinafter: the former PPL]) claimed A. Banaszewska (*Skarga na orzeczenie Krajowej Izby Odwoławczej jako środek ochrony prawnej w systemie zamówień publicznych*, Warszawa 2018, p. 481). She rightly emphasized that the impossibility of classifying the cassation appeal in these matters into the system of legal remedies was primarily related to the exclusivity of its availability under the previously applicable legislation.

[2] Consolidated text, Journal of Laws 2021, item 1129, as amended, hereinafter: PPL.

[3] Act of 17 November 1964 – Code of Civil Procedure (consolidated text, Journal of Laws 2021, item 1805, as amended), hereinafter: CCP.

[4] Journal of Laws 2005, no. 13, item 98.

[5] J. Gudowski, [in:] *System prawa procesowego cywilnego*, vol. 3, part 2: *Środki zaskarżenia*, ed. J. Gudowski, Warszawa 2013, p. 906. In more detail, see idem, *Pogląd na kasację*, "Przegląd Sądowy" 2013, no. 4, p. 10 ff. However, cf. A. Górski, *Uwagi o sprawowaniu wymiaru sprawiedliwości przez Sąd Najwyższy*, [in:] *Aurea praxis, aurea theoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, eds. J. Gudowski, K. Weitz, vol. 2, Warszawa 2011, p. 2807 ff.

[6] See especially M. Waligórski, *Podstawy kasacyjne procesu cywilnego w świetle różnicy pomiędzy faktem i prawem*, Lwów 1936, p. 81 ff. Cf. A. Akerberg, *Środki odwoławcze. Komentarz*

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

Pursuant to Article 398[1] § 2 CCP, a cassation appeal is available against a final judgment or decision of a court of second instance on the rejection of the suit or discontinuance of proceedings that end the proceedings in the case. However, this remedy is not available against rulings repealing the challenged ruling and referring the case for re-examination, as they cannot be regarded as ending the proceedings in the case. The category of rulings ending proceedings in the case includes decisions which once become final, close the way for the case to be decided on its merits by the court of a given instance, if at the moment of their issuance the court is relieved from the obligation to further examine the case.[7] Moreover, the literature points out that only decisions ending the proceedings in the case, defined as a relationship regulated by substantive law covered by the court's decision are subject to a cassation appeal.[8]

The study is intended to point to new possibilities in the area of filing the cassation appeal in public procurement cases that were introduced with the Public Procurement Law currently in force and to analyse their purposefulness and clarity in the context of the application of law. In view of the foregoing, the legal-dogmatic method has been used herein.

GROUNDS FOR FILING A CASSATION APPEAL

For public procurement cases, a cassation appeal is available against a ruling issued by a regional court as a result of examining a complaint against a decision of the National Appeals Chamber, as well as against a decision to reject an appeal or a decision to discontinue proceedings. A cassation appeal is not available against a decision to discontinue proceedings only before the court of second instance.[9] The catalogue of decisions of the National Appeals Chamber that can be challenged with

do art. 393–441 Kodeksu postępowania cywilnego, Warszawa 1933, p. 97; W. Bendetson, *O kasacji według kodeksu postępowania cywilnego*, "Palestra" 1933, no. 1–2, p. 26 ff. Differently F. Halpern, *Do kwestii orzeczenia kasacyjnego cywilnego*, "Głos Prawa" 1932, no. 2–3, p. 111 ff.

[7] See decision of the Supreme Court of 23 August 2002, I CKN 421/01, LEX no. 55523.

[8] See R. Dul, *Skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia a skarga kasacyjna w procesie cywilnym*, Warszawa 2015, p. 132.

[9] According to the position presented by the Supreme Court, a decision of the court of second instance discontinuing the appeal proceedings as a decision ending the proceedings in the case is subject to review in complaint proceedings, while the provision of Article 398[1] § 1 CCP concerns the ruling of the court of second instance to discontinue the proceeding in the case in its entirety. See decision of the Supreme Court of 9 December 2014, V CSK 311/14, LEX no. 1551681; decision of the Supreme Court of 25 September 2014, II CZ 45/14, LEX no. 1532736. The literature clearly emphasizes that the decision to discontinue the appeal proceedings is not a ruling referred to in Article 398[1] § 1 CCP, which does not end the entire case under examination, because it results in the judgment of the court of first instance becoming final. See A. Góra-Błaszczykowska, [in:] *Kodeks postępowania cywilnego*, vol. 1: *Komentarz do art. 1–729*, ed. A. Góra-Błaszczykowska, Warszawa 2013, p. 868.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

a cassation appeal is therefore much narrower than the category of decisions made in civil court proceedings, against which the aforementioned means of challenge serves.

Pursuant to Article 398^3 § 1 CCP, a cassation appeal may be based on two grounds: breach of substantive law through its misinterpretation or misapplication, or breach of procedural law, if this infringement could have had a significant impact on the outcome of the case. For a breach of procedural law, it is therefore incumbent on the applicant to demonstrate an essential causal link between the alleged breach and the outcome of the proceeding. Therefore, a cassation appeal in public procurement cases brought by the parties may therefore be based only on a breach of substantive law through its misinterpretation or misapplication, or on a breach of procedural law, if this breach could have had a significant impact on the outcome of the case. The President of the Public Procurement Office may base the appeal on the same grounds if the fundamental principles of the legal order have been infringed by the issuance of the ruling (Article 398^3 §§ 1 and 2 CCP). Thus, a cassation appeal cannot be based on objections concerning the establishment of facts or the assessment of evidence (Article 398^3 § 3 CCP), regardless of whether it is brought by a party or the President of the Public Procurement Office. The filing of a cassation appeal by a party excludes the possibility for the President of the Public Procurement Office to file a cassation appeal within the challenged scope, which results from Article 398^1 § 2 CCP in conjunction with Article 590 (3) PPL.

The admissibility of filing a cassation complaint by a public entity authorised in public procurement cases, such as the President of the Public Procurement Office, is therefore dependent on whether the fundamental principles of the legal order have been infringed by the issuance of the challenged decision, in conjunction with the application *mutatis mutandis* of Article 398^3 § 2 CCP. A cassation appeal filed by the President of the Public Procurement Office, which does not contain an objection of violation of fundamental principles of legal order, should be rejected since such a flaw constitutes a structural defect of the appeal justifying its rejection without a prior request to rectify it.[10] The fundamental principles of the legal order, are recognised, both in case-law and among civil procedure scholars, as fundamental principles of the socio-political system, but also as fundamental principles governing various branches and areas of law, which together may be equated with the public policy clause.[11] This allows us to distinguish among the specific grounds for a cassation appeal in public procurement cases also the principles of awarding public contracts.[12]

[10] A. Piotrowska, *Komentarz do art. 398³ k.p.c.*, [in:] *Kodeks postępowania cywilnego*, vol. 2: *Komentarz. Art. 367–729*, eds. A. Marciniak, K. Piasecki, Legalis 2016.

[11] For more on this topic, see T. Ereciński, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Postępowanie rozpoznawcze*, ed. T. Ereciński, Warszawa 2012, p. 366.

[12] As stated by A. Banaszewska (*op. cit.*, p. 473).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

Pursuant to Article 590 (2) PPL, the capacity to file a cassation appeal is vested in the party to the proceedings and in the President of the Public Procurement Office, at the same time excluding other entities entitled to file the discussed means of challenge under the general regulation (see Article 398[1] § 1 CCP).[13] The legitimacy of the President of the Public Procurement Office is autonomous, independent of his prior participation in the proceedings initiated by the lodging of an appeal against the decision of the National Appeals Chamber, constituting a right granted to this body to protect the general public interest, on the basis of special regulations. At the same time, the wording of the new regulation (Article 590 (2) PPL) should be assessed positively, compared to the previously applicable Article 198g (1) of the former PPL, as regards granting the party to the proceedings an independent right to file a cassation appeal. The group of such entities is still not fully correctly defined in the Public Procurement Law. Therefore, one should clearly share the critical view formulated in the scholarly opinion regarding further unreasonable exclusion of a proceeding participant from the group of entities authorised to bring such a means of challenge, for example in a situation where it is an economic operator objecting to the acceptance of the appeal by the contracting entity, and at the same time being the only entity potentially interested in challenging the decision of the public procurement court.[14] On the other hand, the view that participants in the proceedings who were granted the status of secondary intervener in the complaint proceedings before the public procurement court, regardless of whether this results from the earlier notification of joining the appeal proceedings, or in an intervention reported for the first time at the stage of the complaint proceedings, obtain the right to submit a cassation appeal to the Supreme Court[15] should be definitely rejected, taking into account the assumption of the legislative action by a rational legislator and the effect of the linguistic interpretation of the aforementioned statutory regulation, as well as the systemic interpretation of individual regulations of the relevant normative act (comparative analysis of Article 579 (1) PPL and Article 590 (2) PPL).[16]

Pursuant to Article 590 (3) PPL, to the acts of the President of the Public Prosecutor's Office related to bringing a cassation appeal, the provisions on the General

[13] Cf. decision of the Supreme Court of 29 January 2016, II CZ 93/15, LEX no. 1997961.

[14] For example, see P. Wójcik, *Komentarz do art. 590 p.z.p.*, [in:] *Prawo zamówień publicznych. Komentarz aktualizowany*, ed. A. Gawrońska-Baran, LEX/el. 2022.

[15] As in A. Mika, *Skarga kasacyjna a nowe prawo zamówień publicznych*, "Polski Proces Cywilny" 2021, no. 2, p. 223 ff. Cf. H. Nowak, M. Winiarz, *Prawo zamówień publicznych. Komentarz*, Warszawa 2021, p. 1410. See also decision of the Supreme Court of 21 May 2009, I PK 10/09, OSNP 2011, no. 1–2, item 11; I. Gromska-Szuster, *Komentarz do art. 79 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 1: *Artykuły 1–366*, ed. T. Wiśniewski, LEX/el. 2021.

[16] Cf. J. Jerzykowski, *Komentarz do art. 590 p.z.p.*, [in:] *Odwołanie i skarga w zamówieniach publicznych. Artykuły 505–590 ustawy – Prawo zamówień publicznych. Komentarz*, LEX/el. 2021; Ł. Jaźwiński, *Komentarz do art. 590 p.z.p.*, [in:] W. Dzierżanowski, J. Jerzykowski, M. Kittel, M. Stachowiak, Ł. Jaźwiński, *Prawo zamówień publicznych. Komentarz*, LEX/el. 2021.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

Prosecutor, specified in the first part of the first book in Title VI of the Code of Civil Procedure shall apply *mutatis mutandis*.

According to Article 398^5 § 2 PPL, in conjunction with Article 590 (3) PPL, the time limit for filing a cassation appeal by the President of the Public Procurement Office is six months from the date when the ruling has become final, and if a party has requested service of the ruling with its substantiation, from the date of delivery of the ruling to the party. If the ruling with substantiation is served on the parties within different time limits, the period in question should start to run from the later of those services. That interpretation is supported by the fact that a longer time limit for filing a cassation appeal for a public entity does not, as a rule, affect the interests of the parties, since a cassation appeal concerns final decisions.[17] On the other hand, the time limit for filing a cassation appeal by a party to the proceedings, in accordance with Article 398^5 § 1 CCP applied *mutatis mutandis*, is two months from the date of service of the challenged ruling. That time limit is a procedural time limit, the length of which has been determined by law and is at the same time final; its reinstatement is permitted on a general basis.[18]

A cassation appeal must be filed with the court which delivered the ruling being challenged. Therefore, if a cassation appeal is filed directly with the Supreme Court, the adherence to the statutory time limit depends on the date on which the appeal is filed with the competent court of appeal. The Supreme Court must refer that appeal to the court whose decision is challenged by that measure. The wrong referral of the postal mail with the cassation appeal to the address of the Supreme Court does not prove the lack of fault of the applicant in the case of a breach of the time limit for filing it. However, if a cassation appeal were filed with the Supreme Court on such a date that it is possible, in the ordinary course of events, to transfer it to the court having jurisdiction within the applicable time limit, then the party could effectively demand the reinstatement of the time limit (Article 168 § 1 CCP).[19] Submitting a pleading at a Polish post office of a public operator is tantamount to filing it with court (Article 165 § 2 CCP).

The limitation of the admissibility of a cassation appeal due to the value of the object under appeal, laid down in Article 398^2 § 1 CCP is not applicable in matters of public procurement (see Article 515 (1) PPL[20]).

---

[17] As held by T. Ereciński, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 3: *Postępowanie rozpoznawcze*, ed. T. Ereciński, Warszawa 2016, p. 258.

[18] Cf. P. Granecki, *Prawo zamówień publicznych. Komentarz*, Warszawa 2016, p. 1498.

[19] See T. Wiśniewski, *Komentarz do art. 398^5 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Artykuły $367–505^{39}$*, ed. T. Wiśniewski, LEX/el. 2021.

[20] This provision specifies a much higher threshold for the value of the contract, on which the possibility of initiating appeal proceedings and, consequently also filing a complaint against the decision of the National Appeals Chamber, depends.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

In the case of cassation appeal, there is an obligation to be represented by a legal professional on the basis of Article 87^1 CCP. Thus, only a party represented by a professional legal representative can effectively file a cassation appeal in public procurement cases.

REQUIREMENTS FOR A CASSATION APPEAL IN PUBLIC PROCUREMENT CASES

A cassation appeal in public procurement cases must meet the formal and structural requirements as set out in Article 398^4 CCP. Therefore, it should meet the requirements provided for a pleading and contain the designation of the ruling against which it is brought, with an indication of whether it is challenged in whole or in part, the cassation grounds and their justification, a request to revoke or revoke and amend the judgment under appeal together with indication of the scope of the requested revocation and amendment, as well as a request to accept the cassation appeal for examination and the substantiation for the request. In property rights cases, the appeal should also specify the value of the object under appeal. The literature rightly emphasizes the need to distinguish between the formal requirements of the means of challenge, failure to comply with which may be rectified pursuant to Article 398^6 § 1 CCP, and the structural requirements, the lack of which justifies the rejection of the appeal without requesting for rectification.[21] The structural elements of the cassation appeal include the requirements specified in Article 398^4 § 1 CCP, i.e. the specification of the decision against which it is brought, with an indication of whether it is challenged in whole or in part; specification of the grounds for cassation and their justification; a request to revoke and amend the decision[22], specifying the scope of the requested revocation and amendment. The literature considers as such kind of requirement of a relative nature also the request (with a relevant substantiation) to accept a cassation appeal for examination.[23]

It should also be considered admissible for the cassation appeal to contain an optional request to suspend the enforcement of the ruling challenged under the cassation appeal. If, in the event of filing a cassation appeal, a party suffered irreparable damage as a result of the enforcement of the ruling, the possible suspension by the

[21] See T. Wiśniewski, *Przebieg procesu cywilnego*, Warszawa 2013, p. 405.

[22] See K. Sadowski, [in:] *Skarga kasacyjna. Zażalenie do Sądu Najwyższego na podstawie art. 394^1 § 1^1 k.p.c.*, ed. D.E. Kotłowski, Warszawa 2016, p. 77.

[23] See judgment of the Constitutional Tribunal of 1 July 2008 (SK 40/07, OTK-A 2008, no. 6, item 10), due to which, acting under the Act of 19 March 2009 amending the Code of Civil Procedure (Journal of Laws 2009, no. 69, item 593), the wording of Article 398^4 § 1 CCP was modified. Cf. T. Zembrzuski, *Skarga kasacyjna. Dostępność w postępowaniu cywilnym*, Warszawa 2011, p. 311; J. Gudowski, [in:] *System Prawa Procesowego Cywilnego…*, pp. 989–990.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

court of second instance of the enforcement of the challenged ruling until the end of the cassation proceeding or making the enforcement of that ruling conditional – and if the appeal is dismissed, also the ruling of the court of first instance, may be combined with the requirement that the claimant must first submit an appropriate security (Article 388 § 1 CCP).

If the cassation appeal does not meet the requirements specified in Article 398^4 § 2 or § 3 CCP, the complainant is called within one week to remedy the deficiencies, or else the appeal will be rejected. The court of second instance shall reject a cassation appeal filed after the expiry of the time limit, a complaint that does not meet the requirements set out in Article 398^4 § 1 CCP, an unpaid one, and an appeal, the deficiencies of which were not remedied within the set time limit or one which was inadmissible for other reasons. Such a decision of the court of second instance on the rejection of the cassation appeal may be appealed against to the Supreme Court. Where the court of second instance finds that the requirements of the cassation appeal have been met, it orders its service on the parties and participants in the proceedings. Within two weeks of the delivery of a copy of the appeal, the parties affected by the contested decisions may, pursuant to Article 398^7 § 1 sentence 2 CCP, submit a response to the cassation appeal. Scholars in the field also present the view that also the participants of the proceedings are entitled to respond to a cassation appeal brought by the President of the Public Procurement Office.[24] After the expiry of the time limit for reply or after ordering the delivery of the reply to the complainant, the court of second instance immediately submits the cassation appeal and the reply together with the case files to the Supreme Court (Article 398^7 § 2 CCP).

EXAMINATION OF THE CASSATION APPEAL

The examination of a cassation appeal at the Supreme Court begins with a review of the admissibility, timeliness and fulfilment of the statutory requirements of this remedy. Following that procedure, the appeal may be dismissed where it has been subject to rejection by the court of second instance or returned in order to rectify the deficiencies identified. The next stage in the appeal proceedings before the Supreme Court, in the context of the so-called pre-trial procedure, is the examination of the appeal in the context of the conditions justifying its admission for hearing. A cassation appeal may be accepted if: there is an important legal issue, there is a need to interpret legal provisions which raise serious doubts or divergent case-law, the nullity of the proceedings or the cassation appeal is manifestly founded. The purpose of the pre-trial procedure is not to examine the admissibility of the cassation appeal but to determine whether the examination is necessary in

[24] As stated by A. Banaszewska (*op. cit.*, p. 478).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

the light of the need for justice and the public interest.[25] The acceptance or refusal to accept a cassation appeal for examination is decided by the Supreme Court at a secret hearing by one judge in the form of a decision which is not subject to appeal. The decision on refusal to accept the cassation appeal for examination terminates the cassation proceedings and the decision on acceptance of the cassation appeal precedes the substantive examination of that means of challenge. The Supreme Court, sitting as a panel of three judges, hears the appeal as to the merits, in principle at a closed hearing. Exceptionally, in the cases referred to in Article 398^{11} § 1 CCP, the Supreme Court may examine the appeal in a trial. Its appointment is subject to a combination of two conditions: the existence of a substantial legal question and the specification in the content of the cassation appeal of a request to be heard in a trial. The Supreme Court may also examine a cassation appeal in a trial if other considerations so require. The non-appearance of the parties does not prevent the trial from being held. Since the rules governing proceedings before the Supreme Court, contained in Articles 398^{10} to 398^{21} CCP are not of a complete nature, according to Article 398^{21} CCP, where there are no other specific rules governing proceedings before the Supreme Court, the provisions governing appeal procedure shall apply *mutatis mutandis* to those proceedings.

The proceeding initiated by filing a cassation appeal boils down to reviewing the legality of the contested ruling. The Supreme Court hears the case as specified in the appeal and within the limits of its grounds; however, it takes into account of its own motion the invalidity of the proceedings within the limits of the appeal (Article 398^{13} § 1 CCP). Due to such a limited scope of review, the errors of the court of second instance in establishing the factual basis and assessing the evidence remain excluded from the review by the court of cassation. In cassation proceedings, it is not permissible to invoke new facts and evidence, and the Supreme Court is bound by the factual findings on which the contested decision is based (Article 398^{13} § 2 CCP).

If a legal issue that raises serious doubts arises when hearing a cassation appeal, the Supreme Court may postpone the decision and refer the case for examination by an enlarged panel of this court (Article 398^{17} § 1 CCP), which may take over the case for consideration.

Pursuant to Article 398^{14} CCP, the Supreme Court dismisses a cassation appeal if there are no justified grounds or if the contested decision, despite the erroneous substantiation, complies with the law. An appeal filed by the President of the Public Procurement Office may also be dismissed if the Supreme Court does not find a violation of the fundamental principles of the legal order.

[25] As held by A. Torbus, [in:] *System Prawa Pracy*, vol. 6: *Procesowe prawo pracy*, ed. K.W. Baran, Warszawa 2016, p. 803.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

In accordance with Article 398[15] § 1 CCP, the acceptance of the claim of a cassation appeal entails, in principle, setting aside the contested decision in whole or in part and referring the case back to the court that issued the decision or to another equivalent court. As pointed out in the literature, due to the specificity of public procurement cases, when hearing a cassation appeal against a ruling of a regional court, the Supreme Court may not revoke a decision of the National Appeals Chamber and refer the case back to it for re-examination, except in cases of nullity of proceedings. The court to which the case has been referred back for consideration is bound by the legal interpretation made by the cassation authority in that case. According to the wording of Article 398[16] CCP, if the ground for the breach of substantive law is manifestly justified and the cassation appeal was not founded also on the ground of a breach of the rules of procedure or this ground turned out to be unjustified, the Supreme Court may, at the request of the applicant, revoke the contested ruling and rule on the merits of the case.

In proceedings initiated by the filing of a cassation appeal by the President of the Public Procurement Office, the costs of the proceedings, in accordance with Article 398[18] CCP applied *mutatis mutandis*, are subject to mutual waiver. In other cases, the court decides on the costs of the proceedings on the basis of general rules.

CONCLUSIONS

The introduction of a new statutory regulation – the Public Procurement Law of 11 September 2019, concerning also a cassation appeal in public procurement matters, must be assessed positively. In particular, the widening of the category of persons entitled to bring such an appeal, which has long been postulated in the literature, should result in a significant increase in the total number of proceedings before the Supreme Court initiated by filing a cassation appeal. Given the peculiar nature of the appeal brought by the President of the Public Procurement Office, the cases of cassation proceedings initiated by this authority are still rare.[26] However, for unknown reasons, Article 590 CCP excludes the interveners from the group of those entitled to file a cassation appeal. This is undoubtedly a far unsatisfactory situation, for example because of the constitutional principle of equality before the law.

[26] See Urząd Zamówień Publicznych, *Skargi kasacyjne Prezesa UZP*, https://www.uzp.gov.pl/baza-wiedzy/orzecznictwo/orzecznictwo-krajowe/skargi-kasacyjne-prezesa-uzp (access: 20.11.2022). During the period from 2010 till now, the President of the Public Procurement Office used his prerogative six times.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

REFERENCES

Literature

Akerberg A., *Środki odwoławcze. Komentarz do art. 393–441 Kodeksu postępowania cywilnego*, Warszawa 1933.

Banaszewska A., *Skarga na orzeczenie Krajowej Izby Odwoławczej jako środek ochrony prawnej w systemie zamówień publicznych*, Warszawa 2018.

Bendetson W., *O kasacji według kodeksu postępowania cywilnego*, "Palestra" 1933, no. 1–2.

Dul R., *Skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia a skarga kasacyjna w procesie cywilnym*, Warszawa 2015.

Ereciński T., [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Postępowanie rozpoznawcze*, ed. T. Ereciński, Warszawa 2012.

Ereciński T., [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 3: *Postępowanie rozpoznawcze*, ed. T. Ereciński, Warszawa 2016.

Góra-Błaszczykowska A., [in:] *Kodeks postępowania cywilnego*, vol. 1: *Komentarz do art. 1–729*, ed. A. Góra-Błaszczykowska, Warszawa 2013.

Górski A., *Uwagi o sprawowaniu wymiaru sprawiedliwości przez Sąd Najwyższy*, [in:] *Aurea praxis, aurea theoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, eds. J. Gudowski, K. Weitz, vol. 2, Warszawa 2011.

Granecki P., *Prawo zamówień publicznych. Komentarz*, Warszawa 2016.

Gromska-Szuster I., *Komentarz do art. 79 k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 1: *Artykuły 1–366*, ed. T. Wiśniewski, LEX/el. 2021.

Gudowski J., [in:] *System prawa procesowego cywilnego*, vol. 3, part 2: *Środki zaskarżenia*, ed. J. Gudowski, Warszawa 2013.

Gudowski J., *Pogląd na kasację*, "Przegląd Sądowy" 2013, no. 4.

Halpern F., *Do kwestii orzeczenia kasacyjnego cywilnego*, "Głos Prawa" 1932, no. 2–3.

Jaźwiński Ł., *Komentarz do art. 590 p.z.p.*, [in:] W. Dzierżanowski, J. Jerzykowski, M. Kittel, M. Stachowiak, Ł. Jaźwiński, *Prawo zamówień publicznych. Komentarz*, LEX/el. 2021.

Jerzykowski J., *Komentarz do art. 590 p.z.p.*, [in:] *Odwołanie i skarga w zamówieniach publicznych. Artykuły 505–590 ustawy – Prawo zamówień publicznych. Komentarz*, LEX/el. 2021.

Mika A., *Skarga kasacyjna a nowe prawo zamówień publicznych*, "Polski Proces Cywilny" 2021, no. 2.

Nowak H., Winiarz M., *Prawo zamówień publicznych. Komentarz*, Warszawa 2021.

Piotrowska A., *Komentarz do art. 398[3] k.p.c.*, [in:] *Kodeks postępowania cywilnego*, vol. 2: *Komentarz. Art. 367–729*, eds. A. Marciniak, K. Piasecki, Legalis 2016.

Sadowski K., [in:] *Skarga kasacyjna. Zażalenie do Sądu Najwyższego na podstawie art. 394[1] § 1[1] k.p.c.*, ed. D.E. Kotłowski, Warszawa 2016.

Torbus A., [in:] *System Prawa Pracy*, vol. 6: *Procesowe prawo pracy*, ed. K.W. Baran, Warszawa 2016.

Waligórski M., *Podstawy kasacyjne procesu cywilnego w świetle różnicy pomiędzy faktem i prawem*, Lwów 1936.

Wiśniewski T., *Komentarz do art. 398[5] k.p.c.*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Artykuły 367–505[39]*, ed. T. Wiśniewski, LEX/el. 2021.

Wiśniewski T., *Przebieg procesu cywilnego*, Warszawa 2013.

Wójcik P., *Komentarz do art. 590 p.z.p.*, [in:] *Prawo zamówień publicznych. Komentarz aktualizowany*, ed. A. Gawrońska-Baran, LEX/el. 2022.

Zembrzuski T., *Skarga kasacyjna. Dostępność w postępowaniu cywilnym*, Warszawa 2011.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 29/11/2026 19:53:12

Online sources

Urząd Zamówień Publicznych, *Skargi kasacyjne Prezesa UZP*, https://www.uzp.gov.pl/baza-wiedzy/orzecznictwo/orzecznictwo-krajowe/skargi-kasacyjne-prezesa-uzp (access: 20.11.2022).

Legal acts

Act of 17 November 1964 – Code of Civil Procedure (consolidated text, Journal of Laws 2021, item 1805, as amended).
Act of 29 January 2004 – Public Procurement Law (consolidated text, Journal of Laws 2019, item 1843, as amended).
Act of 22 December 2004 amending the Act – Code of Civil Procedure and the Act – Law on the System of Common Courts (Journal of Laws 2005, no. 13, item 98).
Act of 19 March 2009 amending the Code of Civil Procedure (Journal of Laws 2009, no. 69, item 593).
Act of 11 September 2019 – Public Procurement Law (consolidated text, Journal of Laws 2021, item 1129, as amended).

Case law

Decision of the Supreme Court of 23 August 2002, I CKN 421/01, LEX no. 55523.
Decision of the Supreme Court of 21 May 2009, I PK 10/09, OSNP 2011, no. 1–2, item 11.
Decision of the Supreme Court of 25 September 2014, II CZ 45/14, LEX no. 1532736.
Decision of the Supreme Court of 9 December 2014, V CSK 311/14, LEX no. 1551681.
Decision of the Supreme Court of 29 January 2016, II CZ 93/15, LEX no. 1997961.
Judgment of the Constitutional Tribunal of 1 July 2008, SK 40/07, OTK-A 2008, no. 6, item 10.

ABSTRAKT

Niniejsze opracowanie zostało poświęcone ogólnej charakterystyce skargi kasacyjnej w sprawach z zakresu zamówień publicznych. Nowa regulacja ustawowa – Prawo zamówień publicznych z 2019 r. – w tym zakresie znacząco zmieniła charakter wskazanego środka prawnego, przewidując nadanie legitymacji do jej wnoszenia podmiotom bezpośrednio zainteresowanym rozstrzygnięciem sprawy – stronom postępowania, obok dotychczas uprawnionego Prezesa Urzędu Zamówień Publicznych. Przez to skarga kasacyjna w sprawach z zakresu zamówień publicznych ma wreszcie szansę na klasyfikację własną do kategorii środków ochrony prawnej. Artykuł zawiera szeroką charakterystykę skargi kasacyjnej w sprawach z zakresu zamówień publicznych ze szczególnym uwzględnieniem wymogów w zakresie jej skutecznego wnoszenia. Opracowanie odnosi się także do samego rozpoznania skargi w sprawie zamówienia publicznego. Autor w sposób metodologiczny prezentuje przeprowadzone analizy.

Słowa kluczowe: skarga kasacyjna; strona postępowania; wymogi środka zaskarżenia; zamówienia publiczne; środki ochrony prawnej