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## **ABSTRACT OF THE DOCTORAL THESIS**

### **The legal nature of the preliminary examination of cassation appeals in the Supreme Court.**

The doctoral dissertation contains an analysis of the preliminary examination of the cassation appeal by the Supreme Court, as well as an assessment of whether the applicable legal regulation violates or limits the right to justice. The dissertation aims to determine what role the pre-cassation court plays within the system of appeals against judgments.

The topic of the study is related to the assessment of the legal nature of the preliminary examination of a cassation complaint before the Supreme Court. For the purposes of analyzing the subject of the dissertation, it is necessary to explain the concepts of legal institution, legal instrument and legal remedy.

The starting point for the considerations undertaken in this work is the thesis that the proceedings in which the admissibility of accepting a cassation appeal for consideration is assessed (the so-called "cassation pre-trial") is a procedural instrument, while a cassation appeal is an institution of procedural law. The legal analysis of the cassation pre-trial related to the possibility of considering a cassation appeal in a given case has not been carried out as part of a monographic study that would present the functions and importance of the cassation pre-trial in a comprehensive and orderly manner. The dissertation contains such an analysis in various aspects, starting from historical and legal conditions, through the conditions for accepting a cassation appeal for consideration, assessing the purposefulness of the existence and function of a cassation pre-trial in the course of proceedings triggered by the lodging of an extraordinary remedy, such as a cassation appeal, and assessing whether a cassation pre-trial limits the admissibility of the examination cassation appeal by the Supreme Court.

The main aim of the research conducted as part of the dissertation was to determine whether the preliminary examination of a cassation complaint in the Supreme Court in the cassation proceedings is justified or whether it should be eliminated from the Code of Civil Procedure. In particular, an assessment was made of whether the cassation pre-trial should be treated as an additional and autonomous mode of proceedings in which cases that may be heard by the Supreme Court are qualified.

For the above reasons, it was necessary to determine whether the cassation pre-trial leads to the fulfillment of the purpose and function of the cassation appeal itself. Due to the indicated doubts of a systemic nature, the dissertation is an attempt to provide answers to the problematic issues indicated below.

1. Should the cassation pre-trial be treated as an autonomous procedure whose subject is the selection of cases suitable for consideration by the Supreme Court as a result of lodging a cassation appeal, or as a stage of proceedings related to the examination of the cassation appeal?
2. What criteria should determine the selection of accepted cases?  
to be heard by the Supreme Court?
3. Does the existence of a cassation pre-trial allow the achievement of the goal?  
and the function of a cassation appeal?
4. Is a cassation pre-trial, as a legal instrument dedicated to a cassation appeal, an emanation of the principle of non-competitiveness of extraordinary remedies?
5. What consequences may be associated with waiving the cassation pre-trial, regulated in the provisions of the Code of Civil Procedure?
6. Is the obvious validity of the complaint as a basis for accepting a cassation appeal tantamount to allowing the cassation appeal?
7. Is the introduced regulation of the cassation pre-trial capable of achieving its intended effects?
8. Is a cassation pre-trial necessary to protect the public interest to which it is connected?

The objectives indicated above, as well as the research issues and the collected scientific materials, allowed the adoption of the following main hypothesis in the work: the preliminary examination of the cassation complaint carried out in the form of a cassation pre-trial in the

Supreme Court is a legal instrument that allows for the assessment and determination of what cases to be considered by the Supreme Court, which in turn allows for the fulfillment of the purpose and function of the cassation appeal.

In this work, an attempt was made to verify whether the initial, specific "selection" carried out in accepting cases for examination results from the needs of the justice system or the need to protect the public interest in the cases being heard? The regulation of the described institution of a cassation appeal and the legal instrument, which is a cassation pre-trial, is associated with ensuring the proper functioning of the system of verification of judgments in a state governed by the rule of law. The regulations that have been introduced are also inherently related to the desire to reduce the backlog in the examination of civil cases by the Supreme Court.

The work was written on the basis of qualitative research on the structure of the cassation pre-trial and the cassation appeal itself, which required reference to the historical and legal conditions of the described legal regulation within the system of appeals in Poland. The basis for conducting qualitative research on the effectiveness and importance of the existence of the cassation pre-trial was statistical data included in the Bulletin of the Civil Chamber of the Supreme Court.

In the context of the currently proposed changes in the form of removing the institution of the cassation pre-trial, it was also necessary to analyze the consequences in the form of the impact of such a change on the system of instances in civil proceedings. The issue of the legal nature of the cassation pre-trial, as well as its function, deserves an in-depth analysis due to the emerging discrepancies in the assessment of this legal instrument, both in legal theory and judicial practice.

The work also discusses the problem of the cassation pre-trial as a legal instrument affecting the functioning and importance of a cassation appeal in terms of the possibility of verifying final judgments.

The dissertation is an attempt to answer the question whether a cassation pre-trial is advisable in proceedings initiated by filing a cassation appeal to the Supreme Court? The hearing also focuses on the analysis of the adjudicating panel at the initial stage of considering a cassation appeal, in the context of granting broad powers to one judge who decides on accepting or refusing to accept the case for substantive consideration.

The doctoral dissertation consists of eight chapters.

The first chapter of this dissertation presents general issues related to the historical development of the appealability of judgments, compares the revision and cassation systems, classifies the means of appeal and explains the features of individual means of appeal. The historical and legal conditions of the current regulation of cassation appeals are described, and how the provisions on the pre-trial cassation appeal have changed are included in the following chapters when discussing the purpose and function of the preliminary examination of a cassation appeal in the Supreme Court. The second chapter of the work is devoted to issues related to the right to appeal against judgments and the constitutional right to a court. This chapter also explains the features related to conducting a fair and quick trial, in terms of exercising the right to appeal against a decision by means of a cassation appeal, as well as the issue of non-competitive nature of extraordinary appeal measures. The third chapter of the study contains an explanation of the specific nature of the cassation appeal, which is an extraordinary means of appeal. The analysis of this appeal began with a presentation of the stages involved in its examination, including the conditions for the admissibility of filing a cassation appeal, as well as the grounds and legitimacy for filing a cassation appeal, and finally, the course of the proceedings was described. The fourth chapter is devoted to the presentation and discussion of the premises of the cassation appeal in the strict sense. This chapter also explains the concept of gravamen. The fifth chapter presents the cassation pre-trial in the historical and legal aspect from the period of partition, during the Second Polish Republic and in the Polish People's Republic. This chapter analyzes the provisions regulating the course of proceedings related to the preliminary examination of a cassation appeal by the Supreme Court and discusses the purpose and importance of the cassation pre-trial. Chapter five also contains an explanation of the characteristics of the cassation pre-trial as a legal instrument functionally related to the cassation appeal. Chapter six describes the differences between the preliminary examination of selected extraordinary remedies. The seventh chapter presents the cassation pre-trial in the context of the conditions for accepting a cassation appeal for consideration by the Supreme Court. This chapter discusses the differences between the condition for the need to interpret legal provisions that raise serious doubts and the condition for discrepancies occurring in case law, and also explains the importance of the condition for the occurrence of a significant legal issue, the condition for the invalidity of the proceedings and the meaning of the condition for a pre-trial cassation, which is the obvious validity of a cassation appeal. In turn, chapter eight presents the proposed changes to the regulations, consisting in the abandonment of the cassation

pre-trial, as well as the reasons and scope of the proposed changes, their assessment and the consequences of the elimination of the cassation pre-trial from the provisions of the Code of Civil Procedure.

The summary includes a verification of the hypotheses and research problems set out at the beginning, leading to the assessment of the cassation pre-trial as a legal instrument.

*Agustín Luis  
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