

**Abstract of habilitation thesis**  
**(Potěšil, L. Kasační stížnost. Praha: C. H. Beck, 2022, 336 p. ISBN 978-80-7400-899-3)**

### **Cassation complaint**

The monograph deals with cassation complaint. A cassation complaint is an important element of administrative justice, as it is taken against a previous decision of the regional court, which is already in legal force. It is therefore an extraordinary remedy, which is decided by the Supreme Administrative Court. In the Czech legal system, the cassation complaint has appeared since 2003. Recently, the cassation complaint has undergone relatively significant changes, which confirms that it is an up-to-date issue.

There is quite a rich commentary literature on the cassation complaint. Several articles and contributions were also published. However, they mainly focus only on selected aspects of the cassation complaint. The cassation complaint received the most attention in the literature during the introduction of the institute of the unacceptability of the cassation complaint on the one hand and from the point of view of the absence of its suspensive effect and possible consequences in the form of so-called revenant decisions on the other hand. Currently, cassation complaint is discussed in connection with the widespread application of the "filter" in the unacceptability of cassation complaint. Therefore, there is a lack of a specific comprehensive discussion of the given issue, including in the necessary theoretical and practical contexts, with aspects of *de lege ferenda*. This is striking even when compared to an appeal in a civil court proceeding or the issue of a constitutional complaint about which monographs had been published already.

The monograph discusses the issue of cassation complaints in a comprehensive manner. It focuses on its history and present, as well as the open future. The basis is an analysis of provisions of the legislation in the Code of Administrative Justice. Of course, general or theoretical roots are not omitted either. In addition to the standard analysis of provisions of legal regulation, based on the usual methods of legal text analysis, the publication also focuses on case law. It is not only mentioned but also evaluated overall. The monograph is also based on the use of some statistical data. These are collected in several tables, from which some facts emerge from the point of view of application practice itself that is interesting.

The monograph tries to answer several questions. Rather than individual questions, the overall idea (hypothesis) can be expressed as to whether the cassation complaint, as set up by its legal regulation and actual implementation, is indeed an extraordinary remedy and what the cassation complaint is for. Therefore, another researched area is the purpose of the cassation complaint and its decision. This is closely related to the role and position of the Supreme Administrative Court.

The monograph is divided into ten chapters, in which attention is paid to individual facts or structural elements of the cassation complaint.

The first chapter outlines the history of the cassation complaint, as well as the changes in its legal regulation that have taken place since 2003. The conclusion is that the 90s of the 20th century were the crucial period for the cassation complaint. This fully manifested the negative consequences of the absence of a cassation complaint in the legal regulation of the administrative justice at the time, closely connected with the actual non-establishment of the anticipated Supreme Administrative Court. This period still acts as a warning and, to a specific extent, influences the understanding of the cassation complaint because it can be taken in the maximum number of potential cases. However, this creates several problems.

The second chapter focuses on the cassation complaint rather from a theoretical point of view, in close connection with administrative justice's characteristic features or foundations. By labeling it as a "complaint", it follows on from historical antecedents. The term "cassation"

in turn, predetermines that, by filing it, one seeks the annulment (or cassation) of the contested decision of the regional court and (most typically) the return of the matter to the regional court for further proceedings. This part concludes that in the case of a cassation complaint and the proceedings about it, there are no significant differences from the dispositional principle, as it is understood from the point of view of administrative justice but also the broader theory of procedural law. The elements of the concentration of proceedings that can be found in the case of a cassation complaint are primarily intended to respect the nature of the cassation complaint as an extraordinary remedy, which is aimed at reviewing the regional court's decision. Another conclusion is that the possibility of taking a cassation complaint or admitting a cassation complaint to the administrative justice system does not conflict with its single-instance system. The cassation complaint does not deny the single-instance nature of administrative justice, and the two mentioned components do not conflict. The principle of single-instance administrative justice is also per the requirements arising from constitutional and international sources, as well as the regulations of European Union law.

In the third chapter, attention is paid to the admissibility and inadmissibility of the cassation complaint. The possibility of taking a cassation complaint is based on the so-called general clause. According to it, a cassation complaint is admissible against every regional court decision in the administrative justice unless otherwise stipulated. This part also focuses on whether the broadly set admissibility of taking a cassation complaint does not contradict its mission and the nature of an extraordinary remedy. This part indicates the decisive role of case law, and its evaluation is also given. It has been proven that knowledge of current case law is necessary to apply the provisions governing cassation complaints correctly.

The fourth chapter discusses the institution of the unacceptability of a cassation complaint, which is not the original institution. With the introduction of the institute of the unacceptability of a cassation complaint in 2005, the function of a cassation complaint has changed from individual legality to ensuring the unity of decision-making and the prospective role of the Supreme Administrative Court. This is also confirmed by the extension of the unacceptability of a cassation complaint, which occurred in 2021. The stated conclusion in this section is that we can expect a general extension of the unacceptability of a cassation complaint to all cases resolved in the administrative justice, in which it is possible to take a cassation complaint.

Other characteristic facts are connected with the cassation complaint, which completes its overall character. It is also requirement or procedure condition. These are primarily the payment of the court fee, timeliness, content requirements of the cassation complaint, and the existence of mandatory representation of the applicant of the cassation complaint. The fifth chapter deals with these aspects in summary. Although this part is descriptive to a certain extent, considerations were also indicated here as to whether the right to take a cassation complaint, which today belongs to all participants in administrative court proceedings, including persons participating in the proceedings, is not too broad.

The facts above are immediately followed by the sixth chapter dedicated to the issue of the reasons for the cassation complaint. It is an essential element of the cassation complaint. This chapter dealt with possible considerations for limiting the reasons for the cassation complaint, which would contribute to strengthening the perception of a cassation complaint as an extraordinary remedy. But the conclusion is that it would only minimally contribute to the goal of such a change in legislation, which is to reduce the burden on the Supreme Administrative Court. Any changes in the reasons for the cassation complaint should, therefore, not be made alone but in connection with other and broader changes to the cassation complaint itself.

As the cassation complaint is an extraordinary remedy, it lacks a suspensive effect. However, the Supreme Administrative Court may grant it at the request of the cassation

complainant. In granting the suspensive effect of a cassation complaint, the Supreme Administrative Court took different approaches. Problems in practice caused by the absence of a suspensive effect of a cassation complaint in connection with the Supreme Administrative Court's annulment decision against the regional court's previous annulment decision have several possible solutions. The seventh chapter is devoted to the facts connected with the suspensive effect of the cassation complaint. One of the conclusions *de lege ferenda* is the possibility of preventing or solving already existing problems associated with the suspensive effect of a cassation complaint in individual special laws. The conclusion is also that, thanks to the subsidiarity of administrative justice, the issue of suspensive effect does not have a simple and easy solution.

The eighth chapter deals with cassation complaint proceedings. This chapter details the procedure of the Supreme Administrative Court after taking a cassation complaint and the procedural steps leading to the decision on the cassation complaint. The role of the extended senate of the Supreme Administrative Court regarding case law dedicated to cassation complaints is also mentioned. From this, one can express an idea about the judicial changes of the cassation complaint and the stability of the case law.

The ninth chapter focuses on decision-making and decisions on cassation complaints. The application of the principle of cassation was mentioned hand in hand with certain rationalization exceptions. Cassation appeals are loaded at the Supreme Administrative Court. They represent the main (but not the only or exclusive) content of its decision-making activity. Attention was also paid to this fact based on specific statistical data. This chapter points out in more detail how the Supreme Administrative Court can decide on a cassation complaint, including what such a decision on a cassation complaint looks like, what it contains, and to whom it is intended. The Supreme Administrative Court decides on several thousand cassation appeals every year. Over the last few years, a higher and higher number of cassation complaints have been loaded, which exceeds the limit of 4,000 per year. However, only a long period will make it possible to assess whether the amendment mentioned above expanding the unacceptability of cassation complaints will make any significant changes to this relatively high amount and the associated burden on the Supreme Administrative Court.

The last, tenth chapter contains not only other static data but also based on the expressed reflections on the present and future of the cassation complaint and its legal regulation. It was stated that it is somewhat paradoxical that the crucial role of the Supreme Administrative Court in ensuring the unity and legality of decision-making is essentially predetermined by whether or not a cassation complaint was taken and on what reasons or objections is based. The question, which is not easy to answer, is the causes of the burden of the Supreme Administrative Court, as well as the appropriateness of the means chosen to solve it. In this context, one cannot avoid a certain parallel between the overcrowding of the supreme administrative court in 1918-1938 and a comparison of the solution to the problem then and today.

As a general conclusion, it can be stated that the cassation complaint represents an essential tool in the functioning of the entire administrative justice and a means of fulfilling the crucial role of the Supreme Administrative Court. The cassation complaint enables the Supreme Administrative Court to unify the case law of regional courts in the administrative justice, thus ensuring their unity and legality.

The monograph leans towards the fact that the Supreme Administrative Court should primarily ensure the unity of decision-making through cassation complaints and by deciding on them. The unifying and prospective role of the Supreme Administrative Court should be preferred. The future of the cassation complaint lies in the slow but sure strengthening of its nature as an extraordinary remedy.