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Original scientific paper

Grounds of Rebutting the Judgment in Criminal Procedure: The Metodology of Writing the Judgment as the Biggest Challenge

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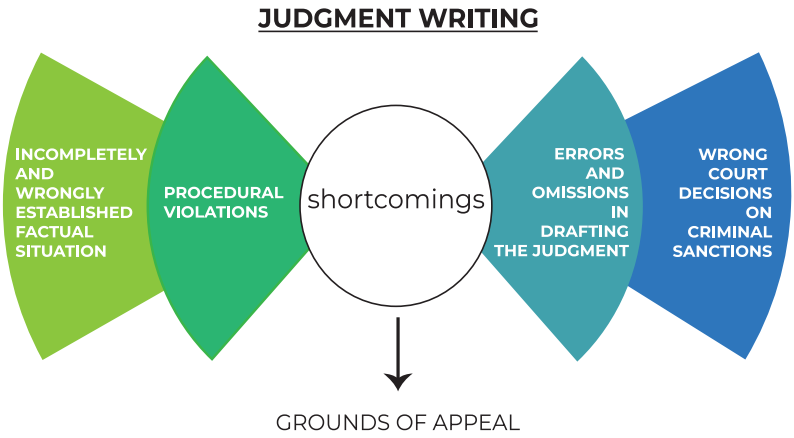
Abstract: The legal and proper resolution of criminal matters represents the fundamental principle of modern criminal procedural legislation, since without its observance, the realization of the principle of a legal, democratic state, i.e. the realization of the fundamental principles of criminal procedural law, as well as the achievement of the goal of criminal proceedings and the protection of basic human rights, cannot be imagined. The prerequisite for the realization of the aforementioned principle is reflected in the correct application of adequate legal regulations, that is, in the correct and complete determination of the factual state by the court in criminal procedure. However, as the making of mistakes and omissions by the court in solving criminal matters represents an immanent feature of the functioning of criminal justice, it is extremely important to establish which errors and omissions the courts make during the meritorious resolution of criminal proceedings. In this sense, with this research, the author established to what extent the courts make standardized errors and omissions, first of all from the aspect of the representation of all grounds of appeal and then also the representation of reason for appeal within the grounds of appeal of essential violations of the provisions of the criminal procedure. Special emphasis in the research was placed on errors and omissions made by courts when writing judgments, bearing in mind both the circumstance that the legislator prescribed it with a general clause, and the circumstance that the courts in most cases commit this essential procedural violation.

Keywords: disposition of the judgment, explanation of the judgment, criminal procedure violations, rebuttal grounds, Belgrade High Court, Belgrade Court of Appeal.

Graphical abstract



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INTRODUCTION

The rendering of a judgment that resolves a specific criminal matter that is the subject of criminal proceedings is a complex task that is put before the court. Difficulties that courts may encounter can be diverse, starting with objective ones, which are beyond the scope/possibility of the court's influence, such as the complexity of the structure of the criminal case, the behaviour of other subjects of the criminal process, etc., to subjective ones, i.e. those that are the product of deliberate or intentional actions or omissions by the court. Bearing in mind that mistakes during the resolution of a criminal case, despite the perfectly regulated judicial system and legal norms, represent "an inherent risk of the functioning of the judiciary" (Vasiljević, 1981; Grubač, 2002), the possibility of review of the judgment by a criminal case resolved on the merits is the foundation of a legal and fair procedure. In this sense, deficiencies in the decision that resolved the criminal matter on the merits as well as in the procedure for its adoption, which are classified as legal and factual anomalies, can be eliminated in a possible appeal procedure.

The mentioned shortcomings, which can be the basis for the initiation of the review procedure of the disputed, possibly illegal and irregular judgment, represent a legal category. Namely, the Code of Criminal Procedure of the Republic of Serbia (hereinafter: CPC) regulates the grounds for filing an appeal against a judgment, which can be classified into two basic categories. The first category refers to legal deficiencies that can be manifested in the form of: a) significant violations of the provisions of the criminal procedure, (Art. 438 of the CPC), b) violations of the criminal law, i.e. the wrong application of the law, the established factual situation (Art. 439 of the CPC) and c) irregular court decisions on criminal sanctions and other decisions, within the limits of the law (Art. 441 of the CPC). The second category refers to factual errors, that is, to improperly or incompletely established factual state (Art. 440 of the CPC). The aforementioned classification was made according to the similarity of the defects – *de iure* or *de facto*.

In order for a violation of the law to be a basis for review the judgment, i.e. filing an appeal, it is necessary that it be essential, i.e. that it has a certain influence on the judgment that has been passed. Therefore, not every violation of the law can be the basis for declaring a legal remedy. Which violations of the law are important is determined by the CPC itself. However, not all significant violations which are the basis for filing an appeal are of equal importance and strength. In this sense, in accordance with the criminal procedural legal solution, there is a classification of absolute (absolutae ab effectu) and relatively significant (relativae ab effectu) violations of the provisions of the criminal procedure.

The type of violation referred to by the appellant in the appeal is determined by the action of the competent court according to the declared legal remedy. In this sense, the effect of an absolutely essential violation, the existence of which has been established, always has a detrimental effect on the rendered judgment which cannot be proven, since it represents an irrefutable legal presumption. Therefore, if it is determined that an absolutely essential violation has been committed, the court has the obligation to cancel or modify the judgment.

In this case, therefore, the existence of causality between some of the violations and the legality and regularity of the judgment is not proven. Ex adverso, in the case of relatively

significant violations of the provisions of the criminal procedure, the court in each specific case should assess whether the violation adversely affected the decision. The higher court instance has the obligation first to determine the existence of a specific violation, and then the impact of the violation on the legality and regularity of the decision made. Here, a cause-and-effect relationship with the harmful consequence caused by the injury must be proven. When it comes to errors regarding the de facto basis of the judgment, it is important to point out that the factual situation represents the fundamental substrate of every criminal procedure, and its correct and complete determination represents the most important but also the most delicate judicial activity. The de facto basis of the criminal judgment is based on the presented evidence and established facts, as well as their assessment, which is the basis for the correct application of substantive criminal law norms. Anomalies with regard to the factual state as a basis for rebutting the judgment must refer only to "essential, decisive facts". It can be said that decisive facts are those "which have a certain degree of relevance in relation to the subject of the criminal proceedings", that is, which in the specific case have significance for the way of solving the criminal case, as well as for the way of solving all important issues in the court decision with which the criminal procedure ended (Škulić, 2013).

Bearing in mind the already mentioned importance of the appeal procedure in which possible errors in the judgment and/or in the procedure in which they were made can be eliminated, it is extremely important to point out which errors and omissions and to what extent the courts make when solving the criminal case. In accordance with the above, the author points to the representation of all grounds of appeal (Art. 438–441 of the CPC) in appeals against judgments. In addition, the author devoted her attention to the analysis of the representation of reasons of appeal within the framework of the grounds of appeal for essential violations of the provisions of the criminal procedure (Art. 438 of the CPC), bearing in mind their number and diversity, and especially emphasizing the significance and qualitative analysis of the errors made by the courts when writing the judgment, and which cause the unintelligibility of the disposition of the judgment as an absolutely essential procedural violation, that is, which cause other defects in the disposition and in the explanation of the judgment as a relatively important procedural violation. The significance of the research of the mentioned appeal reason is reflected in establishing the way in which the courts commit the mentioned violation, bearing in mind both the circumstance that the legislator prescribed it with a general clause (without specifying what it consists of), and the circumstance that the courts, due to its nature, may attach it less importance, which makes this ground of appeal the most represented ground of appeal.

MATERIALS AND METHODS

The subject of the research, which refers to the establishment of the representation of grounds of appeal in reported appeals against judgments, i.e. in the representation of reasons of appeal within the grounds of appeal of essential violations of the provisions of the criminal procedure, and especially the reason of appeal that refers to the unintelligibility of the pronouncement of the judgment (Art. 438, para. 1, subpara. 11 of the CPC) or other deficiencies in the disposition and in the explanation of the judgment (Art. 438, para. 2, subpara. 2 of the CPC), was approached from two aspects.

The first aspect of the research refers to the analysis of complaints that form a sample of one segment of the research. It is about a certain number of appeals against the decision made in the second-instance procedure by the High Court in Belgrade (hereinafter: the High Court) or the Court of Appeal in Belgrade (hereinafter: the Court of Appeal). Namely, this segment of the research was conducted on the basis of a sample of 782 appeals, i.e. from: 1) 178 appeals filed against judgments on which the decision was made in the second instance procedure by the Higher Court in the period from 2016 to 2020 (High Court in Belgrade, 2021), whose selection was made using the random sample method, and 2) 604 appeals filed against judgments on which the decision was made in the second-instance procedure by the Court of Appeal in the period from 2014 to 2020 (Court of Appeal in Belgrade, 2021)[2]. In this part of the research, after processing the data, the author, using a statistical method, i.e. a modelling method, presented the percentage representation of grounds of appeal in the reported appeals, i.e. represented reasons of appeal individually within the grounds of appeal of absolutely essential procedural violations from Art. 438, para. 1 subpara. 11 and para. 2, subpara. 2 of the CPC.

The second aspect of the research refers to the analysis of the decisions of the second-instance courts of the Republic of Serbia, which are available on the Intermex.rs website. In this part of the research, the author analysed the second-instance decisions only from the aspect of establishing which mistakes and shortcomings the courts make when writing the judgments, that is, in which cases the disposition is incomprehensible (Art. 438, para. 1, subpara. 11 of the CPC) and in in which cases there are other deficiencies in disposition and in the explanation of the judgment (Art. 438, para. 2, subpara. 2 of the CPC). After the analysis, the author grouped the identified deficiencies, that is, classified them into specific categories for easier understanding, bearing in mind the number and variety of ways in which the mentioned procedural violations can be committed.

In the research, the author used the following scientific methods: the method of analysis, synthesis, inductive-deductive method, normative legal method, empirical method, and modelling method.

RESULTS

Bearing in mind the complexity of the research, as well as the fact that the research itself consists of two parts, the results of the research will be classified into two groups, as follows:

1) quantitative results (which are presented statistically), which were obtained by processing and analysing appeals on which the decision was made in the second-instance procedure, in a certain period of time, by the Higher Court, that is, the Court of Appeal;

2) qualitative results showing how courts make mistakes and omissions when writing judgments, which results in the unintelligibility of the disposition (Art. 438, para. 1, subpara. 11 of the CPC), or other anomalies in the disposition and in the explanation of the judgment (Article 438, para. 2, subpara. 2 of the CPC).

2 The research was carried out on the basis of the Decision of the Court of Appeal in Belgrade, on a sample of 604 appeals, which were reported in 136 cases, which represents the total number of contested judgments in the period 2014 to 2020, which are available on the website of the Court of Appeal in Belgrade.

The Results Obtained from the Analysis of the Decisions Given in the Second-Instance Proceedings by the High Court in Belgrade and the Court of Appeal in Belgrade

Table 1 and Figure 1 show the overall representation of grounds of appeal in reported appeals against judgments that make up the research sample. Within the grounds of appeal, the representation of all grounds of appeal in the concrete sample of the research is shown, i.e. significant violations of the provisions of the criminal procedure (Art. 438 of the CPC), violations of the criminal law (Art. 439 of the CPC), wrongly or incompletely established factual state (Art. 440 of the CPC) and the decision on criminal sanction and other decisions (Art. 441 of the CPC). The percentage of representation of the mentioned grounds of appeal is given in relation to the research sample, which, in this case, was made up of 178 (100%) appeals on which the decision was made by the High Court, i.e. the Court of Appeal – 604 appeals (100%) in the second-instance procedure. The results of the research are shown in percentage.

Table 1. *Overall representation of grounds of appeal*

Grounds of appeal		Significant violations of the provisions of the criminal procedure (Art. 438 of the CPC)	Violations of the criminal law (Art. 439 of the CPC)	Wrongly or incompletely established factual state (Art. 440 of the CPC)	Decision on criminal sanction and other decisions (Art. 441 of the CPC)
Number of appeals filed	High Court in Belgrade	78.09%	58.43%	79.77%	58.99%
	Court of Appeal in Belgrade	81.29%	70.86%	85.6%	71.69%

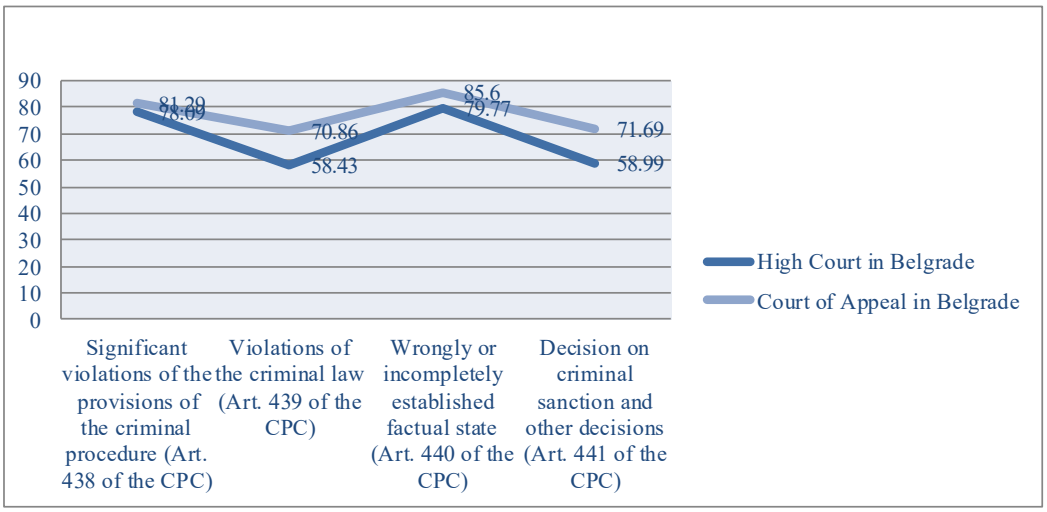

Figure 1. *Overall Representation of Grounds of Appeal*

Table 2 and Figure 2 show the percentage representation of appeal reasons within the appeal basis of procedural violations from Art. 438, para. 1, subparas. 1–11 and para. 2, subparas. 1–3 of the CPC. The percentage representation of all reasons for appeal is given in relation to the number of appeals in which the appellants pointed to a significant violation of the provisions of the criminal procedure from Art. 438 of the CPC, i.e. in relation to 137 appeals (100%) on which the decision was made by the High Court in the second-instance procedure and in relation to 604 (100%) appeals in which the decision was made by the Court of Appeal in the second-instance procedure.

Table 2. *Significant Violation of the Provisions of the Criminal Procedure from Art. 438 of the CPC*

Absolutely essential violations (para. 1)		
Reason of appeal	**Representation of reasons of appeal**	
	High Court	**Appellate Court**
Circumstances that permanently exclude criminal prosecution (subpara. 1)	2.52%	4.56%
Passing judgment by a court without actual jurisdiction (subpara. 2)	/	3.49%
Passing judgment by an improperly and incorrectly constituted court (subpara. 3)	/	0.27%
Participation in the main trial of a judge (jury judge) who had to recuse himself (subpara. 4)	/	4.83%
Denial of certain rights to procedural subjects at the main trial or its maintenance without a person whose presence is mandatory (subpara. 5)	/	1.61%
Illegal exclusion of the public at the main trial (subpara. 6)	/	/
Absence of an accusation by an authorized prosecutor or approval by a competent authority (subpara. 7)	2.52%	0.27%
Failure to fully resolve the case of the accusation with a judgment (subpara. 8)	2.52%	2.41%
Exceeding the charge (subpara. 9)	4.2%	4.29%
Violation of the prohibition on modification to the detriment of the accused (subpara. 10)	/	/
Unintelligibility of the disposition (subpara. 11)	15.13%	28.15%
Relatively essential violations (para. 2)		
Reason of appeal	**Representation of reasons of appeal**	
	High Court	**Appellate Court**
Basing judgment on illegal evidence (subpara. 1)	7.56%	15.01%
Deficiencies in the disposition of the judgment and the explanation of the judgment (subpara. 2)	89.92%	67.29%
Violation of the provisions of the CPC at the main hearing by the court (subpara. 3)	7.56%	6.17%

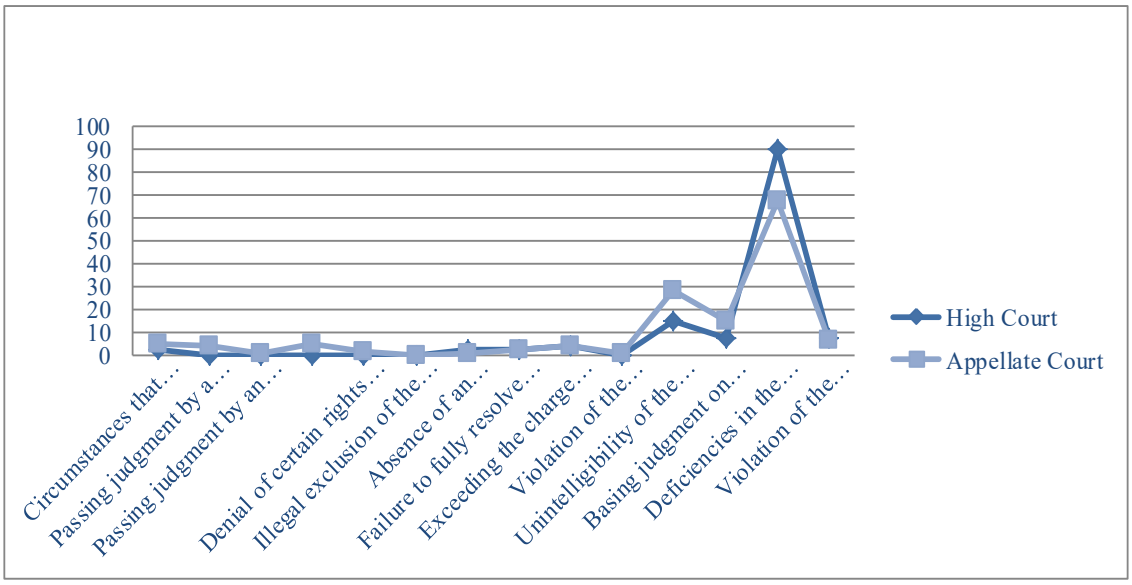

Figure 2. *Significant Violation of the Provisions of the Criminal Procedure from Art. 438, para. 1, subparas. 1–11 of the CPC*

Qualitative Results that Show How Courts Most Often Commit an Essential Procedural Violation, which is Reflected in the Existence of Certain Deficiencies in the Disposition and/or Explanation of the Judgment from Art. 438, Para. 1, Subpara. 11 and Para. 2, Subpara. 2 of the CPC

With regard to procedural violations committed by courts when writing judgments, and since it is a question of questio facti, it is extremely important, by analysing and interpreting examples from judicial practice, to establish what the omissions and errors of the court consist of, which cause certain deficiencies in the judgment, that is, in statements in the explanation of the judgment, which lead to, that is, which can lead to the annulment of the rebutted judgment.

In accordance with the conducted research, it was established that:

1) Incomprehensibility of the disposition of the judgment prescribed by Art. 438, para. 1, subpara. 11 of the CPC, the existence of which caused the annulment of the rebutted judgment, exists in the following cases:

• Regarding the act of committing a criminal offense:
a) If it can be seen from the action description of the execution of the criminal offense that the offense was started but not completed, and the defendant was found guilty of the specific criminal offense (High Court in Zaječar, 2019);
b) If the court did not specify in the judgment disposition what the act of execution consists of, i.e. different forms and ways of committing the criminal offense (aiding, abetting, complicity), that is, it is necessary that the judgment disposition contains information "about what such an action consists of" and that in relation to each person individually (Court of Appeal in Belgrade, 2014b, 2014c; Court of Appeal in Novi Sad, 2011, 2013).

c) If from the act of execution, based on the description of the facts and circumstances, it does not appear that it resulted in the consequences of a specific criminal offense (Court of Appeal in Kragujevac, 2016a; Court of Appeal in Belgrade, 2014a);
d) If the defendant is found guilty of several acts, or if it is a crime with several alternatively prescribed acts of execution, and the disposition does not state which of the acts caused the consequences of the criminal offense (Supreme Court of Cassation, 2013a; Court of Appeal in Kragujevac, 2016b).

• Regarding the subjective element (guilt) of the concept of a criminal offense:
If the court, during the description of the intent, determines the mental attitude of the perpetrator towards the basic offense, and not the qualified form of the criminal offense for which the defendant was convicted (Court of Appeal in Niš, 2010b).

• In view of the essential elements of the existence of a criminal act:
If in the factual description of the crime, the court failed to state an essential element of the existence of the criminal offense, that is, it did not state the facts and circumstances that make up the features of the criminal offense. For example, when the pronouncement of the judgment does not contain specific false facts, in the case of the criminal offense of fraud, on the basis of which it would be determined "which facts the accused falsely presented to the injured party, and which led the injured party to a state of delusion..." (Court of Appeal in Niš, 2017); the court did not state the amount of the damage that occurred (District Court in Niš, 2005; District Court in Kraljevo, 2006), the value of the case, which depends on the existence of a qualified form of criminal offense (District Court in Kraljevo, 2006), obtained illegal property benefit (High Court in Novi Pazar, 2014), percentage of THC (in order to work on narcotics) (Court of Appeal in Novi Sad, 2012; Court of Appeal in Niš, 2013); the same as the decision of the Court of Appeal in Niš (2010a).

• Regarding the place and time of the commission of the crime:
If the court did not specify the time and place of the commission of the criminal offense in the statement of the judgment (Court of Appeal in Kragujevac, 2011a; Court of Appeal in Niš, 2013); the same as the decision of the Court of Appeal in Niš (2010a).

• Regarding criminal sanctions:
a) If the court did not establish, in the case of a suspended disposition, "the beginning and end of the probationary period according to the previous judgment, in order to be able to conclude whether the defendant committed a new criminal offense during the probationary period" (Court of Appeal in Niš, 2012);
b) If the court, when imposing a suspended disposition for the criminal offenses in question, imposed individual suspended dispositions on the defendant and then a single suspended disposition, without first determining individual dispositions, i.e. a single disposition (Court of Appeal in Niš, 2011b).

• If in the case of a criminal offense with a blanket norm, the court failed to specify concrete regulations of a substantive nature on which the existence of the criminal offense depends (High Court in Čačak, 2017; Court of Appeal in Niš, 2011a).

When it comes to the existence of a relatively significant violation of the provisions of the criminal procedure, which consists of certain deficiencies in the disposition and in the explanation of the judgment (Art. 438, para. 2, subpara. 2 of the CPC), a classification will be made into deficiencies in the disposition of the judgment, i.e. deficiencies in the expla-

nation judgments according to the legal text of the provisions of Art. 438, para. 2, subpara. 2 of the CPC, which are established in judicial practice.

Defects in the disposition:

• The disposition contradicts itself:
a) If, during the factual description, the court determined the amount of unlawful property benefit that was obtained, and then, in order to realize the property claim, the injured party was referred to litigation (Court of Appeal in Kragujevac, 2010; Court of Appeal in Niš, 2011c);
b) If it is not possible to establish from the disposition of the judgment which actions resulted in the consequence, since it is a criminal offense (serious physical injury) with alternatively prescribed consequences, and the legal features of the criminal offense do not emerge from the factual description (Court of Appeal in Kragujevac, 2011b).
c) If the second-instance court accepted the appeal filed in favour of the defendant, but in the second-instance judgment sentenced her "to a prison sentence of a longer duration than the sentence imposed in the first-instance judgment" (Supreme Court of Cassation, 2013b).

• The pronouncement of the judgment is contradictory to the reasons for the judgment, if there is a discrepancy between the pronouncement of the judgment and the reasons for the judgment, in the matter of:
a) Basis for acquittal in the disposition and explanation of the judgment (Court of Appeal in Novi Sad, 2015b; High Court in Požarevac, 2015);
b) Data on the (non)conviction of the defendant (High Court in Požarevac, 2018). Similarly, Court of Appeal in Kragujevac (2011c; 2015);
c) Essential elements of a criminal offense – Decision of the High Court in Požarevac (2016);
d) Intentions to obtain illegal property benefits (Court of Appeal in Novi Sad, 2019).

2) Shortcomings in the explanation of the judgment:

• The court commits the said violation if it does not explain why it took some facts as proven and some as unproven, supporting its statements with the criteria of clarity and concreteness (High Court in Kragujevac, 2018);

• The court commits the said violation if the explanation does not include: the reasons the court was guided by when solving certain legal issues, especially if it is about the subjective attitude of the accused towards the criminal offense (Court of Appeal in Belgrade, 2010); explained reasons for confiscation of things from the person whose object was confiscated (Court of Appeal in Novi Sad, 2015a) and others.

DISCUSSION

As the grounds for rebuttal of the judgment represent one of the most significant issues in the area of the procedural institute of legal remedies, the research in question is extremely important, since its results indicate which errors and omissions the courts potentially make the most, i.e., on which grounds the appeals of authorized entities are based to the greatest extent of this legal remedy.

Looking at the research results shown in Table 1 and Figure1, it is established that there is a trend of the same frequency, that is, the same ratio of representation of certain appeal grounds in the appeals that make up the research sample. Thus, in an approximate percentage share, the following grounds of appeal are represented: essential violations of the provisions of the criminal procedure (Art. 438 of the CPC) and incomplete and incorrectly established factual state (Art. 440 of the CPC), i.e. violations of the criminal law (Art. 439 of the CPC) and wrong decision on criminal sanctions and other decisions (Art. 441 of the CPC). Looking at the grounds of appeal separately, it is established that in a large number of cases, the appellants pointed out possible anomalies in the de facto basis of the judgment (Art. 440 of the CPC), although it must be emphasized that there is a high number of grounds for appeal in the filed appeals, that is, that almost all appeals are based on multiple or all grounds of appeal.

Observing from the aspect of the appeal basis of essential violations of the criminal procedure (Art. 438 of the CPC), which includes relatively and absolutely essential procedural violations, it is noted that in the appeals, the greatest number of violations are highlighted, which refer to certain deficiencies in the disposition and in the explanation of the judgment. It is primarily about a relatively important procedural violation (Art. 438, para. 2, subpara. 2 of the CPC) which consists of certain deficiencies in the disposition of the judgment and the explanation of the judgment, that is, about an absolutely important procedural violation from Art. 438, para. 1, subpara. 11 of the CPC, which exists if the disposition of the judgment is unintelligible. By comparing the ratio of the representation of the mentioned reasons for appeal, it can be concluded without a doubt that the reason for appeal, which has a relative character, is significantly more prevalent, and there are certain deficiencies in the disposition and explanation of the judgment, whose harmful effect on the judgment must be proven in order for the judgment to be annulled.

If we look at the ratio of the representation of the two grounds of appeal, from the perspective of the court that decided on the appeal, it is noticeable that the subjects of this legal remedy pointed out the possibility of certain deficiencies in the disposition and explanation of the judgment, which have a relative character in almost 90% of their appeals, while 15% of their appeals pointed to the procedural violation, which consists in the unintelligibility of the disposition of judgment and which is of an absolute nature. In the case of appeals on which the decision was made by the Court of Appeal in the second-instance procedure, the appellants in almost twice as many cases referred to an absolutely essential evidentiary violation from Art. 438, para. 1, subpara. 11–28%, in relation to the representation of this ground of appeal in the appeals on which the decision was made by the Higher Court. On the other hand, in appeals filed before the Court of Appeal, the subjects of this legal remedy in a smaller number of cases pointed to the existence of a relatively significant violation from Art. 438, para. 2, subpara. 2 of the CPC – about 67%, in relation to subjects of legal remedies who filed an appeal before the High Court (90%). If we look from the aspect of each appeal reason individually, it can be unambiguously established that in the appeals on which the decision was made in the second-instance procedure by the mentioned courts, the most represented appeal reason is that it belongs to relatively important violations of the provisions of the criminal procedure, which

consists in certain deficiencies in the disposition and in explanation of the judgment (Art. 438, para. 2, subpara. 2 of the CPC).

Bearing in mind the way in which the legislator established the existence of this essential procedural violation (Art. 438, para.1, subpara. 9 and para. 2, subpara. 2) of the CPC, it is clear that it is a matter of questio facti, which he left to the courts of second instance to determine in each specific case what the stated violation consists of.

Namely, as it emerges from judicial practice, and bearing in mind what the disposition of the judgment as a constitutive element of the judgment (in addition to the introduction and explanation) should contain, the unintelligibility of the disposition of the judgment is caused by mistakes that are made both in relation to the objective and subjective element of the general concept of criminal acts, as well as in relation to the elements of criminal act. Bearing in mind the mentioned examples from practice, it is established that judges make mistakes and omissions that make the judgment unintelligible even during the writing of the disposition of the judgment. In a large number of cases, the courts make the aforementioned mistakes and omissions in terms of determining (describing) the act of committing a criminal offense, while it was established that the unintelligibility of the disposition was caused by errors in determining the subjective attitude of the perpetrator towards the criminal offense, i.e. guilt, as well as in terms of specifying (determining) the place and time of the commission of the criminal offense, with regard to the determination of criminal sanctions, etc. The stated results of the research are in accordance with the positions taken in the criminal procedure doctrine, which indicate that the unintelligibility of the disposition of the judgment exists when the judgment is drawn up in such a way that it is not possible to reliably understand and conclude from its disposition what it actually refers to, that is, what was decided by it (Ilić et al., 2012), if it does not indicate the facts and circumstances that represent the features of the criminal offense (Brkić, 2016), that is, if the description of the offense does not contain facts for all objective and subjective features of the criminal offense (Bejatović et al., 2016).

When it comes to mistakes and omissions made by the courts when writing the judgment, which can lead to the annulment of the judgment if it is established in the appeal procedure that they have a detrimental effect on the legality and regularity of the judgment, the situation is somewhat more complex, bearing in mind the way to which the legislator prescribed the existence of the said violation. Bearing in mind that it is a procedural violation that the appellants referred to in the largest number of cases, it is clear why the judicial practice on this issue is rich. The research in question established that when writing the judgment, judges make mistakes that cause the disposition to contradict itself, to contradict the reasons for the judgment if there is a discrepancy between the data contained in the disposition and the reasons for the judgment, or to contain certain deficiencies in the explanation judgments. Bearing in mind the above, it is clear why the question related to the methodology of writing judgments always occupies an important place in judicial practice. Although the content of the judgment is determined by the CPC, when passing the judgment, judges do not have an easy task at all (especially when preparing the explanation of the judgment), bearing in mind that, as stated by Milojević et al. (2017), the judge, especially in the explanation, "presents an account of his decision to the parties, to the higher court and transparency". That task can be accomplished "only with the strength of arguments, clarity of expression and internal logic that leaves the reader convinced that the court had serious reasons for its positions".

It is very important to be aware of the existence of the aforementioned problem, bearing in mind that, as it is correctly stated in Milojević et al. (2017): the judgment in some way "represents a mirror of the 'quality' of a judicial system", as well as "ambassadors of the Serbian judiciary abroad". As stated in the PKP, the most common shortcomings that affect the clarity, comprehensibility and readability of the judgment are: 1) the colourfulness of the visual appearance of the judgment; 2) disposition length; 3) absence of paragraphs (sections); 4) use of the passive state; 5) wrong, improper use of words; 6) stylistic errors. At this point, it is important to point out that research has established that the average length of a disposition in criminal judgments of Serbian courts is 247 words, while from the aspect of domestic and linguistic standards, it is recommended that an understandable disposition can have a maximum of 40 words, in order to be readable even after the first reading (Milojević et al., 2017). In the end, it is important to emphasize that Ćetković (2013) observes correctly that although at first glance dealing with language culture in Serbian jurisprudence, which is burdened with numerous other problems, does not seem to be a priority, it seems to us that it is a brick that is embedded in the foundation of the building that bears the name Serbian judiciary. If that brick is pulled out of the foundation, the whole building remains crooked.

In order to avoid the aforementioned mistakes when writing a criminal judgment, as it is pointed out in the professional literature, it is necessary, inter alia: to think about the writing of the judgment from the receipt of the indictment; in writing the judgment, clear, precise and not too long disposition should be used, and the explanation must be focused primarily on decisive facts. The significance of the aforementioned example is that, with the strength of its argumentation, the judgment should convince everyone that it is logical, correct and legal. That is why mechanical and template writing should be avoided, with the use of general stages, but rather it should be thought about what is written and check that the disposition and explanation are understandable and logically connected, i.e. if the reasons given in the explanation of the judgment are clear and understandable (Janković, 2006).

CONCLUSION

Iudex est lex loquen.

Bearing in mind that the making of legal and/or factual errors and omissions during the rendering of a judgment that resolves a criminal case is immanent in the work of judicial authorities, the possibility of rebutting judgment is the foundation of the realization of a legal and fair procedure. This is due to the fact that without the institute of legal remedies one cannot imagine the realization of fundamental principles of criminal procedure, such as the principle of fairness and legality, the principle of truth and the principle of legal certainty, but neither the achievement of the goal of the criminal procedure nor the protection of basic human rights, i.e. the protection of individual and general interest. Bearing in mind that the procedure for legal remedies is a rule, even though it is a procedure of an optional nature, it is extremely important to determine the grounds on which the appeals are based and on the basis of which the appeal procedure was initiated. It is about establishing the mistakes and deficiencies that the courts make when solving criminal

cases on the merits, which can have multiple consequences on the position of the parties to the criminal process, that is, on the realization of the postulates on which the criminal process systems of modern, democratically organized states rest. Based on the results of the conducted research, it was concluded that the subjects of legal remedies based their appeals on all grounds of appeal, de iure and de facto in nature, that is, the largest number of appeals were based on all grounds of appeal. With regard to the ratio of representation of grounds of appeal, it was also concluded that in a large number of their appeals, the subjects of legal remedies pointed out that the judgment was possibly based on wrongly and incompletely established factual situation, as well as that the courts in a significant number of cases commit violations of the provisions of the criminal law procedure. Observed from the aspect of appeal reasons, standardized within the appeal basis of essential procedural violations, it was concluded that the appellants in most cases pointed out that mistakes and omissions are made by the courts when writing the judgment, which causes the unintelligibility of the pronouncement of the judgment, as a result of which until annulment of the judgment. In addition to the above, errors and omissions in the writing of the judgment cause certain other shortcomings in the disposition and in the explanation of the judgment (such as the contradiction of the disposition of the judgment itself, the contradiction of the disposition of the judgment with the reasons of the judgment, certain shortcomings in the explanation of the judgment) and which leads to the annulment of the judgment if it is proven that they have a harmful effect on the judgment. In relation to the mentioned shortcomings, it was concluded that the courts in most cases commit the second-mentioned procedural violation, which has a relative character. From the conducted research, it is concluded that the subjects of legal remedies indicated that the courts most often make mistakes when writing or drafting the judgment, which further points to the need to raise awareness and solve the aforementioned problem that is represented in judicial practice in terms of the methodology of drafting the judgment, in order to ensure the passing of legal judgment. In this way, the survival of the judgment in the eventual appeal procedure would be ensured, which would contribute to the preservation of the basic postulates of the criminal procedure and the protection of fundamental human rights.

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