The Identity of the Judgment and Charge in Criminal Procedure: Jurisprudence of Domestic Courts

Abstract: Achieving the identity of the judgment and the charge in criminal proceedings, represents the assumption of the realization of the accusatory principle, as well as the realization of fundamental rights of the accused, such as the right to defense, the right to a fair trial. In order to be able to say that in a specific case there is congruence between the judgment and the charge, it is necessary that identity has been achieved both in the subjective and in the objective sense. The above compliances are regulated by the Code of Criminal Procedure of the Republic of Serbia, Art. 420. The legislator points to the importance of achieving the subjective and objective identity of the judgment and charge by prescribing the violation of the said identity as an absolutely essential violation of the provisions of the criminal procedure. In this way, the legislator provided additional protection, first of all, to the individual interest, that is, the position of the defendant in criminal proceedings. As it is a very important facti criminal procedural issue, which is regulated by the general clause, it is extremely important to establish in which cases the identity of the judgment and charge is violated. For the purpose of establishing such cases, as well as their grouping according to relevant criteria, research was carried out, which included the analysis of a significant number of decisions of domestic courts – qualitative research approach. Also, in order to determine in which cases the subjects of legal remedies indicated in their appeals the existence of a violation of the identity of the judgment and charge, empirical research was carried out of a certain number of decisions of the High Court in Belgrade and the Court of Appeal in Belgrade – quantitative research approach.
Introduction

The identity of the judgment and the charge is set as a fundamental principle that must be respected by the judicial authorities. The obligation to respect the identity of the charge, which the criminal proceedings are initiated and the judgment which resolves the criminal case (the subject of the criminal proceedings) on its merits, is based first of all on the respect of the accusatory principle of the criminal proceedings, according to which “mixing” or “joining” basic process functions is impossible. In addition to the above, by respecting the identity of the judgment and the charge, the basic rights of the accused are protected, such as the right to defense and the right to a fair trial, which ensures the realization of the principle of fair trial.

Namely, the Code of Criminal Procedure (hereinafter: CPC) in Art. 420 stipulates that „the judgment may refer only to the person who is accused and only to the offense that is the subject of the charge contained in the indictment submitted or amended or expanded at the main trial” (para. 1), as well as that “the court is not bound by the prosecutor’s proposals regarding the legal qualification of the criminal offense” (para. 2).

From the aforementioned legal provision, the legislator’s request to respect both the subjective identity - with regard to the accused person – “personal consistency” and the objective identity - with regard to only the part that is the subject of the charge contained in the charge that was submitted, that is, that is later amended or supplemented at the main trial – “substantive consistency” of the judgment and charges. Contrary to the stated requirements of congruence, with regard to the legal identity of the act, the court is not bound by the proposal of the authorized prosecutor.

In order for the legal provision on the obligation to respect the subjective and objective consistency of the judgment and charge to be effective in practice, the legislator provided an additional guarantee of its realization in the second instance procedure, that is, in the procedure for legal remedies. Namely, acting contrary to the above-mentioned provision was prescribed by the legislator as one of the grounds of appeal, that
is, as an absolutely essential procedural violation. It’s about of a type of violation, which, if it is 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 established that an absolutely essential violation has been committed, or that the provision of Art. 420, para. 1 of the CPC, the court has the obligation to cancel or modify the disputed judgment.

In order to fully provide protection, both to individual and general interest, the legislator justifiably envisaged the violation of Art. 420 of the CPC in two directions as an absolutely essential procedural violation. Namely, the mentioned essential procedural violation occurs if the court “decided less, that is if it “decided more” in relation to the content of the charge. In this sense, Art. 438, para. 1, item 8 stipulates that an absolutely essential violation of the provisions of the criminal procedure exists if the judgment does not fully resolve the subject matter of the charge, while item 9 foresees the existence of the mentioned procedural violation in the event that the judgment exceeds the charge.

This research consists of qualitative and quantitative aspects. The first aspect of the research (qualitative aspect) refers to the analysis of the decisions of the certain courts of the Republic of Serbia, which are available on the Intermex.rs website. In this part of the research, the author analyzed second-instance decisions and decisions of Supreme Court of Cassation, only from the aspect of determining how the courts commit absolutely essential procedural violations from Art. 438, para. 1, items 8 and 9 of the CCP.

The second aspect of the research (quantitative aspects) refers to the analysis of a certain number of appeals against the decision that were decided in the second-instance proceedings by the High Court in Belgrade and the Court of Appeal in Belgrade. 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

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1 The research was carried out based on the Decision of the High Court in Belgrade, number Su VIII-48 no. 124/2021 of April 16, 2021.
Appeal in Belgrade, 2021). 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 from Art. 438, para. 1, items 8 and 9.

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

**Failure to Fully Resolve the Case of the Accusation with a Judgment**

CPC, Art. 438, para. 1, item 8 stipulates that an absolutely essential procedural violation exists if the case of the charge is not fully resolved by the judgment. By interpreting the aforementioned legal provision, and as it emerges from the scientific literature and court practice, the subject of the charge is incompletely resolved when, in relation to some point of the charge, the decision of the court was completely absent (Ilić et. al., 2012: 936; Kzz 960/2016), i.e. when the court’s judgment did not include all the acts of the charge or all the accused (Bugarski, 2016: 181), since „one must judge what the plaintiff is suing for” (Kž. 1- 1339/1). Therefore, the judgment should resolve the charge in its entirety, no less than that because otherwise the court commits a negative violation (Petrić, 1980: 144) of the required identity of the charge and the judgment.

In terms of subjective identity, it is important to state that, assuming compliance with the subject matter, the court does not commit a violation, if the accused, who was charged with the indictment as an accomplice, was declared guilty of committing a criminal offense as a perpetrator or co-perpetrator, and vice versa (Kzz OK 16/2019). Determining objective identity, i.e. establishing its violation by the court when solving the charge case, is a somewhat more complex issue, compared to the issue of subjective identity, which is also confirmed by judicial practice. The above results from the fact that when solving the charge, the

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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.
court must resolve the issues and make a decision on all important and essential facts, which concern the elements of the being of the criminal offense, since the facts that are not important for the act of committing the criminal offense do not change the identity of the offense. Namely, as it emerges from court practice (Kž I 1270/08), if we are talking about “irrelevant, secondary facts”, on the basis of which the circumstances of the offense are determined more closely and in more detail, they are not legally relevant for changing the subject of the charge, such as important ones, for example the place, the time of the commission of the criminal act, etc., this order will not exist.

The general rule is that objective identity exists when it is about the same action, the same event that is being judged and its essential parts. Thus, in judicial practice, the position was taken that the objective identity between the judgment and the charge was not violated when the court, at the main trial, established a different factual situation compared to the one described in the charge, and based the judgment on such an altered factual situation, since that it is basically the same event, and the defendant was not put in a disadvantageous position (Kž. 1-5178/10). It is necessary that the court stayed within the limits of those facts and circumstances on which the charge is based, and from which the legal characteristics of a certain criminal offense arise (Krstajić, 2017: 20). Also, there is no violation of objective identity, and the charge is exhausted when the court, qualifying the facts: 2) omits from the sentence the action contained in the charge, which was not proven (Kzz 248/2017; Kzz 709/2016); 3) establishes that the same factual description is given for two criminal acts in the charge, that is, that one act consumes the other, and that it is a single criminal act, accordingly, it passes a judgment of conviction in relation to one criminal act (Kzz 396/2016; Kž.1 3726/12); 4) leave out the decision on the property claim, the costs of the procedure, on the determination of custody, etc., since the court is not bound by the proposal contained in the charge regarding these issues (Ilić et. al., 2012: 937; Paripović, 2016: 281-282); 5) knowingly omits from the factual description of the charge the words that describe the actions taken

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3 In the specific case, the court found that there is no violation of objective identity if “the court finds that a person instead of several blows inflicted only one blow on the victim, bearing in mind that the court is authorized to change the description of the offense from the indictment, i.e. the indictment proposal”, moving “within the limits of those facts and circumstances on which the accusation is based.” Ibid.
by the defendant immediately before he took the actions that represent an essential element of the criminal offense for which he is accused (Kž-1-574/12).4

Contrary to the above, the existence of the mentioned procedural violation was established in the case when: 1) the court did not make a decision regarding the criminal acts that were committed in the meeting (Ilić et. al., 2012: 936); 2) in connection with a complex (or extended) criminal offense, the court determines that the accused did not commit any of the offenses included in it, and acquits him of the charge of a complex (or extended) criminal offense, and does not decide on another offense that is part of composition of complex (or extended), which is not covered by the reason for acquittal, and vice versa (Ilić et. al., 2012: 936-937); 3) the court renders a guilty judgment in relation to a criminal offense (serious bodily injury - Art. 121, para. 1 of the Criminal Code) which represents a more serious consequence of the basic form of a certain criminal offense (Rape – Art.178, para. 3 in connection with paragraph 1 of the Criminal Code), and the accusation charged the defendant with the criminal offense of rape (Kž1. 1022/15).

Exceeding the Charge by Judgment

As with the procedural violation from Art. 438, para. item 8 of the CPC, and in this case it is a violation of the subjective and objective identity between the charge and the judgment, that is, their factual substrate. Of course, in relation to the legal evaluation of the act, there is autonomy of the court, since the court is not bound by the proposal of the authorized prosecutor. The basic difference in relation to the procedural violation regulated by the provision of Art. 438, para. 1, item 8 of the CPC, is that here the violation is committed in the “reverse direction” (Brkić, 2016: 166), i.e. when the judgment was also passed in relation to the accused, who is not charged with the accusation in the specific case, i.e. when the court included in the judgment some criminal acts that were not the subject of the charge of the authorized prosecutor.

4 As stated in the aforementioned judgment, the charge was exceeded only when it was tried on another event or a completely different factual description, both in terms of the act of execution, the perpetrator, the injured party, as well as in terms of the consequences that occurred and if the judgment refers to another person, and not the defendant named in the indictment.
In addition to respecting the accusatory principle, which prevents the mixing of basic procedural functions, i.e. the transfer of the function of accusation to the court, and the partial merging of two mutually exclusive functions, the requirement to respect factual identity ensures a successful and efficient defense, since the accused must know during the entire procedure what he is charged with the charge, i.e. for what in the specific case of the answer (Stanković, 2011: 25; Majić, 2011: 90). According to the above, the court has the obligation to present the accusation to the defendant as well as any subsequent amendment thereof, whereby the powers of the court in connection with the correction of the prosecutor’s mistakes must be interpreted restrictively, in order not to violate the right to a fair trial and violate the equality of the parties based on the law (Kž. 1 Po. 1 26/15). Exceeding the charge does not occur with regard to the views expressed in the explanation of the judgment, but it can occur in relation to the factual description of the act of the criminal act (Kzz. OK 32/2018).

It is clear that the court committed a violation of subjective identity, in connection with the excess of the charge, when the judgment included a person against whom the charge was not filed. From the procedural provision (Art. 410, para. 1 of the CPC), which regulates the rules for expanding the charge in the main trial, it is clear that on this occasion the accusation cannot be expanded in a subjective sense, that is, to a person who was not included in the charge. In relation to the above, the procedural doctrine (Ilić et. al., 2012: 937) takes the position that the court commits an essential procedural violation, if it is established at the main trial that the accused did not commit the criminal offense charged with the charge, but it is established who is the perpetrator of that criminal offense, so in accordance with team, pronounces an acquittal, but the person, who was not included in the indictment, who was found to be the perpetrator, is declared guilty of that criminal act. When it comes to the forms of participation in the execution of the criminal offense by the persons included in the charge, judicial practice has taken the position that the court commits a violation if it emerges from the factual description of the accusation that a certain person committed the crime as an instigator or helper, and the court determines the facts from which it can be concluded that such a person was the executor (Kž. 2821/06). How-

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5 Thus, according to the judgment of the District Court in Belgrade, Kž. 2821/06, Judgment of February 22, 2007, established that the court must convict the defendant of attempted
ever, when evaluating the manner in which the accused participated in the execution of the criminal offense, the court could make changes, but only if they are in his favor (Ilić et. al., 2012: 937).6

From the point of view taken by judicial practice, and regarding the mental state in which the defendant undertook the incriminated action, it follows that there is no significant violation of the provisions of the criminal procedure if the authorized prosecutor stated in the charge that the criminal offense was committed by the defendant “in a state of sanity”, but the court found at the main trial and stated in the factual description of the judgment the circumstances that indicate the commission of the criminal offense “in a state of reduced or significantly reduced sanity” (Kž1-1174/16).

On the question of the court being bound by the charge in terms of objective identity, there is a certain problem related to whether the court is bound by the formal or material side of the identity of the charge. Formal identity refers to the binding of the court by the legal qualification of the act, while substantive identity refers to the binding of the court by the factual description of the act given in the charge. When it comes to the material identity of the judgment and the charge, the criminal procedure doctrine first rested on two points of view. The first point of view, based on strict adherence to the accusatory principle, advocates the complete binding of the court to the factual description of the act contained in the accusation when solving the criminal case. Irrespective of the factual situation established at the main trial, the court must strictly observe all the details of the description of the act that forms the basis of the charge. Otherwise, if the court were authorized to change the description of the offense given by the charge, without modification of the charge by the prosecutor, it would thereby assume the role of the prosecutor (Škulić, Bugarski, 2015: 478). Supporters of the aforementioned point of view point out that such a solution “is rigid but still not contrary to the principle of material truth”, since, in accordance with his powers, the prosecutor can initiate the initiation of criminal proceedings in relation to the changed factual situation at the main trial. Making it impossible for the

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6 Also, the situation is the same in relation to the instigator-assistant attribute, since “the court cannot declare a person who is accused as an abettor guilty as an instigator”. Ibid.
court to judge “beyond the description of the criminal offense given in the charge”, the accused is provided with a guarantee against “arbitrary and sudden prosecution”, and thus a stronger procedural guarantee of an effective and adequate defense.

The second point of view for the basis has a more liberal understanding since it is limited to the attachment of the court only to the event that represents the subject of the charge, while not requiring strict adherence to the description of the event contained in the charge. In this sense, regardless of the prosecutor’s (non)initiative, the court can determine the event differently from the description given in the indictment, “regardless of whether it is in favor or against the defendant” (Škulić, Bugarski, 2015: 478). In support of the stated point of view, the argument of achieving the material truth, the economy of the procedure, but also the fact that the court should not be bound by the “prosecutor’s mistake” is highlighted. Waiting for the initiative of the prosecutor in this case causes a weakening or even loss of the effect of repression due to the delay of the procedure. Also, it is not important for the defendant whether the description of the act is the same as in the charge or not, if it is essentially the same event (Vasiljević, Grubač, 1982: 542-543).

Today, in the practice of criminal courts, another point of view is accepted, but not in its absolute, but in a limited sense. In this regard, the judgment can be based on the factual situation that was changed at the main trial, in relation to the one that is the subject of the charge, but only in in the event that the following conditions are met, cumulatively: 1) identity of events - it is necessary that it is the same criminal act, which in relation to the crime covered by the accusation is “equally serious or lighter”, that is, that it represents the modality of the criminal offense from the charge and 2) that it is more favorable for the accused. This point of view is based on “an appropriate necessary and reasonable relativization of the principle of truth” (Škulić, Bugarski, 2015: 479).

Bearing in mind the above, assuming the fulfillment of the above-mentioned conditions, it follows from judicial practice that there is no absolutely essential procedural violation in connection with objective identity when:

1. the court amends the factual situation with regard to the non-constitutive elements of the criminal offense (which are included in the judgment) established in accordance with the results of the evidentiary proceedings conducted at the main hearing (Kž.
50/14), respectively specifies the circumstances that were not specified in the charge without encroaching on the essential features of the criminal offense;

2. the court selects a narrower set of facts, which it correctly determined and separated from a wider factual description, and gives such a correctly determined factual situation a new legal qualification, different from the one given by the accusation (Kž1 5171/13);

3. the court declares the defendant guilty of one, instead of two, of the criminal offenses charged against him (Kzz 227/2020);

4. the court sentences the defendant to a heavier sentence than the one proposed by the public prosecutor (Kzz 93/2017);

5. the court alternatively defines certain actions in the charge in the judgment as cumulatively determined, if there is no discrepancy in relation to the facts established at the main trial (Kž1. Po1. 4/18).

Existence of overstepping the charge, that is violation of the objective identity of the judgment and the charge, was identified, for example, in cases where the court:

1. by changing the factual situation from the indictment, charged the accused with another criminal offense (Kzz. 213/14, Kž.1-2113/10); 

2. in the pronouncement of the verdict, he stated a new factual description of the criminal offense by adding facts and circumstances that essentially change the identity of the offense, compared to the one that the public prosecutor did not charge the accused (Kž. 1052/16)

7 For example, if the court in the factual description of the offense in the sentence of the judgment for aggravated theft replaces the word “overcoming major obstacles” with the words “overcoming major obstacles” (Kž. 2803/04); if the court determines “that the critical event took place on the property of the accused, and not near his property as stated in the charge” (5Kž.1. 42/15); if the court more precisely determines the “mechanism of the occurrence of the bodily injury that the injured party sustained on a critical occasion” (5Kž.1. 60/15); if the court determined and thus entered the exact time of the commission of the criminal offense, which was not specifically stated in the submitted charge: Kzz 1436/2019, Kzz1464/2016, Kzz 243/2017).

8 In connection with the above, the court cannot determine the manner in which the crime of theft was committed, from which it would follow that it is serious theft or robbery, if the public prosecutor is filed an charge relation to simple theft. (Bajović, 2013: 205).

9 This violation exists since the court changed the constitutive element of the criminal offense
3. declared the defendant's associate guilty for an act that factually does not correspond to the part of the agreement on the defendant's testimony that was accepted by the court's decision, and for which the indictment is charged (Kž1-Po1 23/18).

**Results of Empirical Research**

In order to determine the representation of the mentioned grounds of appeal in domestic judicial practice, research was carried out based on a sample consisting of 1) 178 appeals, which were decided by the High Court in Belgrade as a second-instance court in the period from 2016 to 2020, and 2) 604 appeals on which the decision was made by the Court of Appeal in Belgrade as a court of second instance, in the period from 2014 to 2020.

First of all, it is important to point out the representation of grounds of appeal, regulated by Art. 438, 439, 440 and 441 of the CCP, in the appeals that constituted the research sample. Table 1 show the overall representation of grounds of appeal in reported appeals against judgments that make up the research sample.

**Table 1: Overall representation of grounds of appeal**

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

- the act of execution. Thus, the court commits a violation of objective identity when, in the sentence of the judgment declaring the defendant guilty, it includes facts related to the time and order of the defendant's actions, which are of importance for the criminal offense in question, and were neither contained in the charge, nor are they about these facts were presented as evidence at the main trial (Kž1 Po1 26/15). This violation also exists when the court determines in the pronouncement of the judgment that the amount of illegal property benefit (which is a feature of the criminal offense) is greater than the value stated in the charge (Bulletin of the Supreme Court of Cassation, no. 1/2015, p. 264).
When it comes to appeals that were heard in the second-instance proceedings by the High Court in Belgrade, the following representation of appeal grounds was determined: in an approximate number of appeals, the subjects of the legal remedy referred to Significant violations of the provisions of the criminal procedure (Art. 438 of the CPC) and on Wrongly or incompletely established factual state (Art. 440 of the CPC) – 78-80%. Similarly, in the filed appeals, an approximate percentage representation was also recorded in relation to the two grounds of appeal Violations of the criminal law (Art. 439 of the CPC) and Decision on criminal sanction and other decisions (Art. 441 of the CPC) - 58-60 %.

When it comes to appeals, on which the decision was made by the Court of Appeal in Belgrade in the second-instance procedure, it can be said that the ratio of representation of grounds of appeal is similar to when it comes to appeals in which the decision was made by the High Court in Belgrade as a second-instance court. Namely, on the grounds of appeal Significant violations of the provisions of the criminal procedure (Art. 438 of the CPC) and on Wrongly or incompletely established factual state (Art. 440 of the CPC) the subjects of this remedy invoked in 81-86% cases. Representation of appeal grounds Violations of the criminal law (Art. 439 of the CPC) and Decision on criminal sanction and other decisions (Art. 441 of the CPC) was established in 70-72% of cases.

Table 2 show the percentage representation of appeal reasons within the appeal basis of procedural violations from Art. 438, para. 1, items 8 and 9 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, on which decisions were made by the Hight Court and the Court of Appeal in Belgrade.

**Table 2: Absolutely essential violations (Art. 438, para. 1, items 8 and 9 of the CPC)**

<table>
<thead>
<tr>
<th>Reason of appeal</th>
<th>Representation of reasons of appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to fully resolve the case of the accusation with a judgment (item 8)</td>
<td>2.52%</td>
</tr>
<tr>
<td>Exceeding the charge (item 9)</td>
<td>4.2%</td>
</tr>
</tbody>
</table>

Observed from the aspect of the representation of reasons of appeal
Failure to fully resolve the accusation case by judgment (item 8), as it emerges from the results of the research, in the appeals on which the decision was made by the High Court in Belgrade, the subjects of this legal remedy were invoked in 2.52%, while in the appeals on which the decision was made in the second instance procedure by the Court of Appeal in Belgrade, the subject of this legal remedy was invoked in 2.41% of cases.

From the above, it follows that the subjects of this legal remedy in the approximate number of cases were invoked in their appeals on which the High Court, i.e. the Court of Appeals in Belgrade, issued a decision - 2.41-2.52%.

When it comes to representation of the grounds of appeal Exceeding the charge (item 9). as it emerges from the results of the research, in the appeals on which the decision was made by the High Court in Belgrade, the subjects of this legal remedy were invoked in 4.2%, while in the appeals on which the decision was made in the second instance procedure by the Court of Appeal in Belgrade, the subjects this legal remedy was invoked in 4.29% of cases.

As it emerges from the above, the representation of the stated grounds of appeal in the reported appeals on which the decision was made by the above-mentioned courts of second instance is almost the same - 4.21-4.29%.

**Conclusion**

Bearing in mind that respect for the identity of the judgment and the charge is the basis for the realization of the indictment principle, as well as the assumption of the realization of the fundamental principles of criminal procedure (such as fair procedure), and the assumption of the protection of the defendant’s rights (the right to defense and the right to a fair trial), it is clear why the legislator guaranteed of respect for the subjective and objective consistency of the judgment and charge, provided by norming violations of the said consistency as a reason for filing an appeal.

Namely, the court commits a significant procedural violation if, when resolving a specific criminal matter, it acts contrary to Art. 420 of the CPC, which stipulates that the judgment can only refer to the person who was accused and only to the offense that is the subject of the accu-
The Identity of the Judgment and Charge in Criminal Procedure: Jurisprudence of Domestic Courts

The identity of the judgment and charge in criminal procedure is a fundamental aspect of legal practice and jurisprudence. It is essential to ensure that the court's decision accurately reflects the facts and the legal principles applicable to the case. The identity of the judgment and charge is particularly significant in the context of the prosecutor's role and the court's discretion in determining the legal qualification of the criminal offense.

A key provision in this area is the protection of the identity of the judgment and charge. This protection is intended to ensure that the court's decision is grounded in the evidence and the facts presented, rather than influenced by external factors such as the prosecutor's proposals or the court's interpretation of the law.

In accordance with legal provisions, the legislator has provided protection to both the subjective and the objective identity of the judgment and the charge. The importance of respecting the identity of the judgment and charge is underscored by the classification of the violation of subjective and objective consistency as an absolutely essential procedural violation.

Since the word is questio facti, it was extremely important to carry out research to determine whether and in which cases the courts verify the identity of the judgment and charge, as well as to what extent the stated grounds of appeal are represented in the reported appeals. The first part of the research established that courts are not immune to mistakes when solving criminal cases that cause a violation of the subjective and/or objective identity of the judgment and charge.

In relation to the question of subjective identity, the determination of objective identity is a somewhat more complex issue. As established by court practice, the general rule is that objective identity exists when it is about the same action, the same event that is being judged and its essential parts.

Namely, even in the event that a judgment is rendered based on a different factual situation established at the main trial, in relation to the one described in the charge, there will be no violation of identity, if the following conditions are met: 1) that it is essentially the same event and that 2) the defendant was not put in a disadvantageous position. Of course, it should be borne in mind that this is a matter of facti, which should be viewed in the light of each specific case separately.

Also, to the fact that the legislator's decision on non-compliance with the provisions of Art. 420 CPC as a violation of the procedure is correct, as indicated by the results of the conducted empirical research, which established that the second instance court determined the number of appeals based on the grounds of appeal from Art. 438, para. 1, items 8 and 9 rated as founded.
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35. Supreme Court of Cassation Kzz. 213/14, Judgment of March 03, 2015.
42. Škulić M., Bugarski T. /2015/: Krivično procesno pravo, Novi Sad.
Апстракт: Остваривање идентитета пресуде и оптужбе у кривичном поступку представља претпоставку остварења оптужног начела (односно начела акузаторности), као и остварења фундаменталних права, йоуїйа права на одбрану и права на јавно сужење. Како би се могло рећи да у конкретном случају йосишло саобразност између пресуде и оптужбе, неопходно је да је остварење саобразности како у субјективном тако и у објективном смислу. Наведене саобразности нормирани су Закоником о кривичном йосиуку, чл. 420. На значај остваривања субјективног и објективног идентитета пресуде и оптужбе законодавац указује и тиме што је повреду наведеног идентитета прописао као апсолутно битну повреду одредаба кривичног поступком. На тај начин законодавац је јружио додатну заштиту, индивидуалном интересу, односно йоложају окривљеној у кривичном йосиуку. Као је реч о веома важном questio facti кривичнопроцесном питању, које је нормирано јереналном клаузулом, од изузетне је важности установити у којим случајевима се чини повреда идентитета и оптужбе. У циљу утврђивања оваквих идентитета, као и њихове ируцизама ирема релевантним критеријумима, сироведено је иштравање које је обухватило анализу значајној броју одлука домаћих судова – квалификацији иштравацки йрициу. Такође, да би се утврдило у којој мери су субјекти јавних лекова у жалбама указивали на јосиојане йовред идентитета пресуде и оптужбе, сироведено је емпиријско иштравање одређеној броју одлука Вишег суда у Београду и Апелационог суда у Београду – квалификацији иштравацки йрициу.

Кључне речи: идентитет иреуда и ойшуюбе, апсолулпно йоуійу йоооохесе йовред, йравни лекови, Јуриспруденција другостепених домаћих судова, Вишес суд у Београду, Апелациони суд у Београду.