СОФИЙСКИ УНИВЕРСИТЕТ
„СВ. КЛИМЕНТ ОХРИДСКИ“

ЮРИДИЧЕСКИ ФАКУЛТЕТ

Катедра
НАКАЗАТЕЛНОПРАВНИ
НАУКИ

SOFIA UNIVERSITY
ST. KLIMENT OHRIDSKI

FACULTY OF LAW

Department of
CRIMINAL LAW
SCIENCES

Bisser Zhivkov Troyanov

ABSOLUTE PROCEDURAL VIOLATIONS AS GROUNDS FOR CASSATION IN THE BULGARIAN CRIMINAL PROCEDURE

A B S T R A C T

of a dissertation for award of the
educational and scientific degree "doctor"

Field of higher education:	3. Social, economic and legal sciences
Professional field of study:	3.6. Law
Doctoral program:	Criminal procedural law
Academic supervisor:	Prof. Georgi Ivanov Mitov, DSc

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of a dissertation work for awarding the educational and scientific degree "doctor", doctoral program "Criminal procedural law", professional fielad of study 3.6. Law

Academic supervisor: Prof. Georgi Ivanov Mitov, DSc

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§ 1. GENERAL CHARACTERISTICS OF THE DISSERTATION

1. Relevance, goals and objectives of the study

Although the cassation grounds have been regulated in the Criminal Procedure Code (CPC) for more than 25 years, in the legal literature they are incidentally and briefly discussed. Currently there is no in-depth study to fully analyse them. There have also been some contradictory opinions and decisions that also deserve a comprehensive analysis. These circumstances determine the relevance of the study devoted to the absolute procedural violations as grounds of cassation (Art. 348, para. 3, items 2 – 4 of the CPC). Its main objectives are twofold: 1) to clarify the content of these grounds and their manifestations not only in the cassation proceedings, but also in the first instance and appellate proceedings, insofar as they are grounds for annulment or amendment of the verdict by the appellate court as well; 2) to formulate and justify proposals for improving the legal framework. Their achievement goes through the implementation of the following tasks: 1) tracing the historical development of the legal framework of the grounds for cassation, which contributes to a better understanding of today's rules and their genesis; 2) a comparative legal study of the cassation grounds in several European legislations as a source of ideas for the development of the Bulgarian law; 3) analysis of the legal provisions of Art. 348, para. 3, items 2 – 4 of the CPC and highlighting their possible gaps or shortcomings; 4) study of theoretical opinions and enrichment of the legal doctrine with new theses and arguments; 5) presentation of the relevant case law and its role for the clarification of the legal rules.

2. Subject, object and methods of research

The subject of the dissertation is primarily the provisions of the CPC, regulating the absolute procedural violations as cassation grounds, but also the relevant case law and academic studies.

The object of the dissertation is the cassation grounds themselves, and more precisely those that represent absolute procedural violations.

For the implementation of the dissertation goals and tasks the following legal research methods are used: normative analysis, interpretation, comparative legal method, historical-legal method, various logical methods, etc.

3. The importance of the dissertation is in several directions:

• in respect of the legislator – a number of proposals de lege ferenda have been made with a view to improving the legislation in order to overcome difficulties in interpretation and for better systematization of the legal provisions;

• in respect of the judicial authorities – the meaning and content of the cassation grounds have been clarified, which facilitates their application in the practical procedural work.

• in respect of the legal science - the dissertation presents a number of theses and arguments that enrich and develop the scientific knowledge.

§ 2. VOLUME AND STRUCTURE OF THE DISSERTATION

The dissertation is 315 pages long, including content and a list of references. 674 footnotes are indicated. The literature used includes 126 scientific publications in Bulgarian and 9 publications by foreign authors.

The scientific research consists of an introduction, four chapters including separate sections, a conclusion and a list of references.

§ 3. BRIEF CONTENT OF THE DISSERTATION

In the introduction of the dissertation, the relevance and significance of its topic are justified.

Chapter One is devoted to the historical and comparative legal review of the grounds for cassation in criminal proceedings.

Paragraph 1 represents a brief historical and legal study of the cassation grounds regulated by the first criminal procedure act, of the grounds for annulment of the first-instance verdict in the years of socialist legal development, regulated by the CPC of 1952 and 1974, as well as of the grounds of cassation introduced by the major reform of 1998, adopted without changes in the current CPC.

Paragraph 2 consists of a brief comparative legal study of the legislation of Germany, France and Italy and is done in order to give a broader view of the topic and an opportunity to compare Bulgarian legislative decisions with those of other countries of the continental-European legal family, as well as to be a source of ideas and arguments for the development of the Bulgarian legal framework.

In Chapter Two, in three separate paragraphs, three issues are addressed. Paragraph 1 clarifies the concept of "cassation grounds", for which there is no legal definition, as well as the essence of the absolute procedural violations provided for in Art. 348, para. 3, items 2 – 4 of the CPC.

Paragraph 2 deals with the cassation ground “lack of minutes (record) of the hearing”. The absence of a record is an absolute procedural violation and a ground for annulment of the judicial decision, since there is no written evidence to certify the court hearing and the procedural actions performed in it.

A court hearing for which no record has been drawn up is considered not held because it is not documented in writing.

Within the meaning of Art. 348, para. 3, item 2, sentence 2 of the CPC, the lack of a court record is considered in two directions – actual (physical) absence from the case materials and its preparation in a way that is equated to its complete absence.

Section I of this paragraph deals with the cases where the court record or part of it is not in the case – objective (physical) absence of the record. We speak of a physical absence of the record when: 1) no record has been prepared at all for the court hearing; 2) the procedural acts were recorded on an electronic medium, but the minutes were not drawn up and signed; 3) the record is not attached to the case documents.

Section II discusses the cases in which a court record formally exists, but cannot be used as evidence in the case, because it is prepared in such a way that it lacks essential requisites or does not reflect procedural actions and judicial acts performed at the hearing. In this section, it is analyzed which requisites of the record are mandatory, respectively their absence leads to the absence of a record, and in which cases the lack of requisites does not have such consequences.

Paragraph 3 is devoted to the lack of reasons as a cassation ground under Art. 348, para. 3, item 2 of the CPC. The lack of reasons as a cassation ground manifests itself in two directions – the actual (physical) absence of reasons as a written document to the verdict (Section I) or their preparation in a way that is equated to their complete absence (Section II).

There is a real (physical) lack of reasons when: 1) they were not prepared at all; (2) they have been drawn up but have not been signed; 3) they have been prepared and signed, but they have not been attached to the verdict or after their attachment they are missing – they have been taken

out (torn off), lost or destroyed, and cannot be restored under Art. 94, para. 5 PASSES.

Reasons are also missing when they are drafted in a way that equates to their complete absence – they are incomplete, unclear or contradictory. These are also the most common cases in case law.

The incompleteness of the reasons manifests itself in two directions – the absence (non-presentation) of reasons on an issue that has been resolved by the operative part of the verdict and the absence (non-presentation) of reasons on an issue that has not been resolved, omitted, but is mandatory for resolution in the verdict. This applies to all judicial decisions.

For the appellate court judgment (verdic and decision), in addition to these two criteria, one more applies - the reasons must contain an answer to the arguments and complaints made with the appeal (protest).

In the dissertation, the cases of lack of reasons regarding the content of the judicial act are examined in detail.

There is no reasons explaining the established facts and evidence, when: 1) the factual situation for the act is not presented (there is no description of the act); 2) constituent facts of the crime are not indicated (there are no factual findings of constituent elements of the criminal conduct) and of the defendant's participation in it (the picture of the act is incomplete); 3) the evidence collected in the case has not been discussed (evidence analysis is missing); 4) some of the collected evidence are not discussed (evidence analysis is incomplete).

There is no reasons concerning the legal qualification of the act when: 1) there is no verbal or numerical expression of the elements of the crime or they are not analysed; 2) the defendant's guilt has not been specified and analysed; 3) there are no considerations (justification) for exemption from criminal liability by imposing an administrative penalty

under Art. 61, para. 1 of the Criminal Code, or Art. 78a, para. 1 of the Criminal Code, or explanation why the actus reus constitutes an administrative violation.

There is no reasons concerning the punishment when: 1) the punishment is not specified in the operative part of the sentence - it is not specified by type or its type is specified, but the amount is not specified. The procedural violation is irremediable by the higher (appeal or cassation) instance; 2) there is no reasons (justification) for the type or amount of punishment. The procedural violation is irremediable by the higher (appeal or cassation) instance; 3) some of the mitigating or aggrevating circumstances have not been discussed. The judgment is made by the higher instance for each specific case according to the criterion of whether the inner conviction of the supervised court on the individualization of the punishment has been revealed. Exceptions: 3.1) the higher instance applies a substantive law institute, which exempts the defendant from criminal liability under Art. 78 and Art. 78a of the Criminal Code or acquits him; 3.2) the appellate instance reveals new mitigating or aggrevating circumstances (newly discovered or newly established); 3.3) the higher instance finds the punishment to be clearly unfair and exercises powers under Art. 337, para. 1, item 1 of the CPC, Art. 337, para. 2, item 1 of the CPC, Art. 354, para. 2, item 1 of the CPC, Art. 354, para. 3, item 1 of the CPC.

In this section, it is also analyzed: when, despite some incompleteness in the reasons, there is no ground for cassation; what are the consequences of the establishment of this cassation ground by the appellate and cassation court; how this ground manifests itself in the proceedings before the second nad the third istance courts.

The same section also discusses when there is ambiguity and contradiction in the reasons. The reasons are unclear when the inner conviction of the court remains incomprehensible, misunderstood.

Contradictions in the reasons represent inconsistency of the court's considerations on the same issue or on a specific circumstance, because it remains unknown which of the opposing theses in the reasons, the court actually accepts. The contradiction between the reasons and the operative part is considered as a manifest form of the cassation ground lack of reasons.

Chapter Three

Chapter three examines the rendering of the judgment (verdict or decision) by an illegal court panel (Article 348, Paragraph 3, Item 3 of the CPC). It consists of 8 paragraphs, and the first five of them deal with the requirements for the legality of the court composition traditionally accepted in the doctrine (by Stephan Pavlov): numbers and ratio of judges and jurors in the first-instance panels (§1), the prerequisites for the appointment of the judges (§2) and for the selection of the jurors (§3), the grounds for their non-participation in the panel – recusal (§4). Due to the lack of a specific legal basis for annulment of the judicial act in case of violation of the rules for the participation of the entire judicial panel in handind down the judgment and for the immutability of the court are explained in §5 and §6 as a manifestation of the cassation ground for an illegal judicial panel. In a separate §7, the jurisdiction of criminal cases and when non-compliance with these rules leads to an illegal composition of the court is examined. Finally, in § 8, it is considered whether the non-compliance with the requirement of random allocation of the case to the judge-rapporteur and the other members of the court panel leads to an illegal composition of the court, and a negative opinion is expressed.

§ 1 analyses the legal provision establishing the number of judges and jurors (Art. 28 of the Code of Criminal Procedure) and the change in the number of judges in pending cases in case of amendment of the Code of Criminal Procedure. In section III, a place is devoted to the disputed doctrinal question of the participation of a smaller or larger number of members of the first-instance judicial panel. The position advocated in the thesis does not differ from that adopted in judicial practice and theory that the participation of fewer members in the composition of the court always makes it illegal. But in cases of a larger than the statutory composition of the court a position contrary to the theoretical view is presented with the following arguments: 1) the legal rules do not provide for discretionary authority for the administrative head or for the judge-rapporteur to expand the court panel; 2) the positive effect of bringing in more judges and jurors in order to ensure more accurate fact-finding and law application is controversial. Thus, the legal discretion to determine the number of the court panel's members according to the severity of the crime is called into question; 3) the participation of more than the intended members means more votes in decision-making, the illegally recruited members can influence the decision made and the outcome of the case; 4) members who are not provided for by law participate in the secret meeting for the adoption of the judicial act. In this way, the secrecy of the meeting is also violated, which is a cassation ground under Art. 348, para. 3, item 4 of the CPC for annulment of the judgment.

In section VIII, the comparison of the court panel in the differentiated procedures is discussed. It is argued that the composition of the court panel under Art. 390, para. 1 of the CPC applies to the cases conducted according to the general procedure. The participation of minor defendants in the differentiated proceedings does not change the composition of the court provided for in the special rules for these

proceedings (procedures), as well as in the cases heard by the military courts.

The rules for the appointment of judges are discussed in § 2. The judicial panel is legal when it includes judges appointed according to the procedure established by law - they are appointed, promoted, demoted, transferred and dismissed from office by decision of the Supreme Judicial Council (Judicial college). A centralized competition is held for each position. The legal regulation of this competition is not discussed because it falls outside of the scope of this research. If a judge has not taken office or is not seconded to another court, his/her participation in the case makes the court hearing it illegal. The prerequisites for acquiring the professional quality of "judge", for assuming office, the conditions for incompatibility and the cases of dismissal from office and temporary dismissal from office have been examined.

In § 3, the prerequisites for acquiring the official quality of the jurors and their mandate, the legal significance of the oath taken by them, the grounds for their early release from mandate are explained.

Paragraph 4 is devoted to grounds for impeachment of judges and jurors. They are provided for in Art. 29 of the CPC and are divided into two groups - bias and interest. The dissertation examines in detail each of these grounds Some flaws have been pointed out regarding the circle of persons to whom some of the grounds for annulment extend. Based on the identified gaps in the legal provision, de lege ferenda proposals have been made to supplement it, which will also facilitate the law enforcement.

The duty of all members of the judicial panel to participate in the rendering of the judicial act is discussed in § 5. The non-participation of all members of the court panel in the rendering of judicial acts is examined through the cassation ground for illegal judicial composition under Art. 348, para. 3, item 3 of the CPC. In this paragraph, the activitis of the

judical panel are separately examined: discussion of the issues to be decided in the judicial act (secret meeting), the preparation, signing and announcement of the judicial act, as well as the requirement for the participation of all memebrs of the panel in each of these activities. There are some exceptions to this requirement related to: preparation of the content of the judicial act; the signing of the rulings made during the open court hearing; the signing of the reasons of the verdict by the jurors; the announcement of the decisions in the court books.

Paragraph 6 is devoted to the rule of immutability of the panel. Failure to comply with the requirement under Art. 258, para. 1 of the CPC traditionally is considered in the legal theory as a substantial procedural violation and since it is not provided by the law as an independent basis for annulment of the judicial act, the latter is considered to have been issued by an illegal court panel. Immutability occurs with the beginning of the judicial investigation, and if it does not take place - from the beginning of the judicial deliberations. It is observed until the handing down of the judgment.

The interim court hearing introduced in 2017 and the preclusion for the parties to raise questions about violations of their procedural rights in the pre-trial proceedings not raised in that hearing, gave rise to a contradictory opinions on the immutability of the judicial panel in case law. The thesis defends the theoretical view that immutability applies from the beginning of the judicial investigation and presents arguments against the thesis, which originated in the case law, that it begins earlier, i.e. from the beginning if the interim hearing. The arguments are as follows: the interim hearing is an independent stage of the first-instance court proceedings, separated from the court hearing in which the case is examined on its merits; the two stages solve different immediate tasks; the purpose of the interim hearing is to ensure the public interest and the interest of the

parties, in particular it guarantees that a defendant will be brought to court only is the legal prerequisites for consideration of his case in an open court hearing are present; it was introduced in order to speed up the criminal proceedings, by precluding the requests and objections of the parties for returning the case to the pre-trial phase, but the preclusion does not apply to the court - it cannot be bound by its decision if it finds an error in its assessment of lack of of a procedural violation of the accused's or the victim's rights in the pre-trial proceedings, nor can it bind with its decision the panel that examines the case on the merits (if it is different from the one that conducted the interim hearing); under no circumstances will the issues on the merits of the case be decided at the interim hearing; immutability also applies to reserve judges and jurors recruited after the beginning of the judicial investigation, and they do not participate in the dispositional hearing.

The requirement of immutability also applies when passing the additional verdict - it must be passed by the same court panel that passed the main one. For making the determinations under Art. 306 of the CPC and Art. 327 of the CPC, however, the requirement of immutability does not apply. It is discussed also the immutability of the court panel after the amendment of the indictment under Art. 287 of the CPC and especially in the case of application of a law for a more seriously punishable crime, for which another extended court composition is provided for; arguments are presented for the incorrectness of Interpretative Decision No. 57 of 04.12.1984, case No. 13/1984, of the General Assembly of the Criminal Devision of the Supreme Court of Cassation, which states that the court in the same composition shall continue the judicial investigation.

§ 7 is devoted to the rules of jurisdiction in criminal cases. Any deviation from the rules of jurisdiction constitutes a procedural violation, but only some of the violations are substantial and require the annulment of

the sentence and a repetition of the proceedings. Violations of the rules of subject (material) jurisdiction under Art. 35, para. 1 - 3 of the CPC are always substantial procedural violations under Art. 348, para. 3, item 3 of the CPC and require the annulment of the judgment, even when a higher court decided as a first instance a case, substantively subjudicial to the lower court.

Courts of equal degree have the same type and volume of powers, therefore the violation of territorial (local) jurisdiction is not essential. Contrary to a scientific view, the dissertation advocates that the violation of local jurisdiction is insignificant when the court continued with the consideration of the case, under the jurisdiction of another court of equal degree, ignoring the objection of a procedural party for lack of jurisdiction. Because: 1) non-compliance with the rules on jurisdiction is material or non-material at the time of the violation and is not predetermined by the requests, remarks and objections made by the parties - there is no way for them to turn non-material procedural violations into material ones; 2) in the case of an unjustified rejection of an objection to the court that the case is inadmissible, the procedural right of the party that made it is violated, and this is assessed through the criteria under Art. 348, para. 3, item 1 of the CPC, and not through the absolute violation of Art. 348, para. 3, item 3 of the CPC; 3) exactly what rights of the party have been violated, after it participates fully in the criminal proceedings and has the full range of procedural rights; 4) there is no rule on jurisdiction in the CPC, which can be considered as substantial or non-substantial, depending on its influence on the procedural rights of the parties and the time of their exercise; 5) the theoretical concept and the perverse case law derive from decision No. 280 of 1952 of the Supreme Court, which is isolated and based on the case law under the repealed Criminal Procedure Act (1897) and then the objection of the inadmissibility was ruled only at the initial hearing of the case, and not

at the end of the judicial investigation, which is the case considered by the cited above decision; 6) the rules of jurisdiction are initially associated with the jurisdiction of the court, and it is not deprived of jurisdiction when it considered the case in deviation of the rules under Art. 36, para. 1 and 2 of the CPC; 7) with Art. 43 of the CPC, a change of local jurisdiction is allowed, no such possibility exists in respect of subject, functional and special jurisdictions.

Violations of the rules of "jurisdiction in connection between the cases" are not substantional ones, except when combined with the rules of subject or special jurisdiction.

The rules of functional jurisdiction and special jurisdiction are unconditional and allow no exceptions. Their violations are always substantial procedural violations and constitute grounds for annulment of the judicial act as issued by an illegal court.

Violations of jurisdiction are not expressly provided for among the cassation grounds in Art. 348 of the CPC. According to the legal theory and practice, they are assessed in view of the illegal composition of the court panel under Art. 348, para. 3, item 3 of the CPC. It is necessary the CPC to provide for the above-mentioned substantial procedural violations of jurisdiction as an independent ground for annulment of the sentence.

The last § 8 deals with the issue of the random distribution of criminal cases. This issue is addressed in chapter three of the dissertation in order to answer the question whether the violation of the legal requirement leads to an illegal composition of the court panel. The rule was introduced by Art. 9 of the Judicial System Act and it is not a procedural rule. Its violation does not affect the legality of the composition of the court, unless it creates a reason for recusal – the case is assigned to a specific judicial panel or an individual member of it precisely because of bias or interest.

Chapter Four

Violation of the secrecy of the deliberations of the judgment is the last of the absolute procedural violations. It is discussed in the last fourth chapter of the dissertation.

All judgmenta are handed down after secret deliberations. The single-member judicial panel also holds such deliberations - it is also retired to pass the act and form a position, although its discussion is not in the traditional way for collective bodies. Other general characteristics of the concept of "secret deliberations" are highlighted in § 1: thwy are not limited in time and place, but are not held in open space, they are conducted only by the judicial panel, without the presence of other persons, incl. reserve judges and jurors, there are no particular restrictions, except for the obligation of panel members not to reveal the content of the deliberations before other persons. In § 2, the essential manifestations of the violations of secrecy of the deliberations are discussed. The ground of appeal under Art. 348 par. 3, item 4 of the CPC is present when: 1) there have been no secret deliberations; 2) other persons who are not members of the judicial panel also participated in them; 3) the members of the panel did not comply with the obligation to keep the deliberations secret; 4) the freedom to form the inner conviction of a member of the judicial panel is violated; 5) the continuity of the court hearing is violated.

The newly introduced in 2020 and poorly developed Unified Information System of the Courts (EUIS) creates a serious problem of violation of the secrecy of the deliberations, because it allows access to the signed with a qualified electronic signature, but not yet announced judgment by the users of the electronic system. In this way, observing the letter of Art. 310, para. 1 and 2 of the Criminal Procedure Code, the court panel discloses the content of the verdict to a limited number of people with access to the system before the announcement of the verdict in an

open court session, and in this way the obligation to protect the secrecy of the deliberation is violated.

§ 3 examines the violations of the secrecy of the deliberation when handing down an additional verdict under Art. 301, para. 3 of the CPC, as well as in rendering decisions and rulings.

In contrast to the detailed legal regulation regarding the procedure for passing the verdict, there is no such rule for the passing of the decisions of the appellate and cassation court. However, the appellate court is obliged to retreat into secret deliberation to consider what type of judicial act should render - verdict or decision, after discussing the arguments of the appellant and the submissions of the other parties. The assessment of the type of the act cannot be preliminary, because it reveals the prejudice of the judicial panel regarding the decision of the case, and makes the judicial deliberations formal. The deliberation in a case of a decision has some specifics compared to that held for rendering a verdict.

The passing of the other judicial acts in the criminal process, apart from the verdict (the additional verdict) and the appellate decisions under Chapter XXI of the Criminal Procedure Code, are characterized by some specifics of the secret deliberation: 1) judicial acts that do not require the immediate passing and announcement in a court session (the decisions of the appellate courts, the decisions of the Supreme Court of Cassation in cassation and reopening proceedings, the decisions of the court of first instance in the differentiated proceedings under Chapter XXVIII, the rulings in closed court session (under Article 243, paragraphs 6 and 8 of the Code of Criminal Procedure, some rulings on motion and for dmission of evidence, etc.) are decided at a secret deliberation, held after the conclusion of the court session; 2) the judicial acts, rendered in the course of an open court session (the ruling for approving the bargain agreement, the decision of the first-instance court under chapter XIX Code of Ccriminal Procedure,

the rulings on the progress of the case, etc.), as well as the rulings in the cases of recusal and self-recusal require secret deliberations, which take place during the open court session itself, i.e. the court session is not postponed, it is not waited for its conclusion, it is only interrupted for the deliberations.

In the conclusion, the main conclusions and proposals are summarized.

§4. SCIENTIFIC CONTRIBUTIONS

The dissertation is the first comprehensive scientific analysis of the absolute procedural violations since their introduction to the CPC in 1998 until now.

It offers a definition of the more general term "ground fof cassation" and clarifies the nature of absolute procedural violations as a type of grounds for cassation.

The content of each of the cassation grounds under Art. 348, para. 3, items 2 – 4 of the CPC and its manifestation was considered not only in the cassation, but also in the appellate and first-instance court proceedings.

The thesis argues that only some of the absolute procedural violations require the annulment of the judicial act - these are the illegal composition of the court and violation of the secrecy of the deliberations. They can be corrected only by the court which made the violation and not by the the upper court. The remaining two absolute procedural violations represent cassation grounds for annulment of the judicial act only in the cassation proceedings, but exceptions are also noticeable in it.

For the first time, the many forms of manifestation of the lack of reasons or of record as grounds of cassation have been examined in detail. They vary from their physical absence (either because they were never

drafted, or because after they were drafted they were destroyed, lost), to the presence of various vices in their content. The understanding that lack of reasons, resp. record exists when these errors are so essential that they deprive the reasons, resp. the record from the ability to perform their essential functions. Based on the analysis of the functions and requisites of the record, resp. the reasons, it is clearly stated which errors lead to lack of record/reasons and which do not.

In view of the reasons, the following issues are discussed: each of the questions under Art. 301 of the CPC, decided in the verdict, and the legal significance of the statement of reasons for each of them; the possibility of overcoming the lack of reasons through: the ruling under Art. 306 of the CPC, the additional verdict under Art. 301, para. 3 of the CPC; the powers of the appellate court under Art. 336 and Art. 337 of the CPC.

The problem of the lack of disposition in the judgment on a matter from the catalog under Art. 301, para. 1 CPC is analysed. If a question from the disposition has not been decided by the court, the statement of reasons for it is pointless - they have nothing to clarify, since the will of the court has not been expressed. Such a procedural violation can also be found in the appellate decision, when the court applies controlling and decision-making powers under Art. 337 of the CPC. Since the legislator has decided to indicate the lack of reasons as an absolute procedural violation, it is logical that the "lack of a disposition" should also be such. De lege lata, this omission is assessed through the existing cassation ground under Art. 348, para. 3, item 2, item 1 of the CPC – lack of reasons. A de lege ferenda proposal was made to supplement the grounds of cassation with "lack of disposition" in order to avoid the incorrect expansive interpretation of the existing ground.

For the first time, the opinion that the lack of reasons in the first-instance verdict can be overcome by the appellate instance is defended. It is

justified with appellate court broad powers to collect all admissible evidence, establish a new factual situation, change the legal qualification, change the punishment and the manner of its execution. The absence of a record from the of the first instance hearing, in cases where it does not reflect the collection of evidence and means of proof, can also be corrected by the appellate court in the course of an appellate judicial investigation.

The grounds of cassation under Art. 348, para. 3, item 3 of the Criminal Procedure Code – illegal court composition are examined in detail. The traditional theoretical understandings for lawful judicial panel have been confirmed – certain number of judges and jurors, acquired quality of judges and jurors, the absence of grounds for recusal, the participation of the entire judicial body in issuing the judicial act. At the same time, other legal requirements have been added, which have not been recognized by the legal doctrine as constituting a lawful court panel. These are the rules for immutability of the judicial panel and the jurisdiction of criminal cases.

The rule under Art. 28 of the Code of Criminal Procedure on the numbers of the members of the court panel is discussed in detail. The dissertation proves the unsustainability of the argument that the larger panel (than that providet for in Art. 28 of the CPC) does not constitute a substantial procedural violation, because it "extends the guarantees" for consideration of the case. It is argued that hearing the case by both a smaller and a larger panel represent a substantial violation of the procedural rules and a cassation ground under Art. 348, para. 3, item 3 of the Criminal Procedure Code.

A comparison was made between the proceedings under the general procedure and the differentiated procedures, as well as the application of the special rules for the composition of the court in cases involving minor defendants. Conclusions about the derogating effect of the differentiated

procedures compared to the general rules in determining the composition of the court of first instance are substantiated. And so the meaning of the special rules under chapter thirty of the CPC, which are applied in deviation from the general rules, but do not have priority over the differentiated proceedings under chapters twenty-eight, twenty-ninth and thirty-first of the CPC. This defends the scientific thesis that the composition of the court is determined according to the relevant rules regulating the specific proceedings (differentiated or according to the general procedure), and the special composition in cases with minor defendants complies only with the rules for the general procedure. Disagreement with the existing understanding that the judicial panel in cases with minors is always determined according to the rules of Art. 390, para. 1 CPC, even when a differentiated procedure is conducted.

A scientific analysis has been made of the prerequisites for acquiring the quality of judges and jurors and their impact on the legality of the judicial panel. The issue of the appointment of judges and the selection of jurors has so far not been discussed in detail in criminal procedural research, but it is an important condition for the legitimacy of the court. The specifics of acquiring the legal status of juror, the conditions for being elected for a juror, incompatibilities with other occupations, the legal significance of the oath and the hypothesis of early termination of the mandate of the juror are examined.

The cases of an illegal court panel were analyzed, when not all members of the panel participate when passing the judicial act. This is an atypical manifestation of the grounds of cassation under Art. 348, para. 3, item 3 of the CPC and the view that it should be singled out as a separate absolute procedural violation is defended. The argument is that it affects the legitimacy of the judicial act, and not the structure of the panel. Separate activities are distinguished when issuing judgments - secret

deliberation, drafting (drafting, writing and printing), signing and announcing the judgment, as well as the mandatory participation of all members of the court in each of the activities.

Arguments have been presented against the established understanding in judicial practice in recent years that the requirement for immutability of the judicial panel is manifested from the beginning of the first-instance court's interim hearing. The traditional scientific understanding that the court panel has to be unchanged since the beginning of the judicial investigation is defended. The scientific conclusion was drawn that the immutability of the court in other proceedings, in which no judicial investigation is conducted, occurs with the beginning of the judicial deliberations.

The scientific concept is defended that violations of the subject-matter, functional and special jurisdiction of criminal cases are always substantial and lead to an illegal court panel. The scholarly thesis that a higher court can seize and decide a case pending in a lower court has been criticized and refuted. Violations of the rules of territorial (local) jurisdiction are always determined to be insignificant, even in the case of a procedural objection for lack of jurisdiction. The hypothesis in which the violation of the rules of jurisdiction "in connection with the cases" constitute a substantial procedural violation have been cited. The understanding that the rules of jurisdiction of criminal cases should occupy an independent place as a new (separate) absolute procedural violation in Art. 348, para. 3 of the CPC is justified with the fact their examination through the available cassation grounds for an illegal court composition is the result of an artificial, inaccurate expansive interpretation of the norm.

The organizational principle under Art. 9 of the Judicial System Act on the random distribution of criminal cases has been analyzed from the

point of view of criminal procedural science, rejecting its significance as a determining rule for the legality of the composition of the court panel.

The cases of violation of the secrecy of the deliberation by the judicial panel were analyzed, as well as the impact of the electronic filing system (EISS) used in the courts on the obligation to protect the secrecy of the meeting and the unsuccessful legal changes of Art. 33, para. 7, 8, Art. 310, para. 1 and Art. 311, para. 2 CPC.

The following specific proposals de lege ferenda were made:

• In Art. 29, para. 1:

1. in item 1, b. "c" of the CPC, a comma is placed at the end of the sentence and the text is supplemented with the expression "determination under Art. 243".

2. in item 4 of the Criminal Procedure Code, a comma is placed at the end of the sentence and the text is supplemented with the expression: "or for whom there are grounds to be brought as an accused for the same act as the one considered in the case".

3. item 6 is supplemented at the end of the sentence with the expression: "or for whom there are grounds to be a witness in the case".

4. a new item 9 is created with the following content: "9. who has other pending court proceedings with one of the parties to the case or with another member of the court."

• In Art. 35, para. 4 and 5 are deleted.

• A new article 35a is created with the following content:

"Special jurisdiction of the Sofia City Court"

(1) The Sofia City Court, as a first instance court, has jurisdiction over cases of crimes of a general nature, committed by judges, prosecutors and investigators, by other persons with immunity, by members of the Council of Ministers, as well as cases of crimes under chapter one of the special part of the Penal Code, unless the special rules of chapter thirty-one apply.

(2) The Sofia City Court has also jurisdiction over cases following in the competence of the European Prosecutor's Office".

• In Art. 38 the following changes are made:

1. The previous Art. 38 becomes paragraph one;

2. A new paragraph two is created with the following content: "The court may consolidate two or more cases for different crimes against the same defendant, when the judicial investigation has not started on any of them. When any of the cases is pending before a higher court, the case is considered by it."

• In Art. 39, para. 2 after the expression: "Art. 66, para. 1", a comma is placed and the number "69" is added.

• In Art. 41 para. 3 is deleted.

• In Art. 347, para. 1 is supplemented with new second and third sentences with the following content: "The cassation review is carried out on the grounds specified in the complaint and in the protest, and for the grounds under Art. 348, para. 3, items 2 – 4, the Supreme Court of cassation examines ex officio.

• In Art. 348, para. 3:

1. Creates a new point two: “2. the jurisdiction under Art. 35, Art. 38, Art. 39, para. 1, Art. 40, Art. 41, para. 2 and 3, sentence two, Art. 45”.

2. The previous item 2 becomes item 3, adding "disposition or" after the word "no"

3. The previous points 3 and 4 become points 4 and 5, respectively.

4. Creates a new point six: “6. the judicial act was not passed by all the members of the judicial panel".

• In Art. 395a, para. 1, a second sentence is added: "Judgments are translated into a foreign language after they are publicly announced, and decisions and other acts under Art. 55, para. 4, ex. secondly – after their enactment”.

• In Art. 417:

1. A new paragraph two is created with the following content: "When the initial regime for the execution of the prison sentence is not determined by the court under Art. 306, para. 1, item 2 of the Code of Criminal Procedure, the regime is determined by the prosecutor by decree."

2. The previous para. 2 becomes para. 3.

§5. PUBLICATIONS

1. "**On obligation of the judicial panel to keep the verdict deliberations secret**" - "Pravna misal", no. 2/ 2023, pp. 68 – 84.

2. "**Is the third cassation in criminal cases final? (On the illegal judicial panel and the prohibition under art. 354 (5) of the Criminal procedure code for returning the case for reconsideration)**" - "De jure", no. 2/ 2023, pp. 257 – 272.

3. "**Are the violations of the subject and local jurisdiction of the criminal court grounds for cassation?**" - "Obschtestvo I pravo", no. 1/ 2024, pp. 4 – 15.

4. "**Violations of jurisdiction in relation to the cases, the functional and the special jurisdiction as grounds of cassation in the bulgarian criminal proceedings**" - "Savremenno pravo", no. 3/ 2023, pp. 7 - 24.

5. "**Is the first instance court panel immutable from the beginning of the committal proceedings**?" – "Pravna misal", no. 3/ 2023, pp. 31 – 43.

6. "**Composition of the court in differentiated criminal procedures**" - sent and approved for publication in a collection of reports from a Conference held on 17.10.2023 in the Rectory of SU "St. Cl. Ohridski".