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PRISACARI Vadim

QUALIFICATION OF UNITY AND PLURALITY OF OFFENSES

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Author: _____

Head of doctoral studies: _____ **MARIT ALEXANDRU, PhD in law, professor**

Guiding commission: _____ **GRECU Raisa, PhD Hab. in law, associate professor**

_____ **ANTOCI Albert, PhD in law, associate professor**

_____ **CRIJANOVSCHI Sergiu, PhD in law, associate professor**

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AESM – UEPES "C. Stere"

Author: **PRISACARI Vadim**

PhD Supervisor: **MARIT Alexandru,**
PhD in law, professor,

PhD Assessment Committee:

The President of the Commission:
AVORNIC Gheorghe, PhD. Hab. in law, professor

Secretary of the PhD Assessment Committee
MARIT Alexandru, PhD in law, professor

Official referents:
CUȘNIR Valeriu, PhD. Hab. in law, professor
BUJOR Valeriu, PhD in law, professor
CRIJANOVSCHI Sergiu, PhD in law, associate professor.

The Thesis defence will take place on **September 23, 2022, at 14.00, address: 6th floor, office 600 USPEE "S. Stere", 200 Stefan cel Mare și Sfânt Boulevard, Chisinau municipality**

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Author **_____Prisacari Vadim**
Secretary of the PhD Assessment Committee **_____ Mariț Alexandru**

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CONCEPTUAL GUIDELINES OF RESEARCH

Topicality and importance of approached topic. Criminal unity and plurality represent the institutions, on the one hand, intersecting and, on the other hand, not at all facile. These require unambiguous legal assessment, so that to the recipient of criminal law, but especially to the practitioner of criminal law, to be clear the hypotheses in which the rules of the classification of single offense become incidental and when the rules of the classification of the concurrence of offenses become applicable.

In the judicial practice, multiple and various problems are noticed in the appreciation of some criminal actions as varieties (forms) of single offense or of the concurrence of offenses. For example, the study of the judicial practice demonstrates the presence of some difficulties that some practitioners of criminal law face regarding the determination of the number of intentions with which the perpetrator acts in the process of the commission of identical criminal actions (inactions). But, depending on this peculiarity, those committed must be considered a single offense or the concurrence of offenses. For these reasons, it is strictly necessary to determine the number of intentions expressed by perpetrator. Accordingly, in all cases the prosecuting officer/prosecutor must make every effort for the purpose of the determination of the number of criminal intentions. However, this peculiarity is crucial for the correct classification of multiple identical criminal actions (inactions).

Viewed separately, the institution of single offense raises numerous questions concerning *(i)* the specificity of the qualification of each form of single offense and *(ii)* the delimitation among them of some similar forms (e.g. the delimitation of the extended offense from the repeated one or from the occupational one). The concurrence of offenses constitutes also that form of criminal plurality that involves numerous situations that must be appreciated, including from the perspective of the legal-criminal classification.

According to the par. (3) art. 1 of the Constitution of the Republic of Moldova "The Republic of Moldova is a constitutional, democratic state, in which the dignity of persons, their rights and freedoms [...] represent the supreme values and are guaranteed."[1]

In view of this desideratum, we find that the purpose of the criminal punishment, consisting in the correction of the convicted person, restoration of the social equity, prevention of the commission of new offenses, including, on the part of the convicted person, can be achieved only by proper appreciation of those committed, without an underestimation or an overestimation of those committed. This is possible exclusively by the correct classification of the committed actions. It is inadmissible to confuse various forms of the single offense (*e.g.* it is impossible to make use of the rules of the qualification of the extended offense in the classification of a repeated offense). Even more serious is the fact of the classification of a single offense in the pattern of several norms of incrimination or of inclusion of a combination of criminal actions in the pattern of a single norm.

Subsequently, good qualification of offense has significance in other plans. For example, the fair classification of those committed has a direct impact on the possible criminal punishment subject to application to perpetrator.

The person authorized to qualify the offense is required to give appropriate assessment to the committed action. He/she must clearly dissociate the criminal unity from the criminal plurality. Also, he/she has to assess and to adapt to specific cases the forms of single offense and those of the concurrence of offenses.

Practice demonstrates that in this does not succeed every time the person entitled to apply the criminal law. In this regard, some practical findings are noteworthy. Thus, in the Report of the General Prosecutor's Office of the Republic of Moldova on the activity of the Prosecutor's Office

[1] Constituția Republicii Moldova, adoptată de Parlamentul Republicii Moldova la 29.07.1994. În: *Monitorul Oficial al Republicii Moldova*, 1994, nr.1, republicată în: *Monitorul Oficial al Republicii Moldova*, 2016, nr.78.

of the Republic of Moldova for 2018, the following are recorded: "Efficiency of the activity of prosecutors in 2018 continued to be determined and affected by several factors of objective and subjective order, and namely: deficiencies at the interpretation of the legislation in force, the erroneous and uneven application by the criminal prosecution authorities and prosecutors of the legal provisions that lead to the incorrect qualification of the criminal actions [...]; ununiform judicial practice, divergences in the interpretation of legal norms".[2] The same issues are pointed out in the Report of the General Prosecutor's Office of the Republic of Moldova on the activity of the Prosecutor's Office of the Republic of Moldova for 2019,[3] as well as in the Report of the General Prosecutor's Office of the Republic of Moldova on the activity of the Prosecutor's Office of the Republic of Moldova for 2020.[4]

Inclusion of the topic in the international, national and regional concerns. According to the provisions of the par. (1) of the art. 113 of the Criminal Code of the Republic of Moldova (hereinafter – the CC of RM) "it is considered the qualification of the offense the legal determination and statement of the exact correspondence (the emphasis belongs to us – *n.a.*) between the signs of the committed prejudicial action and the signs of the composition of the offense, provided by the criminal norm".[5] It follows that the classification of a single offense or of a concurrence of offenses implies the establishment of an exact coincidence between the signs of the offense and the signs of the composition of the offense.

We attest clear interferences between the principles of the criminal law and the correct qualification. The principles of the criminal law regarding, *inter alia*, good qualification of offense, are provided in the Criminal Code of the Republic of Moldova: "extensive unfavourable interpretation and application by analogy of criminal law are prohibited" (par. (2) art. 3 of the CC of RM; [6] "the person is subject to criminal liability and criminal punishment only for the actions committed with guilt" (par. (1) art. 6 of the CC of RM);[7] "no one may be subjected twice to criminal prosecution and to criminal punishment for one and the same action" (par. (2) art. 7 of the CC of RM).[8]

In particular, the correct classification of an offense (according to a single norm or in the form of several norms) ensures the practical transposition of the principle of legality of incrimination. The conducted study of the judicial practice demonstrates that, in many cases, a single offense is classified as the concurrence of offenses (and conversely, a concurrence of offenses is considered a single offense). In other cases, the rules of the concurrence of offenses are considered while the applied norms compete with each other. These aspects are nothing more than facets of the principle of legality of incrimination. The erroneous qualification, finally, disregards the principle of legality of incrimination (enshrined principle, including in the jurisprudence of the Constitutional Court of the Republic of Moldova).

The correct qualification, including non-insufficient and non-excessive is the facet of the principle of legality of incrimination – is implicitly enshrined in the text of some international legal instruments. In the same instruments, the prohibition of the application of the criminal law twice for one and the same action is enshrined. Specifically, the prohibition of such applications of the criminal law is regulated by: the art. 7 of the European Convention on Human Rights, [9] as well as by the art. 15 of the International Covenant on Civil and Political Rights, No. 31 of December 16th, 1966.[10]

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[2] Raportul Procuraturii Generale a Republicii Moldova privind activitatea Procuraturii Republicii Moldova pentru anul 2018. [citat 12.02.2022]. Disponibil: http://procuratura.md/file/2019-03-05_Raportul%20Public%20activitatea%20Procuraturii%20Generale%20anul%202018.pdf

[3] Raportul Procuraturii Generale a Republicii Moldova privind activitatea Procuraturii Republicii Moldova pentru anul 2019. [citat 12.02.2022]. Disponibil: http://procuratura.md/file/Raport%20public%20Procuratura%202019%20rectificat%2004.05.2020%20.pdf

[4] Raportul Procuraturii Generale a Republicii Moldova privind activitatea Procuraturii Republicii Moldova pentru anul 2020. [citat 12.02.2022]. Disponibil: http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf

[5] *Monitorul Oficial al Republicii* Moldova, 2002, nr.128-129, republicat în *Monitorul Oficial al Republicii Moldova*, 2009, nr.72-74.

[6] *Monitorul Oficial al Republicii* Moldova, 2002, nr.128-129, republicat în *Monitorul Oficial al Republicii Moldova*, 2009, nr.72-74.

[7] Ibidem

[8] Ibidem

9 Convenția Europeană a Drepturilor Omului. [citat 12.02.2022]. Disponibil: https://www.echr.coe.int/documents/convention_ron.pdf

[10] *Tratate Internaționale*, 1998, nr.1.

Scientific materials in which to be pointed out, exclusively, the rules of the qualification of the single offense and of the concurrence of offenses were elaborated in a small number. In particular, we notice the presence of several didactic works intended for the analysis of the general criminal law institutions. This fact determined us to focus on the exclusive conduct of such research, having the purpose of the examination of the modalities of qualification of the single offense and the plurality of offenses.

Within the research, it is conducted the analysis of several doctrinal opinions revealed in connection with the subject matter of the thesis. In particular, the works of the following authors were researched: A.Barbăneagră, V.Berliba, A.Borodac, S.Brînza, R.Cojocaru, I.Cotorobai, S.Copețchi, M.Gherman, Gh.Graur, V.Grosu, I.Macari, A.Mariț, D.Martin, A.Pîntea, Gh.Reniță, V.Stati, A.-I. Stoian, F.Streteanu, A.Tăbîrță, G.Ulianovschi *(Republic of Moldova);* I.Borlan, C.Duvac, C.Ghigheci, N.Giurgiu, C.Hrițcu, G.-M. Husti, M.-C. Ivan, I.Pascu, G.Sabău, C.Sima, M.Ștefănoaia *(Romania);* I.Agaev, A.S. Ăktov, D.S. Cikin, O.S. Kapinus, N.Korotkih, D.Iu. Kraev, A.N. Kulaghin, K.V. Obrajiev, A.V. Motin, R.S. Pozdîșev, E.N. Șveț *(Russian Federation);* B.B. Matliubov *(Uzbekistan);* T.I. Sozanskii, O.V. Us *(Ukraine);* A.Persidskis, U.Krastins *(Latvia);* E.-A. Escuchuri *(Spain).*

Inclusion of the topic in the inter- and transdisciplinary context. Although it derives from the content of the general norms of the Criminal Code, the topic of the research implies numerous valences of practical order – feasible in relation to certain concrete offenses. For this reason, in the process of study it is observed an interdependence between the general and special norms of the criminal law. Moreover, the conducted theoretical-practical investigation determined us to review some visions, including to formulate some proposals of the improvement of the text of the law. The latter can contribute to the improvement of the criminal policy of the state as an "efficient instrument for control and prevention of criminality". [11]

Purpose of paper. *The purpose of the thesis* consists in the conduct of a thorough theoretical-practical research focused on the modalities of the qualification of the criminal unity and plurality, in the establishment of the specificity of qualification of some forms inherent in the single offense and the plurality of offenses, as well as in the identification and settlement of practical difficulties noticed in the process of the qualification of the single offense and of the plurality of offenses.

Objectives of research. For the purpose of the achievement of the stated purpose, the following *objectives* were formulated: analysis of doctrinal opinions in the sphere regarding the modalities of qualification of the criminal unity and plurality; identification of the defining features of some concrete forms of single natural or legal offenses; determination of the specificity of qualification of continuous offense, of the extended offense, of the complex offense, of the occupational offense, of the repeated offense and of the offense with alternative actions (inactions); the dissociation, between them, of the related forms of the single natural and legal offense; establishment of the peculiarities characterizing the real concurrence and the ideal concurrence of offenses; differentiation of concurrence of offenses from *(i)* some forms of single offense, as well as from *(ii)* the establishment of concurrence of norms; highlighting of the specificity of the qualification of certain specific offenses, from the perspective of the criminal unity and plurality; study of judicial practice in the sphere regarding the modalities of qualification of the single offense and of the criminal plurality; comparative analysis of regulations of the legislations of some foreign states regarding the forms of the single offense and the forms of the criminal plurality; statement of practical difficulties regarding the legal-criminal classification of the criminal actions, from the perspective of the criminal unity and plurality; highlighting of the normative deficiencies regarding the qualification of the single offense and the concurrence of offenses; suggestion of certain legislative proposals capable to lead to the improvement of the regulatory framework in the field regarding the qualification of single offense and of the concurrence of offenses.

[11] GRECU, R. Evoluția istorică a noțiunii și definiției politicii penale. În: *Revista Națională de Drept*. 2018, nr.7-9, p. 21; GRECU, R. Politica penală – abordare evolutivă a noțiunii și definiției. În: *Revista de studii interdisciplinare „C. Stere".* 2017, nr.1-2(13-14), p. 62

The hypothesis of the research is based on the assumption according to which:

- not only the unity of the intent constitutes the criterion in the delimitation of the extended offense and of the real concurrence between the identical offenses, but also the nature of the committed criminal actions (inactions);
- the repeated offense bears similarities to the concurrence of offenses, deriving from the latter the legal category, and does not constitute a deviation of the criminal recidivism;
- classification of those committed, according to the rules of the concurrence of offenses (according to the norm that includes the complex offense, but also according to the norm that contains the absorbed offense) is contrary *(i)* to the rule of qualification in the hypothesis of the concurrence from a part norm and a full norm and, implicitly, *(ii)* the principle of the exact classification as the subspecies of the principle of the legality of incrimination, from the perspective of the conduct of an over-qualification;
- it is not excluded the ideal concurrence between the offenses with the identical object of attempt, committed with the same form of guilt;
- the unity of the person of the corruptor does not constitute a mandatory condition of the passive corruption in the prolonged form, being possible for the perpetrator to claim, accept or receive illicit remuneration from several corruptors, but those committed to be considered as a single offense.

Synthesis of the methodology of research and justification of the chosen research methods. The following methods were used at the achievement of the proposed purpose and objectives: logical method, induction, deduction, historical method, systemic method, comparative method, empirical method, etc.

The comparative and empirical method occupied a special place within the conducted study. Thus, the comparative method was used in the process of the delimitation, among them, of some forms of the single offense. At the same time, it was used at the distinguishment of the concurrence of offenses from *(i)* certain forms of single offense, as well as from *(ii)* the institution of concurrence of norms. Last but not least, the comparative method contributed to the identification of certain good legislative practices in the field of single offense and concurrence of offenses, as recorded in the legislations of some foreign states. In this regard, several texts of law of the foreign Criminal Codes were studied, including: the Criminal Code of Romania, Bulgaria, Poland, Latvia, Lithuania, Greece, Belgium, Spain, Austria, Germany, the Czech Republic, France, Italy, Croatia, Malta, Portugal, Slovakia, Hungary, Georgia, Armenia, Ukraine, Japan, etc.

It should be mentioned that the empirical method was also used extensively. In this regard, we specify that a part of the conducted research is focused on the analysis of the judicial practice in the field of qualification of the single offense and the concurrence of offenses. Specifically, more than 150 court decisions (sentences, findings) were analysed.

CONTENT OF THESIS

Within the ***Chapter 1 "Analysis of scientific materials on qualification of unity and plurality of offenses"*** the analysis of several doctrinal opinions revealed in connection with the topic of the thesis was conducted. In particular, the works of the following authors were researched: A.Barbăneagră, V.Berliba, A.Borodac, S.Brînza, R.Cojocaru, I.Cotorobai, S.Copețchi, M.Gherman, Gh.Graur, V.Grosu, I.Macari, A.Mariț, D.Martin, A.Pîntea, Gh.Reniță, V.Stati, A.-I. Stoian, F.Streteanu, A.Tăbîrță, G.Ulianovschi *(Republic of Moldova);* I.Borlan, C.Duvac, C.Ghigheci, N.Giurgiu, C.Hrițcu, G.-M. Husti, M.-C. Ivan, I.Pascu, G.Sabău, C.Sima, M. Ștefănoaia *(Romania);* I.Agaev, A.S. Ăktov, D.S. Cikin, O.S. Kapinus, N. Korotkih, D.Iu. Kraev, A.N. Kulaghin, K.V. Obrajiev, A.V. Motin, R.S. Pozdîșev, E.N. Șveț *(Russian Federation);* B.B. Matliubov *(Uzbekistan);* T.I. Sozanskii, O.V. Us (Ukraine); A.Persidskis, U.Krastins *(Latvia);* E.-A. Escuchuri *(Spain).*

Among the scientific materials published on the topic of the thesis in the Republic of Moldova it is distinguished the scientific article elaborated in co-authorship by *S. Brînza and*

V.Stati.[12] It is a material in which the authors come to bring multiple arguments in favour of the abrogation of the institution of the repetition of offense. Finally, the authors suggest that the legislator extend the action of the concept "concurrence of offenses" also to the commission by the same perpetrator of two or more identical offenses that will contribute to a better differentiation of the criminal liability, to a more equitable punishment, to a more consistent promotion of the purposes and principles of the criminal law, and, last but not least, to the raise of the standards of the criminal justice.

It should be specified that the scientific material is published before the exclusion from the text of the Moldavian criminal law of the art. 31 (article that regulated the repeated offense) and of the aggravating circumstantial sign "repeated" from the most articles in the Special Part of the Criminal Code (amendment operated in 2008, in force since 2009). It seems that the arguments of the above-cited authors were heard by the legislator. However, we note a dose of reluctance of the Moldavian legislator that, although renounced the institution of the repetition of the offense (regulated previously in the art. 31 of the CC of RM), in some articles the repeated form of the offense was still preserved, though in a more rudimentary form.

The paper elaborated by *A. Barbăneagră, Gh. Alecu, V. Berliba and others* dates from 2009.[13] Deserve attention the segments of the paper in which are analysed: continuous and extended offense (forms of single offense), as well as the concurrence of offenses (form of plurality of offense). The author of these doctrinal theses is G. Ulianovschi. The following assertion is noticeable: "In order to unite all enforcement acts, enforcement resolution must be sufficiently determined in the sense that the offender has a complex image of his/her subsequent activity that he/she will carry out by identical and separate actions, and with the execution of each action the final decision can be concretized".[14] We note that this aspect is decisive in the delimitation of the extended offense from the real concurrence between identical offenses.

Another material in the spotlight is the scientific article elaborated in 2011 by *R. Cojocaru.*[15] Within this material the author defines the concurrence of offenses; establishes the features of the concurrence of offenses; identifies the forms of the concurrence of offenses and determines the specificity of the qualification of each form of the concurrence of offenses.

In 2012, a paper elaborated by the same group of authors was published: *M. Grama, S. Botnaru, A. Șavga and V. Grosu.* [16] The author of the segment of the paper in which the criminal unity and the plurality of offenses is approached is V. Grosu. According to V. Grosu, "there is a unity of offense when in the activity conducted by a person, we identify the content of a single component of offense and there is the plurality of offenses when in the prejudicial activity of the person we identify the contents of two or more components of offenses".[17]

Useful for the given study are the scientific materials elaborated by *A.-I. Stoian* in 2012.[18] The author pays more attention to the aspect regarding the dissociation of the prolonged offense from the repeated one. In this context, A.-I. Stoian mentions: "In accordance with the criminal legislation of the Republic of Moldova, the repeated offense can be recognized in the capacity of a distinct form of criminal unity, when in the Special Part of the Criminal Code are formulated the aggravating norms that include two or more actions committed by the perpetrator in the standard variant, until his/her final conviction".[19]

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[12] BRÎNZA, S., STATI, V. Considerente de natură politico-penală în vederea abolirii instituției de repetare a infracțiunii. În: *Revista științifică a USM „Studia Universitatis",* 2007, nr.6, pp. 60-72.

[13] BARBĂNEAGRĂ, A., ALECU, Gh., BERLIBA, V. et al. *Codul penal al Republicii Moldova. Comentariu. (Adnotat cu jurisprudența CEDO și a instanțelor naționale).* Chișinău: Sarmis, 2009. 860 p.

[14] Ibidem, p. 73.

[15] COJOCARU, R. Trăsăturile definitorii și formele concursului de infracțiuni potrivit Codului penal al Republicii Moldova. În: *Analele științifice ale Academiei „Ștefan cel Mare", Științe juridice*. 2011, nr.XI(2), p. 17.

[16] GRAMA, M., BOTNARU, S., ȘAVGA, A. et. al. *Drept penal. Partea Generală. Vol.I.* Chișinău: Tipografia Centrală, 2012. 328 p.

[17] Ibidem, p. 304.

[18] STOIAN, A.-I. Infracțiunea continuată (prelungită) și infracțiunea continuă succesivă în dreptul penal. În: *Legea și Viața*. 2012, nr.10, pp. 45-49; STOIAN, A.-I. Infracțiunea continuată (prelungită) și infracțiunea repetată în legislația penală a Republicii Moldova. În: *Закон и жизнь*. 2012, №.10, pp. 55-58.

[19] STOIAN, A.-I. Infracțiunea continuată (prelungită) și infracțiunea repetată în legislația penală a Republicii Moldova. În: *Закон и жизнь*. 2012, №.10, p. 57.

In 2015, two scientific articles elaborated in the co-authorship by *D.Martin* and *S.Copeţchi* were published having as the content the qualification of the concurrence of offenses.[20] According to the authors, "the concurrence of offenses presupposes that all committed prejudicial actions constitute independent offenses that must be qualified in their entirety in accordance with several norms of incrimination".[21] In consequence, taking into account this postulate D.Martin and S.Copeţchi evoke the following rule that must be taken into account at the classification of the concurrence of offenses: "[...] the person authorized to apply the criminal law, implicitly with the qualification of the offenses, will indicate in the procedural-legal act (ordinance of initiation of criminal prosecution, ordinance of indictment, criminal indictment, conviction sentence) all articles, as the case may be, paragraphs, letters of the special part of the Criminal Code that incriminate the committed concrete criminal actions that enter in concurrence, and in case of unconsumed offenses or those committed in participation, and of the norms of the general part of the Criminal Code".[22]

The manual elaborated by *A. Mariţ,* [23], intended to the approach of the techniques and rules of the qualification of offenses, also dates from 2015. Of interest are the segments of the paper in which the author examines the rules of the qualification of single offense and of the concurrence of offenses.

Extremely developed is the opinion of A. Mariţ, in the context of the qualification of the extended offense, in the chapter regarding the circumstances that testify the unity of intention: "For the deduction of the single decision, the orientation value can have the aspects such as: unity of place, unity of victim, unity of material object, etc., without, however, these aspects being absolutized; they may also be criteria for the assessment of the existence of a single judgment: identification of the manner of the commission of the actions, the procedure or the manner of the commission, the identity of the pursued purpose, the similarity of the actions, the non-intervention of an impediment that would necessitate a new criminal decision, etc."[24] A. Mariţ is right when he states that "the single criminal decision (resolution) is the condition that it is established more difficultly, because making a decision is a psychic, inner process of the perpetrator, difficult to decipher after the commission of the actions".[25]

It is worth noting the scientific article whose author is *S.Copeţchi*, published in print in 2016.[26] In general, the author tries to point out the criteria for the delimitation of the extended single offense from other forms of single offense, as well as from the concurrence between identical offenses. In terms of the distinguishment of the extended offense from the offense with alternative actions (inactions), S.Copeţchi states: "The single extended offense is characterized by the presence of several actions/inactions, but identical, while in case of the offenses with alternative actions, actions/inactions, on the one hand, are not identical and, on the other hand, are expressly provided for as alternative actions".[27]

In 2020, a scientific article was published by the author *I. Cotorobai*.[28] For the most part, the author examines the subject matter of the qualification of the concurrence of offenses. *Ab initio*, the features of the concurrence of offenses are signalled, as well as its forms. Comparing those two forms of the concurrence of offenses, I. Cotorobai notes: "In case of real concurrence, if the

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[20] MARTIN, D., COPEŢCHI, S. Calificarea concursului de infracţiuni. Partea I. În: *Revista Naţională de Drept*. 2015, nr.1, pp. 23-28; MARTIN, D., COPEŢCHI, S. Calificarea concursului de infracţiuni. Partea II. În: *Revista Naţională de Drept*. 2015, nr.2, pp. 37-43.

[21] MARTIN, D., COPEŢCHI, S. Calificarea concursului de infracţiuni. Partea I. În: *Revista Naţională de Drept*. 2015, nr.1, p. 23.

[22] Ibidem.

[23] MARIŢ, A. *Calificarea infracţiunii: aspecte teoretico-normative şi practice ale calificării infracţiunilor. Suport de curs*. Chişinău: Centrul Editorial „Universitatea de Studii Europene din Moldova", 2015. 420 p.

[24] Ibidem, p. 152.

[25] MARIŢ, A. *Calificarea infracţiunii: aspecte teoretico-normative şi practice ale calificării infracţiunilor. Suport de curs*. Chişinău: Centrul Editorial „Universitatea de Studii Europene din Moldova", 2015, p. 151.

[26] COPEŢCHI, S. Delimitarea infracţiunii unice prelungite de concursul de infracţiuni, precum şi de unele forme ale unităţii infracţionale. În: *Revista ştiinţifică a USM „Studia Universitatis Moldaviae", Seria „Ştiinţe sociale"*. 2016, nr.8 (98), pp. 138-146.

[27] Ibidem, p. 145.

[28] COTOROBAI, I. Modalităţile concursului de infracţiuni şi problematica aplicării pedepsei penale. În: *Revista Procuraturii Republicii Moldova*. 2020, nr.7, p. 40.

action (inaction) of one of the concurring actions were removed, the others would continue to exist, while in case of the ideal concurrence, if there was no antisocial action or inaction, there would normally be no offense".[29]

Among the eminent papers intended for the given research, published in other states, is the doctoral thesis defended in 2005 by *E.N. Şvet*.[30] Among others, it is approached the concept of the plurality of offenses – the concept from which the concurrence of offenses derives. The concept of the "concurrence of offenses" is also investigated. The forms of concurrence of offenses are identified and investigated. The correlation between the concurrence of offenses and the concurrence of the juridical-criminal norms is established. In terms of the qualification of the ideal concurrence E.N. Șvet claims: "in the hypothesis of the ideal concurrence, as an expression of reality, one of the objective laws of human conduct is reflected, and namely, the possibility that as a result of a single conscious and volitional action different consequences are caused".[31]

In 2006 it is published the scientific article elaborated in co-authorship, by *V. Berliba and R.Cojocaru*.[32] It is a material in which the authors point out the features of the continuous and the continued (extended) offense, as well as the demarcation lines between them.

Notable are the statements of V. Berliba and R. Cojocaru in the context of the delimitation of the continuous offense from other criminal forms that presuppose a prolongation in time of the socially dangerous activity: "For the continuous offense, a simple prolongation of the criminal activity is not characteristic, which we find also in other forms of criminal unity. Any constituting action or inaction of an offense may have no matter how short duration of conduct (for example, commission of a murder by application of successive beats or by non-breastfeeding of a newborn child for a relatively long period of time, which would result in death). In these cases, it is about the occasional prolongation of the offense, determined by the concrete manner in which the perpetrator conceived its commission. While the offense continues, the prolongation of the criminal activity is determined by the very nature of the action, the continuity being an inherent attribute of it".[33]

In 2008 came out the monograph signed by the Uzbek author *B.B. Matliubov*.[34] In the paper it is approached the institution of the concurrence of offenses. A part of the study is predestined to differentiate the rules of qualification of the concurrence of offenses depending on its forms. When asked if there could be an ideal concurrence between offenses with the same object of attack B.B. Matliubov answers: "the ideal concurrence between offenses with an identical object of attempt can only be if the form of guilt is different". [35]

The summary of the doctoral thesis elaborated by the Ukrainian author *T.I. Sozanskii* dates from 2009.[36] It is a material in which the author investigates the subject matter of the qualification of the concurrence of offenses. Various aspects are examined: starting with the understanding of the basic notions and ending with the display of the concrete rules of the qualification of the concurrence of offenses.

It deserves our attention also the summary of the doctoral thesis defended in 2013 by *D.S. Cikin.*[37] The paper focuses on the analysis of some forms of the single offense: extended offense;

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[29] Ibidem, p. 38.

[30] ШВЕЦ, Е.Н. *Совокупность преступлений: понятие, виды, наказуемость*. Диссертация на соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2005. 152 с.

[31] ШВЕЦ, Е.Н. *Совокупность преступлений: понятие, виды, наказуемость*. Диссертация на соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2005, с. 59-60.

[32] BERLIBA, V., COJOCARU, R. Infracțiunea continuă și continuată în legea penală a Republicii Moldova. În: Revista de Drept penal. 2006, nr.4, pp. 130-142.

[33] Ibidem, p. 130.

[34] МАТЛЮБОВ, Б.Б. Совокупность преступлений: квалификация. Ташкент, 2008.

[35] Ibidem, с. 57.

[36] СОЗАНСЬКИЙ, Т.І. Кваліфікація сукупності злочинів. Автореферат дисертації на здобуття наукового ступеня кандидата юридичних наук. Львів, 2009.

[37] ЧИКИН, Д.С. Сложные единичные преступления: уголовно-правовая характеристика, проблемы квалификации и законодательного конструирования. Автореферат диссертации на соискание ученой степени доктора юридических наук. Краснодар, 2013. 32 с.

continuous offense; offense with occurred intent; offense with alternative signs; complex offense; offense, the composition of which provides for repeated actions.

Striving to delimit the complex offense from the competition of offenses, D.S. Cikin points out: "The distinction of the complex offense from the concurrence of offenses is made taking into account the type and size of the sanction, provided by the norm that includes the complex offense, in general, and the penalties to be applied for the commission of the offenses. If the sanction for the commission of the complex offense is harsher than the sanction for the elementary offense, those committed must be considered as a single offense. If the sanction for the commission of the offense-element is greater than or equal to the sanction for the complex offense, those committed must be qualified as a concurrence of offenses".[38]

The scientific article signed by *C.Sima* in 2014 is another material to be studied.[39] The key points of the scientific approach are focused on: approach to the generalities regarding the unity and plurality of offenses; enunciation and analysis of the categories and types of the criminal unity. The extended and the complex offense are meticulously analysed. C. Sima points out that "in case of the complex offense, the absence of the absorbed offense in its content leads to the non-existence of the complex offense".[40] The same author indicates that "absorbed offenses completely lose their criminal autonomy, producing separate legal effects, but only within the complex offense".[41]

The review also includes the summary of the doctoral thesis defended in 2018 by the Latvian author *A. Persidskis*.[42] It is a research focused on the issues regarding the real and ideal concurrence of offenses. In particular, the emphasis is put on the ideal concurrence of offenses. Among other things, the demarcation lines between the concurrence of offenses and *(i)* the complex offense and, *(ii)* the prolonged offense are marked.

Another Latvian author, *U. Krastiņš*, [43] publishes in 2019 a material having as the object the subject matter of the extended offense in the criminal law. *Inter alia*, the following features of the extended offense are highlighted: "interconnected similar actions; actions aimed at the same purpose; acts involving the same criminal intent; actions that, as a whole, form a single offense".[44] According to the author, it is imperative that both the single intent and the single purpose be included in the concept of the prolonged offense, since the purpose of the criminal activity is the result, the perpetrator tends to.

It is worth noting the summary of the doctoral thesis defended in 2019 by *M.-C. Ivan.*[45] Among other things, the following forms of the single offense are investigated: simple offense, continuous offense, deviated offense, continued [extended] offense, complex offense and progressive offense. Characterizing the simple offense, the author states that "all elements of the legal content of each committed offense in the simple form of the unity of offense are single such as: social relations defended by the generic and special legal object, material object, subjects of offense (with some differentiations from offenses against person) etc". [46]

Finally, in 2021, another scientific article was published by the authors *V.Stati and Gh.Reniță.*[47] It is an article elaborated by two local authors, but published in a foreign journal. Within this scientific approach, the authors argue about the repeated violation – the form of single

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[38] Ibidem, cc. 26-27.

[39] SIMA, C. Unitatea de infracțiuni. În: Revista „Pro Lege". 2014, nr.4, pp. 11-41.

[40] Ibidem, p. 34.

[41] Ibidem, p. 34.

[42] PERSIDSKIS, A. Noziedzīgu nodarījumu kopība aggregation of criminal offences. Promocijas darba kopsavilkums synopsys of the doctoral thesis. Riga, 2018. 37 p.

[43] KRASTINS, U. Turpināta noziedzīga nodarījuma problemātika krimināltiesībās. În: The 7th International Scientific Conference of the Faculty of Law of the University of Latvia (January 2019), pp. 346-352.

[44] Ibidem, p. 351

[45] IVAN, M.-C. Unitatea de infracțiune. Rezumatul tezei de doctorat în drept. București, 2019. 14 p.

[46] Ibidem, p. 3.

[47] STATI, V., RENIȚĂ, GH. Dilema (ne)constituționalității dispoziției cu privire la repetarea violului. În: Polish Science Journal, 2021, Issue 6(39), p. 103.

offense. V.Stati and Gh.Reniță record the opportunity of the definitive exclusion of the repeated form of offense from the content of the Criminal Code.

Chapter 2 ***"Qualification of continuous and extended offense"*** was dedicated to the investigation of continuous and extended offense – the forms of the single offense.

It is noted that in the situation of the continuous offenses, the existence of a prolongation in time of socially dangerous activity is inevitable. Such an extension is natural, springing from the continuous natural manner of the description of the offense. *Per a contrario*, in case of other offenses, the prolongation of socially dangerous activity does not depend on their essence, having only an occasional nature. It is demonstrated that the continuing form of an offense is not determined by the long-term failure to fulfil an obligation imposed by law on the perpetrator. It is concluded that continuing offenses can also have a material component of the offense, not just a formal one. It is not necessary to absolutize the thesis, according to which the continuous offenses are characterized only by direct intention. This is the rule, to which, however, can exist the exceptions. We do not exclude the hypothesis of the commission of a continuing offense through negligence.

It is pointed out that in case of successive continuous offenses, the interruption of the criminal activity (on the occasion of an incident (natural) intervention)) does not mark the moment of consummation of the offense. In this case, all criminal activities (between interruptions) form a single offense, those committed will be qualified only once, according to a single norm. The interruption of a continuous offense that is exclusively permanent indicates the intervention of the moment of consummation of this offense. That is why the possible resumption of such a permanent continuous criminal activity needs to be classified, again, on the basis of the norm that includes the committed continuous criminal action. In this situation, those committed must be classified according to the rules of the concurrence of offenses.

The author does not exclude the hypothesis of a concurrence between two identical continuous offenses (*e.g.* art. 290 and art. 290 of the CC of RM). For this it is necessary to occur the moment of consummation of the first offense. This is the only way to identify a new offense.

It is mentioned that it is inadmissible to consider identical the offense of passive corruption, provided in the par. (1) art. 324 of the CC of RM and the offense of passive corruption, stipulated in the let. d) par. (2) art. 324 of the CC of RM. Under these conditions, in the absence of an identity of the committed criminal actions (inactions), *de lege lata*, those committed should not be considered as a single offense (despite the fact that the perpetrator acted on the basis of a single intention and a single purpose), but to be appreciated as a concurrence of offenses.

The author concludes that not only the unity of intent constitutes the criterion in the delimitation of the extended offense and the real concurrence between identical offenses, but also the nature of the committed criminal actions (inactions). Commission of different (non-similar, non-identical) criminal actions (inactions), even on the basis of a single intention, cannot form a single prolonged offense, but a concurrence of offenses.

In accordance with the legislation of the Republic of Moldova, any intentional offense susceptible of commission by several prejudicial actions (inactions) can take the form of an extended criminal action (from offenses against life and health of person to offenses against good conduct of activity in public sphere). At the assessment of the existence of an extended offense, it is irrelevant if each criminal episode, in part, contains the signs of an offense.

It is argued that the extended offense is incompatible with the offenses committed by negligence. In case of an extended offense, the perpetrator must be aware that the committed prejudicial actions (inactions) constitute the episodes of a single offense. The perpetrator must understand that the committed actions (inactions) must not be seen separately, but as part of a long-term criminal activity. This awareness is lacking in case in which the perpetrator manifests negligence.

In case of offenses committed by negligence performed by several identical or similar actions (inactions), those committed must be classified taking into account the rule enshrined in

the art. 114 of the CC of RM (qualification of offenses in case of a concurrence of offenses). In this case, each criminal action (inaction) must be given a separate legal assessment.

The author points out that the study of judicial practice demonstrates the presence of some difficulties that some practitioners of criminal law face at the qualification of the extended offense. Sometimes, several criminal actions (inactions) committed on the basis of different intentions are considered, erroneously, stages (episodes) of a single offense. In such cases, instead of concurrence of offenses, the rules of the extended offense are applied. In some cases, the solution of the single prolonged offense is justified by the principle in *dubio pro reo*. When the person qualified with the juridical-criminal classification cannot unequivocally establish the unitary or plural nature of the criminal intention, all that remains is to give a favourable qualification solution to the perpetrator.

In terms of the qualification of the extended single offense, it is also demonstrated: the sole purpose pursued by the perpetrator is the sign which, on the one hand, emphasizes the existence of a single intention, and on the other hand, ensures the presence of a cohesion between the criminal actions (inactions); the duration between the committed criminal actions (inactions) constitutes the feature that greatly facilitates the process of the delimitation of the extended offense from the repeated single offense and the concurrence of offenses (hypothesis of concurrence between offenses of the same type). However, the duration of time interval between the episodes constitutes an important criterion, not a decisive one in the assessment of those committed as a single extended offense; the unity of the victim of the offense (passive subject) should not be seen as a mandatory feature (condition) of the single extended offense.

Chapter 3 ***"Qualification of other forms of single offense"*** was dedicated to the research of the repeated offense, occupation offense, complex offense, as well as offense with alternative actions (inactions).

It is pointed out that, at present, the repetition of the offense has a double valence: a) it represents a form of the legal criminal unit (for the cases when the text of the incrimination norm includes, as an aggravating circumstantial sign, the fact of the commission of the offense by a person that committed previously such an offense); b) forms a concurrence of offenses (for other cases). So, the repeated single offense constitutes a legal fiction; *de facto* it represents a concurrence of offenses, while *de jure*, artificially, it forms the content of a single offense.

The author notes that the content of the single repeated offense includes at least two identical or, in some cases, homogeneous (but provided for by the same article) criminal actions. The repeated offense bears enormous similarities to the concurrence of offenses, deriving from the latter legal category, and does not constitute a deviation from the criminal recidivism. Regarding the nature of the repeated offense and its rules of qualification, the author finds that the assessment of a concurrence of offenses as a single offense constitutes a harmful legal fiction. It disregards several fundamental principles, including: the principle of legality, the principle of equality and the principle of individualization of criminal liability and punishment.

In terms of the qualification of a habitual (occupational) offense, the author emphasizes, it is not the interest of each act, but the totality of the acts. It is also stated that the concurrence cannot usually include the offenses of the same type. At the same time, it is not excluded that there is a concurrence between usually different offenses. In the process of the qualification of an offense, it is usually not the maximum limit of the actions committed that matters, but the minimum limit.

Regarding the classification of the complex offense, the author notes that the elimination of the attached (reunited) or absorbed offense declines the qualification of those committed according to the norm that incriminates the complex offense. In case of the complex offense, the absorbed/reunited criminal actions lose their individuality, and cannot be considered in the qualification, together with the complex offense. And, the classification of those committed, according to the rules of the concurrence of offenses (according to the norm that includes the complex offense, but also according to the norm containing the absorbed offense) is contrary *(i)* to the rule of qualification in the hypothesis of concurrence from a part norm and a full norm and, implicitly, *(ii)* the principle of the accurate classification as a subspecies of the principle of the

legality of incrimination, from the perspective of an over-qualification. The qualification of a complex offense must be made according to the norm that includes the complex offense, however not according to the norms that form the complex offense.

It is concluded that in case of the complex offense it is imperative that the secondary action (inaction) precede the moment of the accomplishment of the main action (inaction), but not to succeed. Otherwise, those committed could constitute a concurrence of offenses.

Regarding the qualification of the single offense with alternative actions (inactions), the author emphasizes that this implies the accomplishment of one of the actions (inactions) provided in the disposition of the norm. The performance of several actions (inactions), of those of alternative nature, provided in the disposition of the norm, cannot weigh for the purpose of the modification of the legal classification from a single offense in the concurrence of offenses. Offenses with alternative actions (inactions) can only form a concurrence if the perpetrator acts on the basis of different intentions in relation to the committed prejudicial action (inaction). It is also mentioned that the compatibility of the actions (inactions) provided for in the disposition of the norm must be taken into account at the qualification of the offense with alternative actions (inactions).

Chapter 4 ***"Plurality of offenses: concept, forms, rules of qualification"*** was dedicated to the investigation of the concurrence of offenses – form of criminal plurality.

The author notes that the concurrence of offenses is not incidental in hypotheses in which appear various circumstances that make it impossible to prosecute the perpetrator for at least one of two committed offenses. The offenses forming a concurrence can be heterogeneous, homogeneous or identical.

It is proven that in case of the concurrence of the offenses with aetiological connection, the initial action (inaction) (committed for the purpose of the facilitation of the commission of another offense) constitutes in itself a distinct offense, the reason for which, in this situation we are in the presence of a concurrence of offenses, but not of a complex offense. It is pointed out that when the initial intention regards the criminal lesion of an object/victim, while the subsequent intention regards the criminal lesion of another object/victim, those committed cannot form a single offense (committed on the basis of an occurred intent), following that the qualification will be made according to the rules of the concurrence of offenses.

The author states that the basic feature of the ideal concurrence consists in the performance of a single action (inaction), seconded by the feature of the existence of elements of several offenses (by the committed action (inaction), thus it is necessary to invoke several norms of incrimination at the qualification of these actions. The author does not exclude the ideal concurrence between offenses with identical object of attempt, committed with the same form of guilt. This requires that the committed action (inaction) cause different harmful consequences. Homogeneous offenses, provided for in the content of the same article, may form an ideal concurrence.

It is concluded that in the hypothesis of the qualification of a complex offense, when the so-called "absorbed offense" exceeds the degree of social danger of the complex offense, the solution of the concurrence of offenses is excessive (does not meet the principle of legality of incrimination). The solution of the concurrence of offenses is incidental only for the cases in which the violence (physical coercion) is applied *a posteriori* at the moment of the accomplishment of the main action.

The author points out that it is inadmissible to invoke several incriminating norms when the same values and social relations are harmed. At the same time, they are allowed to be considered as the ideal concurrence of offenses when by a single action (inaction) are caused different prejudicial consequences (provided by distinct norms), except for the case in which the primary consequence determines the appearance of a secondary prejudicial consequence.

Finally, it is emphasized that the concurrence of norms and the ideal concurrence of offenses have similarities in terms of *(i)* the uniqueness of the criminal activity and *(ii)* the plurality of applicable legal and criminal norms. It is observed that there can be no ideal concurrence

between the offenses regulated by the competing norms. Compared to the institution of the concurrence of criminal norms, in case of the single complex offense the author notices the following relation: the absorbed offense corresponds to the norm-part, while the absorbing offense to the norm-whole. In the absence of a logical succession of the offense provided by the norm-part in the conjuncture of the offense provided by the norm-whole, the committed ones no longer form a single offense, not being present the form of concurrence between a part and a whole. In this case, they are the prerequisites for the classification in accordance with the rules of the concurrence of offenses.

Chapter 4 ***"Modalities of qualification of criminal unity and of concurrence of offenses in case of certain specific criminal actions"*** was dedicated to the examination of the issue of the qualification of the single offense and the concurrence of offenses in relation to some specific criminal offenses (*i.e.* intentional murder, offenses against sexual life and offenses against the proper conduct of activity in the public sphere).

It is demonstrated that unlike the simple form of murder, the prolonged one requires the presence of longer intervals between actions. The presence of too little interval can express a natural continuity of the committed material actions, being a characteristic feature of the simple single offense. It is argued that any offense against the person, in general, and intentional murder, in particular, can take a prolonged form (except for those *a priori* incompatible with the prolonged offense). The author concludes that the qualification of intentional murder, involving the cause of death of one of two concerned persons, on the basis of the rules of the single offense (reported to the art. 27 of the CC of RM) corresponds to the content of the intention of the perpetrator. The corresponding rule of qualification cannot be ignored, just to respect the principle of fairness of criminal liability.

It is demonstrated that the norm of the let. a) par. (2) art. 171 of the CC of RM is inapplicable in any situation in which the perpetrator is definitively convicted for the commission of one of two committed offenses of violation. The author notes that it cannot form a single offense the commission of a violation and of a violent action of sexual nature (even if the criminal actions are committed on the same intent and in relation to the same victim). At the same time, if the intention of the perpetrator to commit a violation has another content, and namely, to commit violent actions of sexual nature, those committed must be qualified according to the norm that includes the committed offense on the basis of the occurred intent.

It is observed that in order to qualify a single offense against sexual life (in extended form), it does not matter whether the criminal actions are directed at one and the same victim or at different victims. Accordingly, the unity or plurality of victims does not have relevance either in terms of the assessment of those committed as the concurrence of offenses. A concurrence of offenses with the same victim is not excluded, just as an extended offense with more than one victim is not excluded.

In terms of the qualification of the offenses of corruption, the author reveals that the unity of the personality of the corruptor is not a mandatory condition of passive corruption in the extended form, being possible for the perpetrator to claim, accept or receive illicit remuneration from several corruptors, but those committed to be considered a single offense.

The author notes that, in some cases, the judicial practice supports the position according to which the actions of passive corruption are appreciated as single offenses even when the criminal actions (inactions) are the episodes of a single offense – are committed on the basis of an undetermined intent. It is concluded that in order to be in the presence of a single offense of corruption (*e.g.* passive corruption), committed with undetermined or relatively determined intent (related to number of corrupters) it is necessary for the perpetrator to have a certain representation (at least global (general)) regarding their number. The manifestation of an abstract representation of the number of corruptors excludes the presence of a single intent. The qualification must be made in accordance with the rules of the concurrence of offenses when, for example, one and the same perpetrator (public person) receives illicit remuneration, on different days, on different occasions (although in similar circumstances), from one and the same corruptor. *Per a contrario*,

the manifestation of a certain representation, the perpetrator understanding that he/she will receive in the near future, in other times, illicit remuneration from the same corruptor, can be a unifying criterion of intention, those committed will be qualified according to a single norm.

In the process of the reception of the illicit remuneration from several corruptors, the criterion regarding the common interest of the corruptors together with other circumstances (their common effort (the fact of which the corrupted person is aware) etc.) facilitates the process of the identification *in concreto* of the psychic attitude of the corrupted person towards those committed. In the presence of the common interest of the corruptors, but in the absence of their cooperation and, respectively, in the absence of a single intention of the corrupted person regarding the illicit remuneration transmitted concomitantly, those committed must be assessed in the light of the concurrence of offenses.

It should be noted that the claim, acceptation, reception or extortion of an illicit remuneration from several persons concomitantly (when the corruptors cooperate with each other, the fact of which the corrupted person is aware) does not constitute a single extended offense, although it is a single offense. Finally, the author concludes that the consecutive performance of actions of alternative nature (entered in the text of the art. 324-326 of the CC of RM) does not transform the offense into an extended one.

CONCLUSIONS AND RECOMMENDATIONS

The obtained results of the given doctoral thesis were concretized in the following: 1) the defining features of some concrete forms of single natural or legal offenses were identified; 2) the specificity of qualification of continuous offense, of extended offense, of complex offense, of occupation offense, of repeated offense and of the offense with alternative actions (inactions) were determined; 3) the related forms of the single natural and legal offense were dissociated from each other; 4) the peculiarities that characterize the real concurrence and the ideal concurrence of offenses were established; 5) the concurrence of offenses was distinguished from *(i)* some forms of the single offense, as well as from *(ii)* the institution of concurrence of norms; 6) the specificity of qualification of some concrete offenses were highlighted, from the perspective of the criminal unity and plurality; 7) the judicial practice in the sphere regarding the modalities of qualification of the single offense and of the criminal plurality was studied; 8) the comparative analysis of the regulations of the legislations of some foreign states regarding the forms of single offense and the forms of criminal plurality was carried out; 9) the practical difficulties regarding the juridical-criminal classification of the criminal actions were ascertained, from the perspective of the criminal unity and plurality; 10) the normative deficiencies regarding the qualification of the single offense and the concurrence of offenses were revealed; 11) legislative proposals were suggested that could lead to the improvement of the regulatory framework in the field of the qualification of the single offense and the concurrence of offenses.

The important scientific issue was demonstrated by the conclusions elaborated on the basis of the hypothesis of research, as follows:

1. **Not only the unity of intent constitutes the criterion in the delimitation of the extended offense and the real concurrence between the identical offenses, but also the nature of the committed criminal actions (inactions).** Commission of different (non-similar, non-identical) criminal actions (inactions), even on the basis of a single intent, cannot form a single extended offense, but a concurrence of offenses. The express emphasis in the provision of the defining norm of this objective feature of the extended offense is more than necessary. This is related to the essence of the single extended offense, facilitating the process of its dissociation from the concurrence of offenses. *(See: Chapter 2, Section 2.3.2.1.)*
2. **The repeated offense bears similarities to the concurrence of offenses, deriving from the latter legal category, and does not constitute a deviation from the criminal recidivism.** The repeated single offense is a legal fiction. The committed offenses (forming the repeated offense) *de facto* represent a concurrence of offenses, while *de jure*,

artificially, form the content of a single offense. In the General Part of the Criminal Code, the repeated offense is regulated in the art. 33 of the CC of RM (along with the concurrence of offenses, but not with the criminal recidivism). Therefore, the conditions for the validity of the concurrence of offenses *grosso modo*, are also valid in case of the repeated single offense. The condition regarding the absence of a final conviction for any of the committed offenses (that form the content of the repeated offense) is no exception. *(See: Chapter 3, Section 3.1.)*

3. **The classification of those committed, according to the rules of the concurrence of offenses (according to the norm that includes the complex offense, but also according to the norm that contains the absorbed offense) is contrary to *(i)* the rule of qualification in the hypothesis of concurrence from a part norm and full norm and, implicitly, *(ii)* the principle of exact qualification as subspecies of the principle of legality of incrimination, from the perspective of the conduct of an over-qualification.** In case of a complex offense, the absorbed/reunited criminal actions lose their individuality, and cannot be considered in the qualification. The absorption is achievable only under the conditions in which the absorbed offense is less dangerous than the offense in which it is dissolved. The solution of the concurrence of offenses (according to the norm that includes the complex offense, as well as according to the norm that contains the absorbed offense) is not equitable, the person being imposed to a much harsher sanctioning regime, given that his/her behaviour is unduly underestimated. At the same time, those committed must be classified on the basis of the norm that comprises the complex offense only if the adjacent action (inaction), which includes the absorbed offense, is committed in order to facilitate the commission of the main action (inaction). *(See: Chapter 3, Section 3.3.2.)*
4. **The ideal concurrence between the offenses with the identical object of attempt, committed with the same form of guilt, is not excluded.** This requires that the committed action (inaction) cause different prejudicial consequences. This is the only way we can attest an ideal concurrence (*e.g.* the case of the offenses provided in the art. 264 of the CC of RM). Therefore, they are allowed to be considered as the ideal concurrence of offenses when a single action (inaction) causes different prejudicial consequences (provided for by distinct norms), except for the case in which the primary consequence determines a secondary prejudicial consequence (this is the case of the offense with additional prejudicial consequences – variety of progressive offense). *(See: Chapter 4, Section 4.3.)*
5. **The unity of the person of the corruptor does not constitute a mandatory condition of passive corruption in prolonged form, being possible for perpetrator to claim, accept or receive illicit remuneration from several corruptors, but those committed to be considered a single offense.** We do not exclude the variant of the manifestation by the perpetrator of a unique intention in relation to each act of corruption (act embodied in claim, acceptation, reception or extortion of a different illicit remuneration (*i.e.* from different persons)), when each act of corruption is viewed as an episode (component part) of the single extended offense. The plurality of corruptors should not necessarily mean a plurality of offenses in the form of a concurrence. The fundamental feature of the extended offense (which distinguishes it from the concurrence of offenses) is the unique intention that the perpetrator must manifest in relation to each act of passive corruption. The unity of the person of the corruptor does not constitute an obligatory condition of the passive corruption in extended form. This condition does not appear from the text of the par. (1) art. 30 of the CC of RM. Therefore, it is possible for the perpetrator to claim, accept or receive illicit remuneration from several corruptors, but those committed may be regarded as a single offense. For this, it is important that the perpetrator has a unique intention from the start seconded by a single purpose in relation to each of the committed actions of passive corruption. In the process of the reception of the illicit remuneration from several corruptors, the criterion regarding the common interest of the corruptors together with

other circumstances (their common effort (the fact realized by the corrupted person) etc.) facilitates the process of identification *in concreto* of the psychic attitude of the corrupted person towards those committed. In the presence of the common interest of the corrupters, but in the absence of their cooperation and, respectively, in the absence of a single intention of the corrupted person regarding the illicit remuneration transmitted at the same time, those committed must be assessed in the light of concurrence. *(See: Chapter 5, Section 5.3.)*

As a result of the conducted research, the ***important scientific problem*** was solved, which consists in the elaboration of a complex and thorough conceptual framework regarding the concrete modalities of qualification of the single offense and the plurality of offenses (taking into account the existing normative framework, the judicial practice as well as good legislative practices), which led to the highlighting of regulatory shortcomings and practical difficulties in dealing with such offenses and, consequently, to the proposal of legislative suggestions capable to contribute to the improvement of the regulatory framework, exactly for the purpose of the direction of the practitioners of the criminal law towards a correct qualification of the single offense and the concurrence of offenses.

Description of personal contributions with emphasis of its theoretical significance and practical value. The *personal contributions* are expressed in the in-depth theoretical-practical research, from new positions, of qualification rules of various forms of single offense and concurrence of offenses (form of criminal plurality).

To the personal contributions can be attributed: the approach to the rules of qualification of single offense and concurrence of offenses in relation to some concrete criminal actions; elucidation of practical difficulties of classification of single offense and concurrence of offenses; conduct of a comparative study of the regulations of the legislations of some foreign states in the field regarding the qualification of the single offense and the concurrence of offenses; the submission of legislative proposals capable of leading to the improvement of the normative framework aiming at the qualification of the single offense and the concurrence of offenses, etc.

The *legal and empirical basis* of the study consists of: a) the norms of the General Part and the norms of the Special Part of the Criminal Code; b) the judicial practice regarding the qualification of the criminal unity and plurality; c) the decisions of the SCJ Plenum regarding the application of criminal legislation on certain categories of offenses, relevant in the context of the qualification of the unity and plurality of offenses (*e.g.* in the matter of offenses of murder, offenses related to sexual life, hooliganism offenses, corruption offenses, etc.); d) the criminal regulations of the legislations of some foreign countries regarding the criminal unity and plurality. The *scientific basis* of the research is represented by the works of the local and foreign authors (*e.g.* Romania, Russian Federation, Latvia, Ukraine, Uzbekistan).

Theoretical significance of thesis. The given paper constitutes a theoretical-scientific approach of great importance for the doctrine of the criminal law. The thesis contains various approaches (some from new positions) of the rules regarding the qualification of the single offense and the concurrence of offenses. The specificity of the qualification of some concrete forms of the single offense and of the concurrence of offenses is highlighted. Undoubtedly, the given paper denotes theoretical value, having the power to arouse the interest of scientists in familiarization with its content. For these reasons, we are of the opinion that this paper can be an edifying scientific support for the specialized doctrine, both in the country and abroad.

Practical value of thesis. From the practical perspective, the given paper can contribute to the activity of those authorized to apply criminal law to the proper classification of criminal actions in accordance with the rules of qualification of the single offense and the concurrence of offenses.

The paper is of practical relevance, especially given the fact that a sufficiently large number of court decisions were submitted for analysis (over 150 applicable acts (judgments, decisions). As a result of the conducted empirical research are identified various issues of the understanding of rules of qualification of criminal unity and plurality. As a result, practical

solutions/recommendations useful to those authorized with the official qualification of the offense are formulated.

Data on approval of results. The main conclusions of the paper are formulated in 13 scientific publications. Also, some ideas were reflected within scientific communications, during the participation in various scientific (national and international) forums.

Indication of the limits of the obtained results, with the establishment of the issues remained unresolved. The limits of the obtained results consist in: a) conduct of an investigation of the norms of the General Part of the Criminal Code regarding the qualification of the single offense and of the concurrence of offenses, as well as of some concrete incriminating norms, in connection with which the rules of the criminal unity and plurality were approached; b) the empirical analysis of the rules of qualification of the single offense and of the concurrence of offenses, from the perspective of the studied local judicial practice; c) the investigation of the criminal regulations of the legislations of some foreign countries regarding the criminal unity and plurality; d) duration of doctoral studies (2018 – present).

II. Recommendations

1) Modification of the second sentence within the par. (1) art. 29 of the CC of RM, so as to have the following content: *"In case of the commission of one and the same continuous (permanent or successive) offense those committed cannot be appreciated as the concurrence of offenses".*
2) The introduction of a new paragraph (2^1) in the text of the art. 60 of the CC of RM, with the following content: *"In case of continuous offense, the prescription term runs from the date of cessation of the criminal action or inaction or the occurrence of some events that impede this activity".*
3) The introduction of a new paragraph (9^1) in the art. 30 of the Contravention Code, with the following content: *"In case of continuous contravention, the prescription term runs from the date of cessation of the contravention action or inaction or the occurrence of some events that impede this activity".*
4) Abrogation of the incriminating norms (with the role of aggravating circumstantial signs) provided in: the let. o) par. (2) art. 145 of the CC of RM, let. a) par. (3) art. 158 of the CC of RM, let. a) par. (2) art. 165 of the CC of RM, let. a) par. (2) art. 171 of the CC of RM, let. a) par. (2) art. 172 of the CC of RM, let. a) par. (3) art. 206 of the CC of RM, let. a) par. (3) art. 217^1 of the CC of RM and in the let. a) par. (2) art. 287 of the CC of RM.
5) Modification of the definition of the concurrence of offenses, recorded in the par. (1) art. 33 of the CC of RM, as follows: *"It is considered the concurrence of offenses the commission by a person of two or more offenses if the person was not convicted definitively for any of them and there is the possibility of the criminal prosecution for at least two of the committed offenses".*
6) Modification of the provision of the norm of the art. 114 of the CC of RM, as follows: *"The qualification in case of a concurrence of offenses is carried out with the invocation of all norms that provide for the committed prejudicial actions".*
7) Presentation in a new wording of the art. 30 of the CC of RM:

"Article 30. Extended offense

(1) An action committed with a single intent, characterized by two or more identical criminal actions or inactions, committed for a single purpose, at short intervals, in common circumstances (place, method, means, etc.), constituting as a whole an offense, is considered an extended offense.

(1^1) "For the purposes of the given article, in the capacity of the identical criminal actions or inactions may occur, inclusively, the homogeneous actions or inactions, provided for in the content of the same article".

(2) The extended offense is consumed since the moment the last criminal action or inaction is committed.

8) Introduction of a new article (30^1) in the Criminal Code, defining the complex offense, and establishing the rules of its qualification:

"Article 30^1. Complex offense

(1) A complex offense is considered a criminal action, the content of which includes an action or an inaction (as a constitutive sign or as an aggravating circumstantial sign) which constitutes in itself an action provided by the criminal law.

(2) The qualification of a complex offense must be made according to the norm that includes the complex offense, but not according to the norms that form the complex offense.

(3) At the qualification of a complex offense, the absorbed/reunited criminal actions lose their individuality, and cannot be considered in the qualification.

(4) The complex offense, in which the secondary action or inaction determines the causing by negligence of a prejudicial consequence (in the position of an aggravating circumstantial sign), while the main action or inaction remains at the stage of the attempted act, is punishable by the penalty provided by law for the complex consumed offense".

Suggestions on potential future directions of research related to the approached topic: a) modification and completion of the content of some explanatory decisions of the SCJ Plenum regarding the practice of qualification of certain offenses with rules regarding the qualification of the single offense and the concurrence of offenses; b) the approach of the reconceptualization of the norms of the Criminal Code from the perspective of the unification of the provisions regarding the concurrence of offenses and the concurrence of the criminal norms; 3) examination of the specificity of the qualification of the unity and plurality of offenses in case of concrete criminal actions (*e.g.* in case of economic, ecological offenses, etc.).

Proposals for the use of the obtained results in the sociocultural and economic fields: in the practice of the persons entitled to carry out the official qualification of the offense (criminal prosecution officers, prosecutors and judges); in the legislative activity, being useful to the legislator in the process of qualitative and continuous improvement of the normative framework related to the single offense and the concurrence of offenses (form of the criminal plurality); in the process of training of students and master course students of the Faculties of Law in higher educational institutions, doctoral students of Doctoral Schools, as well as trainees within the National Institute of Justice.

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ADNOTARE

Prisacari Vadim, „Calificarea unității și a pluralității de infracțiuni”. Teză de doctor în drept. Școala doctorală în Drept, Științe Politice și Administrative a Consorțiului Național al Instituțiilor de învățământ, ASEM și USPEE „C.Stere”. Chișinău, 2022

Structura lucrării: Teza cuprinde: Introducere, 5 capitole, concluzii generale și recomandări, bibliografia din 467 titluri, 186 pagini text de bază. Rezultatele sunt publicate în 13 lucrări științifice.

Cuvinte-cheie: infracțiune unică, pluralitate infracțională, concurs de infracțiuni, calificare, infracțiune prelungită, infracțiune repetată, infracțiune complexă, practică judiciară.

Domeniul de studiu. Lucrarea face parte din domeniul Dreptului penal, Partea Generală.

Scopul și obiectivele lucrării: Scopul investigației constă în realizarea unei cercetări teoretico-practice temeinice axate pe modalitățile de calificare a unității și a pluralității infracționale, în stabilirea specificului de calificare a unor forme inerente infracțiunii unice și pluralității de infracțiuni, precum și în identificarea și soluționarea dificultăților practice sesizate în procesul calificării infracțiunii unice și a pluralității de infracțiuni.

Pentru atingerea scopului au fost trasate următoarele obiective: deosebirea concursului de infracțiuni de *(i)* unele forme ale infracțiunii unice, precum și de *(ii)* instituția concurenței normelor; evidențierea specificului de calificare a unor infracțiuni concrete, din perspectiva unității și pluralității infracționale; constatarea dificultăților practice vizând încadrarea juridico-penală a faptelor penale, din perspectiva unității și a pluralității infracționale; relevarea deficiențelor normative privitoare la calificarea infracțiunii unice și a concursului de infracțiuni etc.

Noutatea și originalitatea științifică a rezultatelor obținute se concretizează în faptul realizării unei cercetări profunde teoretico-practice, de pe noi poziții, a regulilor de calificare a diverselor forme ale infracțiunii unice și ale concursului de infracțiuni (formă a pluralității infracționale). Noutatea științifică a lucrării elaborate consistă și în: a) abordarea regulilor de calificare a infracțiunii unice și a concursului de infracțiuni în raport cu unele fapte penale concrete; b) realizarea unui studiu comparativ al reglementărilor din legislațiile unor state străine în sfera ce privește calificarea infracțiunii unice și a concursului de infracțiuni; c) înaintarea unor propuneri legislative capabile să ducă spre îmbunătățirea cadrului normativ vizând calificarea infracțiunii unice și a concursului de infracțiuni etc.

Problema științifică importantă soluționată constă în elaborarea unui cadru conceptual complex și temeinic în ceea ce privește modalitățile concrete de calificare a infracțiunii unice și a pluralității de infracțiuni (ținând cont de cadrul normativ existent, de practica judiciară în materie, precum și de bunele practici legislative), fapt ce a condus la evidențierea unor carențe normative și a unor dificultăți practice de încadrare a unor atare infracțiuni și, în consecință, la propunerea unor sugestii legislative capabile să contribuie la îmbunătățirea cadrului normativ, tocmai în vederea direcționării practicienilor dreptului penal spre o corectă calificare a infracțiunii unice și a concursului de infracțiuni.

Importanţa teoretică şi valoarea aplicativă a lucrării. Prezenta lucrare constituie o incursiune teoretico-științifică de importanță deosebită pentru doctrina dreptului penal. Teza conține diverse abordări (unele de pe noi poziții) a regulilor ce vizează calificarea infracțiunii unice și a concursului de infracțiuni. Din perspectivă practică, prezenta lucrare poate contribui în activitatea celor abilitați să aplice legea penală la buna încadrare a faptelor infracționale în acord cu regulile de calificare a infracțiunii unice și a concursului de infracțiuni. Lucrarea prezintă relevanță practică, îndeosebi, avându-se în vedere faptul supunerii analizei unui număr suficient de mare de hotărâri judecătorești (peste 150 de acte aplicative (sentințe, decizii).

Implementarea rezultatelor științifice. Acestea își găsesc aplicare în procesul de instruire a studenților și masteranzilor de la facultățile de drept din instituțiile de învățământ superior.

АННОТАЦИЯ

Присакарь Вадим, «Квалификация единства и множественности преступлений».

Диссертация на соискание ученой степени доктора права. Докторская школа права, политических и административных наук, Национального консорциума образовательных учреждений Академия экономического образования Молдовы и Университет политических и экономических европейских знаний им. К. Стере. Кишинэу, 2022

Структура работы: Диссертация содержит: введение, 5 главы, общие выводы и рекомендации, библиографию, включающую 467 наименование, 186 страницы основного текста. Полученные результаты были опубликованы в 13 научных работах.

Ключевые слова: единичное правонарушение, множественность преступлений, совокупность преступлений, квалификация, затянувшееся правонарушение, повторное правонарушение, сложное правонарушение, судебная практика.

Область исследования: Диссертация является частью Уголовного права, Общая часть.

Цель диссертационного исследования и задачи исследования состоит в проведение тщательного теоретического и практического исследования, направленного на выявление способов квалификации единства и множества преступлений, установления видовой квалификации некоторых форм, присущих единичному правонарушению и множества преступлений, а также выявление и решение практических трудностей, возникающих при квалификации единичного правонарушения и множественности преступлений.

Для достижения цели были поставлены следующие задачи: отличие совокупности преступлений от (i) некоторых форм единичного правонарушения, а также от (ii) института конкуренции норм; выделение особенностей квалификации конкретных правонарушений, с точки зрения единства и множественности преступлений; выявление практических трудностей уголовно-правовой квалификации преступных деяний с точки зрения единства и множественности преступлений; выявление нормативных недостатков в части квалификации единичного правонарушения и совокупности преступлений и др.

Научная новизна и оригинальность полученных выводов выражается в том, что проведение глубокого теоретико-практического исследования с новых позиций правил квалификации различных форм единичного правонарушения и совокупности преступлений (форма множественности преступлений). Научная новизна работы заключается также в: a) рассмотрение правил квалификации единичного преступления и совокупности преступлений в отношении некоторых конкретных преступных деяний; b) проведение сравнительного исследования норм законодательства некоторых иностранных государств в сфере квалификации единичного преступления и совокупности преступлений; c) внесение законодательных предложений, способных привести к совершенствованию нормативной базы, направленной на квалификацию единичного преступления и совокупности преступлений и др.

Решенный важный научный вопрос заключается в разработка комплексной и тщательной концептуальной базы относительно конкретных способов квалификации единичного преступления и совокупности преступлений (с учетом существующей нормативной базы, судебной практики по данному вопросу, а также передовой законодательной практики), что привело к выявлению некоторых нормативных недостатков и некоторых практических трудностей в квалификации данных преступлений и, как следствие, к предложению некоторых законодательных предложений, способных способствовать совершенствованию нормативной базы, именно для того, чтобы направить практиков уголовного права на правильную квалификацию единичного преступления и совокупности преступлений.

Теоретическая значимость и практическая применяемость результатов исследования. Данная работа представляет собой научно-теоретический набег, имеющий большое значение для учения об уголовном праве. В диссертации представлены различные

подходы (в том числе с новых позиций) норм квалификации единичного преступления и совокупности преступлений. С практической точки зрения данная работа может способствовать деятельности лиц, уполномоченных применять уголовное право, по надлежащей квалификации преступных деяний в соответствии с правилами квалификации единичного преступления и совокупности преступлений. Диссертация имеет практическую значимость, особенно с учетом того, что анализу подлежит достаточно большое количество судебных решений (более 150 применимых актов (приговоров, постановлений).

Внедрение результатов диссертационного исследования. Они находят применение как в процессе обучения студентов юридических факультетов высших учебных заведений.

ANNOTATION

Prisacari Vadim, "Qualification of Unity and Plurality of Crimes".
PhD Thesis. Doctoral School in Law, Political and Administrative Sciences of the National Consortium of Educational Institutions, ASEM and USPEE "C. Stere".
Chisinau, 2022

Structure of thesis: Introduction, 5 chapters, general conclusions and recommendations, bibliography of 467 titles, 186 pages basic text. The fundamental ideas and scientific results are exposed and published in 13 scientific papers.

Keywords: single crime, the plurality of crime, cumulative crime, qualification, prolonged crime, repeated crime, complex crime, legal practice.

The domain of study: This thesis belongs to the judicial domain, the General Part.

The purpose and objectives of the study consist in conducting a comprehensive theoretical and practical study aimed at qualifying the unity and plurality of crimes, establishing the specific qualification of some forms inherent to the single crime and the plurality of crimes, as well as identifying and settling practical difficulties reported in the process of qualifying the single crime and the plurality of crimes.

To achieve the goal, the following tasks were set: to distinguish the cumulative crimes from *(i)* some forms of the unique crime, as well as from *(ii)* the institution of competition of norms; highlighting the features of the qualification of some specific crimes, from the point of view of the unity and plurality of crimes; identifying practical difficulties in the legal-criminal qualification of criminal deeds, from the point of view of the unity and plurality of crimes; revealing the regulatory deficiencies on qualification of the single crime and cumulative crimes, etc.

The scientific novelty and originality of the obtained results find expression in the fact that has been conducted a theoretical-practical in-depth study, from new positions, of the rules for the qualification of the various forms of the single crime and the cumulative crimes (a form of criminal plurality). The scientific novelty of the elaborated paper also consists in: a) the approach of the rules for the qualification of the single crime and cumulative crimes concerning some specific criminal deeds; b) conducting a comparative study of the norms of the legislation of some foreign states in the field of qualification of a single crime and competitive crimes; c) putting forward several legislative proposals that can lead to the improvement of the regulatory framework aimed at qualifying a single crime and the competitive crimes, etc.

The solved scientifically issue consists in the development of a comprehensive conceptual framework concerning specific ways of qualifying the single crime and the plurality of crimes (taking into account the existing regulatory framework, legal on this issue, as well as good legislative practice), which led to the highlighting of some regulatory deficiencies and some practical difficulties in qualifying such crimes and, consequently, to the proposal of some legislative suggestions that can contribute to the improvement of the regulatory framework, precisely to direct the practitioners of criminal law to the correct qualification of a single crime and the cumulative crimes.

The theoretical importance and the practical value of this thesis. This paper is a scientific and theoretical foray, which is of great importance for the doctrine of criminal law. The thesis presents various approaches (including from new positions) of the rules qualifying the single crime and the cumulative crimes. From a practical point of view, this paper can contribute to the activities of persons authorized to apply criminal law in the proper qualification of criminal deeds under the rules for qualifying the single crime and the cumulative crimes. The paper is of practical importance, especially considering that a sufficiently large number of court judgements (more than 150 applicable acts (awards, decisions) were submitted for analysis.

The implementation of the scientific results. They are applied in the process of training students from the law faculties of higher education institutions.

PRISACARI Vadim

QUALIFICATION OF UNITY AND PLURALITY OF OFFENSES

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University of European Political and Economic Studies “C. Stere”
Chisinau municipality, 200 Stefan cel Mare si Sfant Avenue