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Differentiation between the Concurrence of Offences and the Unity of Offence with Multiple Passive Subject

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Abstract: In the content of the article, the author sets out the practical, concrete way in which, with the help of technical-legal reasoning of the inductive method - typical of criminology - reasoning that underlie both the qualification of criminal acts and the legal framework can be analyzed and argued, setting out the criteria for differentiating between unity and plurality of offences in cases of plurality of subjects or multiple passive subject. The aspects presented have a certain scientific value that must be considered both at the time of legislating criminalizations (of the legal qualification) and by the practitioner on the occasion of the investigation of such criminal acts. The novelty of the study is the need for the legislator to address the plurality of social values defended in the complex offence, fundamental values in relation to the plurality of actions / inactions within this type of criminalization.

Keywords: criminal justice practice; criminal policy; violated; criminal consequences

1. Influencing / determining the plurality or unity of offence according to the uniqueness or plurality of passive subjects is an important component of the criminal policy of any state.

Identifying the rational criteria for differentiating between the plurality and the unity of offences in situations where we have several passive subjects harmed by actions that are part of the same objective side has equally concerned with both criminal justice practice and specialized legal literature.

In research, the criteria are given by the method, and the methods by the chosen reference system.

In our study, in order to determine the criteria, we will analyze the object of the topic by referring to the positivist inductive (experimental) method, which starts from studying the concrete case / phenomenon and then identifies the general rules – a specific method of criminology science, compared to the technical-legal method, specific to the normative constructions of the positive criminal law.

The technical-legal method, although, in its essence, its content is based on the logical-rational form, also presents a number of disadvantages in the situation of analyzes for determining the naturalistic-factual criteria, among which we could indicate its formalism, which results in moving away from the substantial, practical content that has generated it, being able to move away from the real experience - its expression being reduced to the pure form.

The inductive method seems to us to be more appropriate in finding rational answers in order to clarify the analyzed situation, starting from the practical realities, specific to criminology.

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Thus, if from a positivist perspective crime, murder and repression (punishment) are natural, human and social realities, and in their research activity investigative methods specific to the positivist sciences are used, their consequences / antitheses must also be analyzed, ie injury and victim (injured person).

2. In the legal-criminal plan, the victim is qualified as the passive subject, ie the person whose rights are endangered or even harmed by the action / inaction exercised by the active subject, so, concluding, the passive subject is the person suffering the injury.

Depending on the impact of the injury on the individual or on their assets, the criminal consequences and repression will be different.

Starting from the reality according to which law grants each person, indiscriminately, the same legal protection, the plurality of natural persons victims of actions within the same objective side generates a plurality of offences of the same type, and not a single offence. This syllogism is the rule in the case of offences committed against the person.

Summarizing, from a positivist perspective, the number of victims is equal to the number of offences. This aspect, in the legal-criminal plan, takes the form: the number of passive subjects is equal to the number of offences (plurality of offences) for which the perpetrator (an active subject) will be held criminally liable.

Thus, there will be as many rape offences as there have been raped victims or as many threatening offences as there have been threats.

In judicial practice, the situations in which the trespass to dwelling referred to the room in which several people lived were resolved differently.

Thus, some courts have considered that unlawfully entering or remaining in the space of the room where several people live is a single offence with a plurality of passive subjects, while other courts have considered that there is a plurality of offences of trespass to dwelling, with as many offences as there are people living in that room.

We agree with the latter point of view, because the harmed social value refers to the right to privacy, which exists and must be defended for each of the people living in that room. However, the violation of the right of each of those who live in that room generates a number of crimes directly proportional to the number of holders of the injured right.

3. The legislator, in the process of identifying the criteria of criminalization (legal qualification of positive facts), has the possibility to form a criminal unity in the case of the plurality of passive subjects, considering the plurality of victims as *a circumstantial element of aggravation* within the same criminalization or *an aggravated form* of that offence. This unity, being made based on the will of the legislator, is called legal unity of offence in order to distinguish it from the natural unity of offence, in which the unity component derives from the nature of the action / inaction and the unique result caused.

Thus, we can exemplify the legal unity of offence in the case of the way in which the legislator criminalized the murder of two or more persons within the qualified murder (art. 189 par. (1), letter f) of the Criminal Code), where the plurality of the victims murdered is criminalized as representing a circumstance that attracts the aggravation of criminal liability (generating the murder qualification component), or the culpable homicide of several persons (art. 192 para. (3) of the Criminal Code), in which the plurality of victims determines the aggravated form of the offence of culpable homicide.

4. Unlike the legal unity of offence, there are also criminalizations in which the plurality of persons form a multiple passive subject. Such legal constructions, of qualification, in which the plurality of passive subjects is a constitutive component within the same criminalization, also represent a unity of offence, but a constitutive unity.

For example, in the case of the offence of slavery (art. 209 of the Criminal Code), the legislator sanctions the slave trade with imprisonment from 3 to 10 years and the prohibition of exercising certain rights. However, the plurality of victims from the legal content of the criminalization does not exclude the sanctioning of trafficking, in a state of slavery, of a single person, but only strengthens the idea of the unity of offence also in the case of the plurality of passive subjects.

In the above examples, the unity or plurality of offences having in its composition a single passive subject or a plurality of passive subjects is given by the will of the legislator guided by the principles of the criminal policy they pursue.

5. However, there are also criminalizations in which the plurality of passive subjects not only is caught in a unity of offence (constitutive unity), but is a premise condition (*sine qua non*), for example, the crime of genocide (art. 438 paragraph (1) of the Criminal Code) or crimes against humanity (art. 439 paragraph (1) of the Criminal Code).

In the latter cases, the plurality of victims is an essential, natural condition of the criminalization (is of the essence of the criminalization), the plurality appearing as a natural premise condition of the criminalization and not as an attribute of legal qualification.

6. There has been a great deal of controversy in judicial practice and in the specialized literature on the unity or plurality of offences depending on the uniqueness or plurality of victims in the case of complex offences, for instance, in the case of robbery, three types of solutions were expressed in the judicial practice in which both the opinions on the uniqueness or plurality of the offence and the type of reasoning presented differed.

Thus, in judicial practice, some courts, settling crimes of robbery consisting of acts of violence against several persons for the purpose of appropriating certain property thereof, have deemed that the whole activity should be classified and punished as a single offence of robbery, not being of criminal relevance the fact that the perpetrator, through the violence exercised, aimed at taking some movable goods from different patrimonies.

On the contrary, other courts have held that, in such cases, the activity must be classified and punished as a concurrence of offences (a plurality of robberies - real concurrence) because, on the one hand, acts of (physical or psychic) violence were committed against several persons (plurality of passive subjects), and on the other hand the author pursued or appropriated certain goods from each victim (plurality of consequences with patrimonial consequences).

In other cases, the courts oscillated between awarding the concurrence or the unity of the offence if, although violence was committed against several persons, the author still aimed at appropriating movable property from a single patrimony.

In the case of the latter approach, the courts considering that there was a concurrence of offences (plurality of robbers) based their decision on the plurality of victims (assaulted persons who must be defended equally and distinctly), while the courts considering that there was a single offence (unity of offence with

a plurality of passive subjects) based its reasoning on the fact that the author appropriated goods from a single patrimony (as there is no plurality of damaged patrimonies, given that the crime is directed against the patrimony, we have a single offence).

Finding rational arguments to justify, in all respects, the solution chosen in the case of the latter type of robbery (plurality of assaulted persons and unity / identity of affected patrimony) is neither easy nor quick.

Thus, in a first analysis, we must consider the type of offence analyzed, robbery being a complex offence, and in terms of social values defended, we must consider the primary value defended by the legislator within robbery.

Unfortunately, in the construction of the complex offence, as it appears defined in par. (2) of art. 35 of Criminal Code in force), the legislator has granted full legal effect to the reunification within the same text of criminalization of the actions or inactions separately criminalized (this being, in the view of our legislator, the essential component of “complexity”), without taking into account the plurality of social values defended in the context of the complex offence, although, naturally, this plurality of social values is a constant component in all these offences. Moreover, if we were to reflect on the logical reasoning of qualifying the crime, at the time of criminalization, the legislator did not choose randomly the actions / inactions described in the criminalization and did not resort to the complex description of the crime, but was guided in their choice according to the social values they sought to protect, these representing, in essence, also a plurality, that are found in the precept of the legal norm of criminalization.

Therefore, it cannot be ignored that, within the legal content of the robbery, the main value defended is the maintenance of the de facto state of possession or detention of movable goods - in the sense of not changing, by violence, these attributes related to the appearance of patrimonial right, while physical integrity or mental liberty of the person of the possessor / holder of that good represents the secondary social value (robbery is a qualified offence in the group of criminalizations defend the patrimony).

Consequently, if the possession or detention of a movable property represents the main social value defended in the offence of robbery, in order to have a plurality of robberies (real concurrence), it is mandatory, in addition to the plurality of victims (undisputed holders of social value represented by physical integrity and moral freedom), we must also have a plurality of damaged patrimonies. Otherwise, from a technical-legal point of view, there is a single offence of robbery with a plurality of injured persons.

In conclusion, even if from the perspective of criminal repression, the indicated solution would be a milder one, the observance of the principle of legality, especially in complex offences, forces us to consider the consequences of actions / inactions in relation to the uniqueness or plurality of social values actually violated.