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Problematics of Identification of a Continuous Criminal Offence

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The publication focuses on the issue of the substance of a continuous criminal offence and its features to draw a line of demarcation between a continuous criminal offence as a type of separate (unitary) criminal offence and the real concurrence of several independent criminal offences, which is required for the correct qualification of criminal offences. In searching for an answer to this, the criminal law regulation has been analysed, findings of the criminal law theory and judicature have been studied, the practice of applying the norms of criminal law in criminal cases of various categories, in providing the legal qualification of criminal offences, has been compiled.

Keywords: criminal law, continuous criminal offence, real concurrence of criminal offences, qualification of criminal offences.

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Introduction

The pre-requisite for reaching the aim defined in Section 1 of the Criminal Procedure Law¹, – fair regulation of criminal legal relations, is the correct qualification of a criminal offence, the importance of which has been highlighted repeatedly in the judicature and in case law by referring to the findings of the legal doctrine, by the Supreme Court of the Republic of Latvia pointing out that, in qualifying a criminal offence, legally significant circumstances of the occurrence, which have been established by applicable, admissible, credible and sufficient evidence, are compared with the mandatory elements of a criminal offence as set out in the Criminal Law (object, objective side, subject, subjective side). Only in the case where the actual elements of the offence coincide with the elements of the particular criminal offence, envisaged in the Criminal Law, there are grounds for recognising that a criminal offence has been committed and for the correct qualification of it.²

The above statements are fully applicable to the matter examined in the article because the fact, whether an offence committed by a person is qualified as a separate continuous criminal offence or concurrence of multiple independent criminal offences, is significant and entails criminal law consequences since, in the first case, the person is accused of committing only one criminal offence, whereas in the second instance – of committing multiple criminal offences.

Problems in the understanding of a continuous criminal offence are revealed both in the publications on this topic by several authors and by the fact that the standing working group on the Criminal Law at the Ministry of Justice is developing corrections to the concept of the continuous criminal offence, as well as the fact that the case law related to this matter is not uniform, which will be presented below; however, the criminal law regulation and explanations of it will be examined first.

1. Separate (Unitary) Continuous Criminal Offence and Real Concurrence of Criminal Offences

The features of a separate (unitary) criminal offence have been normatively consolidated in Section 23 of the Criminal Law³ (hereafter – also CL), where the legislator has provided that a separate (unitary) criminal offence is one

¹ Kriminālprocesa likums: LV likums [The Criminal Procedure Law: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, No 74, 11.05.2005.

² Augstākās tiesas Kriminālietu departamenta 06.09.2018. lēmums lietā SKK-186/2018 (11261000514) [Decision of 06.09.2018 by the Department of Criminal Cases of the Supreme Court in No. SKK-186/2018 (11261000514)]; Augstākās tiesas Departamenta 19.07.2018. lēmums lietā SKK-362/2018 (11331060914) [Decision of 19.07.2018 by the Department of Criminal Cases of the Supreme Court in No. SKK-362/2018 (11331060914)]; Augstākās tiesas Kriminālietu departamenta 28.03.2018. lēmums lietā SKK-J-138/2018 (11511002914) [Decision of 28.03.2018 by the Department of Criminal Cases of the Supreme Court in No. SKK-J-139/2018 (11511002914)]; Augstākās tiesas Kriminālietu departamenta 01.12.2017. lēmums lietā SKK-696/2017 (11351023714) [Decision of 01.12.2017 by the Department of Criminal Cases of the Supreme Court in No. SKK-696/2017 (11351023714)] u.c. See more: *Liholaja, V.* Noziedzīgu nodarījumu kvalifikācija. Palīgīdzeklis krimināltiesību normu piemērotājiem [Qualification of Criminal Offences. Aid to Parties Applying the Norms of Criminal Law]. Rīga: Tiesu namu aģentūra, 2020, pp. 32–33.

³ Krimināllikums: LV likums [The Criminal Law: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, No.199/200, 08.07.1998.

offence (act or failure to act), which has the constituent elements of one criminal offence, or also two or several mutually related criminal offences encompassed by the unitary purpose of the offender and which correspond to the constituent elements of only one criminal offence.

The theory of criminal law differentiates between simple separate (unitary) criminal offences and complex separate (unitary) criminal offences, where a separate (unitary) criminal offence comprises more than one unlawful action or failure to act, or also the adverse consequences caused by them.⁴ A continuous criminal offence is one type of a complex separate (unitary) criminal offence, which, pursuant to the provisions of CL Section 23 (3), is constituted by several mutually related similar criminal acts, which are directed to a common objective, if they are encompassed by the unitary purpose of the offender, and therefore in their totality they form one criminal offence.

Hence, it follows from the legal provisions that a continuous criminal offence is characterised by the fact that all acts are 1) mutually related; 2) similar; 3) directed against the same interest; 4) are committed with a unitary purpose and have a common final objective. The unitary purpose and common objective are the principal binder, which unites multiple similar acts into a unitary criminal offence. Thus, in case of unlawful enrichment, a person is aware that several thefts must be committed, which are all united by one objective of the person – to gain maximum material benefit.⁵

The unitary purpose as the subjective basic criterion of a continuous criminal offence can be identified by the totality of objective features of multiple criminal offences, their interrelation. The unitary purpose is characterised by the fact that it is already initially directed at such a common objective that is achieved by several temporarily mutually related acts.

In analysing the criteria of a continuous criminal offence, U. Krastiņš also underscores the unitary purpose (objective) as one of the main binding elements in a continuous criminal offence, the existence of which, in his opinion, could be evidenced by systemic commitment of – at least three – similar unlawful acts.⁶

In upholding U. Krastiņš' opinion, it should be emphasised that the systematic nature of unlawful acts as the objective criterion of a criminal offence clearly “demonstrates” the mental activities of a person, leading to the conclusion that multiple offences committed by a person are encompassed by a unitary purpose and directed to a common objective. The link between the external manifestations of a criminal offence and a person's mental activity was once underscored also by the Supreme Court, noting “the fact that, in the procedural documents of pre-trial

⁴ *Krastiņš, U.* Noziedzīga nodarījuma sastāvs un nodarījuma kvalifikācija. Teorētiskie aspekti [Constituter Elements of a Criminal Offence and Qualification of an Offence. Theoretical Aspects]. Rīga: Tiesu namu aģentūra, 2014, p. 294.

⁵ *Liholaja, V., Hamkova, D.* O ponjatii i priznakah prodolzhaemogo prestupnogo dejanija [On the Understanding of the Features of a Continuous Criminal Offence. Sbornik XVI Mezhdunarodnoj nauchno-prakticheskoj konferencii “Ugolovnoe pravo: strategija razvitija v XXI veke” 24-25 janvarja 2019 goda [Proceedings of XVI International Scientific-practical Conference “Criminal Law: Strategy of Development in XXI century”]. Moskva: MGJuA, pp. 570–576.

⁶ *Krastiņš, U.* Turpināta noziedzīga nodarījuma problemātika krimināltiesībās [The Problems of a Continuous Criminal Offence in Criminal Law]. In: Tiesību zinātnes uzdevumi, nozīme un nākotne tiesību sistēmās. LU Juridiskās fakultātes 7. starptautiskās zinātniskās konferences rakstu krājums The Objectives, Significance of the Legal Science and the Future in Legal Systems. Proceedings of the 7th International Scientific Conference of the Faculty of Law of the University of Latvia]. Rīga: LU Akadēmiskais apgāds, 2019, p. 350.

investigation and courts' rulings, the objective features of a criminal offence, i.e., the external manifestations of a person's conduct, are examined separately from their mental attitude towards the committed acts and the consequences caused by them, prevents from formulation of the form of guilt in full and qualifying the offence correctly".⁷

If a person has committed two or more independent, mutually unrelated offences, which do not correspond to the features of a continuous criminal offence, the real concurrence of criminal offences will form (CL Section 26 (3)), which is understood, as explained in the theory of criminal law, as cases, where one person, by taking actions or failing to act, these actions being separated in time, commits two or more successive independent criminal offences, for which the person, until the moment the judgement is delivered, has not been sentenced and with respect to which the limitation period has not set in.⁸

The following features of a real concurrence of criminal offences has been indicated in the theory of criminal law: "1) the same person has committed two or more criminal offences; 2) each of these offences comprises the constituent elements of a criminal offence (independent offence); 3) each criminal offence has been envisaged in a separate section or part of a section (paragraph) of the Special Part of the Criminal Law; 4) the person has not been sentenced for any of the offences forming the concurrence; 5) the limitation period of criminal liability has not set in with respect to any of the offences or no other grounds exist for releasing a person from criminal liability".⁹

Since by the law of 13 December 2012 "Amendments to the Criminal Law"¹⁰, the repetition of criminal offences as a type of multiplicity and as a qualifying feature was deleted from the criminal law, multiple separate criminal offences, if they do not comprise the features of a continuous criminal offence and form the real concurrence of criminal offences, must be qualified independently, determining punishment for each criminal offence and setting the final punishment in accordance with the concurrence of criminal offences.

However, although the features of a continuous criminal offence and of the real concurrence of criminal offences have been consolidated in law, theory and practice, the understanding of them in the practice of applying the norms of criminal law is not uniform, which is proven by the case law in criminal cases with respect to criminal offences of several concrete categories.

⁷ Tiesu prakse krimināllietās par noziedzīgiem nodarījumiem, kas saistīti ar tīšu smagu miesas bojājumu nodarīšanu: Augstākās tiesas prakses apkopojums [Case law in criminal cases regarding criminal offences related to inflicting intentionally serious bodily harm: Digest of the Supreme Court's Case Law], 2004, p. 35. Available: www.at.gov.lv/lv/judikatura/tiesu-prakses-apkopojuumi/kriminaltisibas [last viewed 09.03.2020].

⁸ *Krastiņš, U., Liholaja, V.* Krimināllikuma komentāri. Pirmā daļa (I-VIII² nodaļa). Otrais papildinātais izdevums [Commentaries on the Criminal Law. Part One (Chapter I-VIII²). Second Supplemented Edition]. Rīga: Tiesu namu aģentūra, 2018, p. 123.

⁹ *Krastiņš, U.* Noziedzīga nodarījuma sastāvs un nodarījuma kvalifikācija. Teorētiskie aspekti [Constituter Elements of a Criminal Offence and Qualification of an Offence. Theoretical Aspects]. Rīga: Tiesu namu aģentūra, 2014, p. 307.

¹⁰ Grozījumi Krimināllikumā: LV likums [Amendments to the Criminal Law: Law of the Republic of the Latvia]. *Latvijas Vēstnesis*, No. 202, 27.12.2012.

2. Overview of Case Law

For the analysis of case law, rulings in criminal cases on multiple criminal offences were selected, the legal assessment of which illustrates most vividly the problem outlined in the article, and one of such criminal offences is illegal activities with the means of payment of another person, envisaged in CL Section 193, i.e., using the means of payment of another person.

Already in 2006, when the Supreme Court prepared a digest of the case law with respect to illegal activities with financial instruments and means of payment, the question was foregrounded, whether in those cases, where a person repeatedly used the means of payment of another person, withdrawing cash from ATM or paying for purchases or services, the offence committed by a person should be qualified as a separate continuous criminal offence or as the real concurrence of several criminal offences.

In the digest of case law, the Supreme Court has explained that, pursuant to the provisions of CL Section 23 (3), multiple withdrawal and / or use for paying for purchases or services of another person's monies, which has been done within a short interval from the same source (account) by uniform actions, having a unitary purpose and a common final objective – clearing the account or obtaining the maximum amount possible, purchasing goods until the account has sufficient coverage for the transaction, should be regarded as continuous illegal use of means of payment.¹¹

The Senate and the Chamber of Criminal Cases of the Supreme Court of the Republic of Latvia, having examined the results of the digest at the general meeting of Judges, noted, additionally, that the repetition of illegal activities (use, destruction, damage, forgery, use or distribution of forgery) with means of payment was constituted by: activities with means of payment belonging to several persons, with several means of payment belonging to one person or activities within a longer interval of time, in another place, in another way or with another purpose with the same means of payment belonging to the same person.¹² However, it must be noted that, in accordance with the current criminal law regulation, the reference to repeated activities should be replaced by a reference to the real concurrence of criminal offences.

The examination of the case law of the recent years in cases, where the offender used several times the means of payment belonging to one person to pay for purchases or services or to withdraw cash from ATM, which was done within short intervals in time, it can be concluded that currently the offence,

¹¹ Tiesu prakse par nelikumīgām darbībām ar finanšu instrumentiem un maksāšanas līdzekļiem: Augstākās tiesas prakses apkopojums [Case Law Regarding Illegal Activities with Financial Instruments and Means of Payment: Digest of the Supreme Court's Case Law], summary, para. 8.2., 2006, p. 38. Available: www.at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/ [last viewed 09.03.2020].

¹² Par lietu izskatīšanu par nelikumīgām darbībām ar finanšu instrumentiem un maksāšanas līdzekļiem: Augstākās tiesas Senāta Kriminālietu departamenta un Kriminālietu tiesu palātas tiesnešu kopsapulces 2006. gada 5. decembra lēmuma 6. punkts [On Examining Cases Regarding Illegal Activities with Financial Instruments and Means of Payment. Para. 6 of the General Meeting of Judges of the Department of Criminal Cases of the Supreme Court's Senate and the Chamber of Criminal Cases on 5 December 2006]. Available: www.at.gov.lv/lv/judikatura/tiesnesu-kopsapulcu-lemumi/kriminallietu-departaments [last viewed 09.03.2020].

basically, has been qualified as a separate continuous criminal offence.¹³ However, there are also cases, where, in the presence of similar actual circumstances, the real concurrence of criminal offences occurs.

Hence, it follows from the judgement of 24 April 2018 by Zemgale District Court that, on 24 January 2017, person B robbed person C of means of payment – AS “Swedbank” debit card and PIN code, following which, on the same day, made various purchases and also withdrew cash from person C’s account as well as attempted to pay for a purchase on 27 January. This offence was qualified as the real concurrence of nine criminal offences.¹⁴

To illustrate the problem, the judgement of 5 March 2018 by Zemgale District Court needs to be highlighted in particular, by it person A was recognised as being guilty of committing 158 criminal offences, each of which was independently qualified as a crime envisaged in CL Section 193 (2). In the period from 2 January 2016 to 14 July 2016, person A had used illegally the means of payment of person B, transferring monies from person B’s account into his own and other persons’ accounts, inflicting upon person B, in total, material damage in the amount of 14 483 EUR.¹⁵

The analysis of the case law of the recent years with respect to the illegal use of means of payment allows concluding that today the illegal use of the internet banking, by taking, in the name of another person, the so-called “pay-day loans”, is the dominant type of using the means of payment of another person. In this regard, it must be noted that the qualification of these offences in the case law is pronouncedly non-uniform, i.e., in the presence of comparable actual circumstances, these offences are qualified both as the real concurrence or multiple independent criminal offences in accordance with CL Section 193 (2) and as a separate continuous criminal offence.

Thus, for example, by the judgement of 17 January 2018 by City of Riga Latgale District Court, person A was recognised as being guilty of committing 28 criminal offences, qualifying each of them in accordance with CL Section 193 (2), person A had illegally used the means of payment of another person – person C, and in the name of person C had taken out loans from various credit companies in the period from 30 January 2017 to 3 February 2017.¹⁶ A similar solution to

¹³ Daugavpils tiesas 2019. gada 25. oktobra spriedums krimināllietā Nr. 11181009719) [Judgement of 25.10.2019 by Daugavpils Court in Criminal Case No. 11181009719]; Kurzemes rajona tiesas 2019. gada 10. oktobra spriedums krimināllietā Nr. 11261069515 [Judgement of 10.10.2019 by Kurzeme District Court in Criminal Case No. 11261069515]; Rīgas rajona tiesas 2019. gada 16. jūlija spriedums krimināllietā Nr. 11355028418 [Judgement of 16.07.2019 by Riga District Court in Criminal Case No. 11355028418]; Vidzemes rajona tiesas 2019. gada 15. marta spriedums krimināllietā Nr. 11300007818 [Judgement of 15.03.2019 by Vidzeme District Court in Criminal Case No. 113400007818]; Vidzemes rajona tiesas 2019. gada 26. jūnija spriedums krimināllietā Nr. 11280016116 [Judgement of 26.06.2019 by Vidzeme District Court in Criminal Case No. 11280016116]; Zemgales rajona tiesas 2019. gada 21. oktobra spriedums krimināllietā Nr. 11370024019 [Judgement of 21.10.2019 by Zemgale District Court in Criminal Case No. 11370024019].

¹⁴ Zemgales rajona tiesas 2018. gada 24. aprīļa spriedums krimināllietā 1131002917 [Judgement of 24.04.2018 by Zemgale District Court in Criminal Case No. 1131002917].

¹⁵ Zemgales rajona tiesas 2018. gada 5. marta spriedums krimināllietā Nr. 11310051516 [Judgement of 05.03.2018 by Zemgale District Court in Criminal Case No. 11310051516].

¹⁶ Rīgas pilsētas Latgales priekšpilsētas tiesas 2018. gada 17. janvāra spriedums krimināllietā Nr. 11310010817 [Judgement of 17.01.2018 by City of Riga Latgale District Court in Criminal Case No. 11310010817].

qualification is found in the judgement of 10 November 2016 by Gulbene District Court.¹⁷

At the same time, upon having identified similar facts of the case, Tukums District Court, by its judgement of 16 December 2016, recognised person A as being guilty of committing the criminal offence envisaged in CL Section 193 (2), qualifying it as a separate continuous criminal offence. It follows from the text of the judgement that person A, from 27 October 2015 to March 2016, illegally used the means of payment transferred in the use of person B by applying for loans from various capital companies.¹⁸ The offence by person D, who, from July 2015 until June 2016, using the means of payment of person F – the internet banking, had taken out payday loans in the name of person F at least 89 times, was qualified as a continuous crime.¹⁹

Judgement of 13 December 2016 by Aizkraukle District Court²⁰ needs to be mentioned, it follows from the judgement that person A had illegally used the means of payment of person B – the internet banking, applying for loans from various capital companies on the following dates – 22 and 26 April, 1, 9, 25 and 26 May, 1 and 7 June, 3 November 2013, 7 December 2017. Thus, the person was recognised as being guilty of committing 10 crimes in accordance with CL Section 193 (2). Presumably, the use of the means of payment from 22 April to 7 June 2013, within short intervals between each instance of use, should be qualified as one criminal offence, whereas the offences committed on 3 November 2013 and 7 December 2014, most probably, should be qualified as independent criminal offences.

As can be seen, in the presence of comparable circumstances the qualification of criminal offences is radically different. Since in this category of cases abridged judgements, as well as criminal proceedings examined in the procedure of agreement prevail, regrettably, arguments in favour of one or another solution to the qualification are absent. Notwithstanding the lack of reasoning, it should be concluded that, most probably, such differences in the legal assessment are ungrounded and do not ensure a fair resolution of criminal legal relation because, irrespectively of the similar circumstances of the offence, in one case a person has been sentenced for one criminal offence whereas in another – is recognised as being guilty of committing tens or even hundreds of criminal offences.

The authors' opinion is that in the case, where a person uses multiple times the means of payment of one person within a short interval of time and pay-day loans are taken from various capital companies, the offence should be qualified as a separate continuous criminal offence. In this category of cases, it is important to establish that a person is using the means of payment of one person, because the objective of multiple acts by the offender is directed at obtaining a maximum gain, by using another person's means of payment, and usually these acts are committed within relatively short intervals of time. If the period of time

¹⁷ Gulbenes rajona tiesas 2016. gada 10. novembra spriedums krimināllietā Nr. 11170004616 [Judgement of 10.11.2016 by Gulbene District Court in Criminal Case No. 11170004616].

¹⁸ Tukuma rajona tiesas 2016. gada 16. decembra spriedums krimināllietā Nr. 11390045616 [Judgement of 16.12.2016 by Tukums District Court in Criminal Case No. 11390045616].

¹⁹ Daugavpils tiesas 2019. gada 21. februāra spriedums krimināllietā Nr. 11320011518 [Judgement of 21.02.2019 by Daugavpils Court in Criminal Case No. 11320011518].

²⁰ Aizkraukles rajona tiesas 2016. gada 13. decembra spriedums krimināllietā Nr. 11370021216 [Judgement of 13.12.2016 by Aizkraukle District Court in Criminal Case No. 11370021216].

between the instances of using another person's means of payment is longer, then the reasons for it, etc. should be examined on a case-by-case basis.

In identifying a continuous criminal offence and the real concurrence of criminal offences, a relevant problem is also the qualification of robbery of property, predominantly, theft on a small scale, which is committed systematically, from various sources, and the like, because, pursuant to CL Section 180 (1) each offence like this is qualified as a separate theft on small scale, although the total value of property stolen by the person exceeds small scale.

The problems in qualifying such robbery of property on small scale and possible decriminalisation was discussed at the sittings of the standing working group on Criminal Law of the Ministry of Justice of the Republic of Latvia, where U. Krastiņš expressed the opinion that returning to the previous case law was needed, where in the case of several thefts of small scale the total value of the stolen property and money was calculated for all thefts taken together and the offence was not qualified in accordance with CL Section 180, but in accordance with CL Section 175. Notably, this practice was based on the explanations included in Decision of 14 December 2001 by the Supreme Court No. 3 "Application of law in criminal cases regarding robbery of another person's property", referred to above, and Decisions of 23 July 1999 No. 3 "On the application of some norms of the law in criminal cases in connection with the coming into force of the Criminal Law", providing that in determining the amount of losses if multiple similar criminal offences had been committed (multiple thefts, multiple robberies, multiple fraud, multiple misappropriations), the value of the objects acquired by criminal offences should be added up.²¹

However, the Supreme Court has changed the previous practice by prescribing that each theft should be punished separately, irrespectively of the total value of stolen property, consistently reinforcing the thesis regarding inadmissibility of mechanical aggregation in several Supreme Court's decisions.²² As predicted,²³

²¹ Likuma piemērošana krimināllietās par svešas mantas nolaupišanu: Augstākās tiesas plēnuma 2001. gada 14. decembra lēmuma 7.5. punkts [Application of law in criminal cases regarding robbery of another person's property; para. 7.5 of the Supreme Court's plenary meeting on 14 December 2011]. In: Latvijas Republikas Augstākās tiesas plēnuma lēmumu krājums [Collection of Decisions by the Plenary of the Supreme Court of the Republic of Latvia]. Rīga: Latvijas Policijas akadēmija [Police Academy of Latvia], 2002; Par likuma atsevišķu normu piemērošanu sakarā ar Krimināllikuma spēkā stāšanos, Augstākās tiesas plēnuma 1999. gada 23. jūlija lēmums Nr. 3 8.1. punkts [Para. 8.1. of Decision No. 3 of the Supreme Court's plenary meeting of 23 July 1999 "On the application of some norms of the law in criminal cases in connection with the coming into force of the Criminal law"]. In: Latvijas Republikas Augstākās tiesas plēnuma lēmumu krājums [Collection of Decisions by the Plenary meeting of the Supreme Court of the Republic of Latvia]. Rīga: Latvijas Policijas akadēmija [Police Academy of Latvia], 2002, pp. 79, 65.

²² Sk. Augstākās tiesas Senāta 2009. gada 17. aprīļa lēmums lietā SKK-155/2009 (11330045206) [Decision of 17.04.2009 by the Supreme Court Senate in case No. SKK-155/2009 (11330045206)]; Augstākās tiesas Senāta 2011. gada 13. septembra lēmums lietā SKK-J-509/2011 (11354019308) [Decision of 13.09.2011 by the Supreme Court Senate in case No. SKK-J-509/2011 (11354019308)]; Augstākās tiesas Senāta 2011. gada 19. decembra lēmums lietā SKK-671/2011 (15830511505) [Decision of 19.12.2011 by the Supreme Court Senate in case No. SKK-671/2011 (15830511505)].

²³ Sk. *Liholaja, V.* Kriminālsodu politikas koncepcija un no tās izrietošie grozījumi Krimināllikumā [The Concept of Policy on Criminal Punishments and Amendments to the Criminal Law Following from it]. LU žurnāls "Juridiskā zinātne" [Journal of the University of Latvia "Law"], No. 3. Rīga: Latvijas Universitāte, 2012, pp. 8–12; *Liholaja, V.* Grozījumi Krimināllikumā un to piemērošana sodu noteikšanas praksē [Amendments to the Criminal Law and Application thereof in the Practice of Determining Punishments]. In: Tiesību efektivitāte postmodernā sabiedrībā. Latvijas Universitātes 73. zinātniskās konferences rakstu krājums [The Effectiveness of Law in Post-Modern Society.

the situation was made even more complicated by deleting the repetition of a criminal offence from criminal law, as the result of which all criminal offences against property, the liability for repeated commitment of which was especially envisaged in the law, were qualified independently in accordance with the corresponding section of the Special Part of the Criminal Law.

In practice this solution is applied also to other categories of cases, which is confirmed by the decision of 28 February 2013 by the Supreme Court in case No. SKK-762013 regarding application of CL Section 148 (1).²⁴ In this decision, the Senate of the Supreme Court emphasised that the appellate instance court, in examining a case, had not assessed, how exactly the significant damage of this criminal offence, which had substantive elements of crime, had manifested itself with respect to the owner of each computer software referred to in the charges, i.e., whether by the actions committed by accused B.A. significant damage had been caused to each right-owner of the computer software programmes indicated in the charges.

Similarly, although in this case – in determining large scale, the issue was resolved in a criminal case, in which A. was charged with committing a crime envisaged in CL Section 148 (3) because Ltd. [X], in which A was a board member, stored in its computer system and used in its business activities 14 illegal (reproduced without the permission by the subject of copyright) computer software programmes, the total value of which was to be considered as being large scale. In revoking the judgement by the appellate instance court, by which A. was recognised as being guilty of committing the crime he was charged with, the Department of Criminal Cases of the Supreme Court in its decision of 28 February 2017 in case No. SKK-426/2017 indicated that the appellate instance court had not examined, whether, in the particular case, large scale had been determined correctly, by adding up the value of illegal software programmes, without taking into account the fact that the copyright to these software programmes belonged to nine owners, and the material damage caused to each of them did not amount to large scale. By referring to the decision of 28 February 2013 by the Senate of the Supreme Court in case No. SKK-76/2013, mentioned above, the Supreme Court noted that, in the particular case, before qualifying A.'s act in accordance with CL Section 148 (3), it had to be assessed, whether the damage inflicted to each of the copyright owners amounted to large scale.²⁵

M. Leja, assessing critically the decision of 28 September 2017 by the Department of Criminal Cases of the Supreme Court in case No. SKK-426/2017, has validly noted that “in view of the fact that the Supreme Court had not contested that the storing of all 14 illegal software programmes had been one offence in the meaning of CL Section 23, the damage that had been caused by storing such illegal software programmes, had to be summed up (aggregated), irrespectively of the fact whether the owner of the illegal software programme was one person or several persons because these consequences followed from the same offence. It would be necessary to assess the damage caused by each

Proceedings of the 73rd Scientific Conference of the University of Latvia]. Rīga: LU Akadēmiskais apgāds, 2015, pp. 192–203.

²⁴ Augstākās tiesas 2013. gada 28. februāra lēmums lietā SKK-76 /2013 (11816006611) [Decision of 28.02.2013 by the Supreme Court Senate in Criminal case No. SKK-76/ 2013 (11186006611)].

²⁵ Augstākās tiesas Kriminālietu departamenta 2017. gada 28. septembra lēmums lietā SKK-426/2017 (11816015611) [Decision of 28.09.2017 by the Department of Criminal Cases of the Supreme Court in case No. SKK-426/2017 (11816015611)].

illegally stored software programme separately only in the case if the storing of each software programme had been recognised as being a separate offence. Only this approach corresponds to the structure of a separate (unitary) criminal offence. The criterion advanced by the Supreme Court, which would allow aggregation of the consequences, i.e., one owner of the illegally stored software programmes, has nothing in common with the structure of the particular criminal offence. Hence, it is not the criterion for determining, whether the adverse consequences should be aggregated”.²⁶

To align this issue, the standing working group on Criminal Law of the Ministry of Justice had prepared and submitted a proposal to add Part 3¹ to CL Section 23 in the following wording: “A separate continuous criminal offence is constituted also by similar criminal offences that have been committed with a unitary purpose and the total value of its objects exceeds small scale or amounts to significant or large scale”; however, it was not approved by the Legal Committee of the *Saeima*. In 2020, the working group on Criminal Law plans to continue examining the issue of possible amendments to the Criminal Law to return to the case law, where in the cases of multiple criminal offences against property of the same type the total value of damages is calculated, thus making persons liable in accordance with the most severe section of the Criminal Law or part of the section, appropriate for the total amount of damage caused.

The criminal offences, examined above, depending upon particular circumstances of the case, may be recognised as being both continuous and separate independent criminal offences that constitute the real concurrence, however, there is also such group of criminal offences, which, although formally comply with the features of a continuous criminal offence, in view of their peculiarities and nature, should be recognised as such only in some exceptional cases. Thus, it is considered also in the German case law that a continuous criminal offence cannot occur if interests of pronouncedly personal nature of persons are jeopardised, for example, life, health, and freedom.²⁷

It must be noted that already the digest of case law, prepared in 2007, on the qualification of sexual crimes and the crime of leading to depravity²⁸ identified a lack of uniform understanding of the features of a repeated and continuous criminal offence, indicated in CL Section 23 (3): 1) a person commits several mutually related similar acts; 2) these acts are directed to a common objective, and 3) they are encompassed by the unitary purpose of the offender. Although in many cases sexual acts with minors were perpetrated over the course of several years if the features indicated in CL Section 23 (3) were not identified the criminal offences were qualified as continuous, although, in accordance with

²⁶ *Leja, M.* Krimināltiesību aktuālie jautājumi un to risinājumi Latvijā. Austrijā, Šveicē, Vācijā. Noziedzīga nodarījuma uzbūve: cēloņsakarība, vaina; krimināltiesību normu interpretācija un spēks laikā. I daļa [Current Criminal Law Issues and the Solutions to them in Latvia, Austria, Switzerland and Germany. The Structure of a Criminal Offence: Causality, Guilt; Interpretation of the Norms of Criminal Law and their Validity Period. Part I]. Rīga: Tiesu namu agentūra, 2019, p. 771.

²⁷ Vācijas Federālās Augstākās tiesas lieta [Case of the German Federal Supreme Court]: Urteil vom 17.10.1958, 5 St.R 296/58. Available: <https://www.jurion.de/ueteile/bgh/1958-10/17/5-str-296-58/> [last viewed 10.03.2020].

²⁸ Tiesu prakse krimināllietās pēc Krimināllikuma 160. un 162.panta: Augstākās tiesas prakses apkopojums, 2006 [Case law in criminal cases on this basis of Section 160 and Section 162 of the Criminal Law: Digest of the Supreme Court's Case Law], 2006, pp. 15–16, 19–20. Available: www.at.gov.lv/judikatura/tiesu_prakses_apkopojumi/kriminaltiesibas/ [last viewed 10.03.2020].

the criminal law regulation they had to be qualified as repeated criminal offences, but in accordance with the current regulation, in view of the fact that repetition has been deleted from criminal law, as separate independent criminal offences.

However, as noted in the Supreme Court's digest of case law of 2017 regarding criminal offences against morality and sexual inviolability, committed against minors,²⁹ likewise, there have been cases, where the courts, upon identifying several independent criminal offences, had qualified these as one criminal offence.

Thus, for example, the court established that in the period from spring of 2012 until September 2014, at times that were not established with greater precision during the investigation, the perpetrator, being an adult and knowing and being aware of the fact that his daughter, born on [...] 1999, had not attained the age of sixteen and was dependent materially and otherwise from him, while being inebriated, at least once per two months, made his daughter lie down on his bed and touched her body, including her sexual organs, as well as penetrated by fingers into her vagina, in some cases made her satisfy him orally by taking his penis in her mouth. The victim succumbed to the accused person's actions, being afraid that the accused could subject her to violence and also that he might drive her from home. The court recognised that the accused, by these actions, had committed a criminal offence envisaged, in CL Section 160 (6).³⁰

In the period from mid-September 2016 until [...], the accused, being of age and knowing that the victim, born on [...] 2002, had not attained the age of sixteen, had with her at least five sexual intercourses at his place of residence. The court recognised that the accused, by these acts, had committed a criminal offence envisaged in CL Section 161, thus qualifying five sexual acts as one criminal offence and determining punishment for one criminal offence.³¹

In both digests the Supreme Court validly found that "each sexual act is one criminal offence, which has the features of the constituent elements of one criminal offence" and it had to be qualified as a separate criminal offence because there were no grounds for recognising that several separate sexual acts were mutually related. This finding is applicable also to sexual crimes and leading to depravity, envisaged in CL Section 160 and Section 161, which, as to their content and objective features, differ substantially from such criminal offences, which can be manifested as continuous, for example, theft, which can be done from the same source in several instances within short intervals and which in their concurrence form a completed unitary criminal offence. In the case of a continuous criminal offence, all identical acts by the offender are conducted within the framework of one criminal offence and are deemed as being completed, when these acts have been discontinued in accordance with the person's own will or due to reasons beyond their control.

Whereas sexual crimes are completed at the moment of initiating the sexual act or other activities that constitute the objective side of crimes envisaged in CL Sections 160 and 161; leading to depravity, in turn, is recognised as being completed when the offender has committed immoral actions directed at another

²⁹ Tiesu prakse kriminālietās par noziedzīgiem nodarījumiem pret tikumību un dzimumneaižskaramību, kas izdarīti ar nepilngadīgo: Augstākās tiesas prakses apkopojums, 2017 [Case law in criminal cases regarding criminal offences against morality and sexual inviolability, committed against minors: Digest of the Supreme Court's Case Law, 2017]. Available: www://at.gov.lv/lv/judikatūra/tiesu-prakses-apkopojumi/kriminaltiesibas/ [last viewed 10.03.2020].

³⁰ Ibid., p. 11.

³¹ Ibid., p. 16.

person. With each successive, newly initiated activity of sexual nature or immoral actions another criminal offence is committed, which jeopardises a person's interests anew and must be assessed as an independent criminal offence. An exception could be those cases, where it is established that the offender, the nature of whose sexual activities reveal a unitary purpose, without interrupting the abuse of the state of helplessness, violence or threat thereof, or interrupting these only for a short moment, commits successive sexual activities with the same person. Such understanding of continuous rape follows also from the German case law, where it is recognised that raping the same victim three times within 15–30 minute intervals is one offence in the legal meaning if the accused had initially decided to commit a sexual act with her multiple times and if following the initial use of violence (before the first instance of rape) the victim was no longer subjected to it, but the victim succumbed to the offender's demands under the influence of the initial violence.³²

Studies of the experience of other countries could facilitate more accurate understanding of the concept of a continuous criminal offence, set out in the Criminal Law, as well as of the features characterising it and determining its role in the process of qualifying criminal offences, therefore an insight into the criminal law regulation on this matter of several foreign countries follows.

3. The Concept of a Continuous Criminal Offence and the Understanding of Its Features in Foreign Criminal Law

Research of several foreign criminal laws allows concluding that the institution of a continuous criminal offence has not been normatively consolidated in the criminal law of many countries, for example, Austria, Belarus, Belgium, Denmark, Estonia, the Russian Federation, Lithuania, Switzerland, the Federal Republic of Germany, and references to continuous criminal actions are found only in connection with determining the punishment. Thus, for example, Section 56 (1) of the Criminal Code of the Netherlands provides that if several offences are related in such a way that they have to be considered as one continuous act, notwithstanding the fact that each in itself constitutes a crime or a criminal offence, only one criminal provision is applicable.³³

In those foreign criminal laws, which provide a definition of a continuous criminal offence, the features of it differ slightly. Thus, pursuant to Section 54 (2) of the Criminal Code of Bosnia and Herzegovina, a continuous criminal offence arises when the perpetrator intentionally commits a number of identical criminal offences or offences of the same type, which coincide as to the manner of

³² Vācijas Federālās Augstākās tiesas lieta [Case of German Federal Supreme Court]: Beschluss vom 22.11.2011., 4 StR 480/11, 7. rdk. Available: <http://www.hrr-strafrecht.de/hrr/4/11/4-480-11.php> Quoted from: *Leja, M.* Krimināltiesību aktuālie jautājumi un to risinājumi Latvijā, Austrijā, Šveicē, Vācijā. Noziedzīga nodarījuma uzbūve; cēloņsakarība; vaina; krimināltiesību normu interpretācija un spēks laikā. I daļa [Current Criminal Law Issues and the Solutions to them in Latvia, Austria, Switzerland and Germany. The Structure of a Criminal Offence: Causality, Guilt; Interpretation of the Norms of Criminal Law and their Validity Period. Part I]. Rīga: Tiesu namu aģentūra, 2019, p. 762.

³¹ Criminal Code of the Kingdom of Netherlands. Available: https://www.legislationline.org/downloads/id/6415/files/Netherlands_CC-am2012_en.pdf [last viewed 13.03.2020].

³³ Criminal Code of Bosnia and Herzegovina. Available: https://www.legislationline.org/download/id/8499/files/CC_BIH_am2018_eng.pdf [last viewed 13.03.2020].

perpetration and other circumstances in the case;³⁴ Section (1) of the Criminal Code of the Republic of Georgia states that a crime provided for by one article or one part of an article, which contains two or more acts committed with a single purpose, constitutes a continuous crime;³⁵ it follows from Section 29 of the Criminal Code of the Republic of Moldova that a continuous crime is an offense committed with a single intention and is characterised by two or more identic criminal activities having a common purpose;³⁶ the legislator of the Czech Republic notes in Section 116 of the Criminal Code that in the case of a continuous criminal offence individual criminal acts are committed with a single purpose, target the same object, are conducted by the same or similar activity with close coincidence in time;³⁷ Article 32 (2) of the Criminal Code of Ukraine, differentiating between a repeated and a continuous crime, notes: “Repetition [...] shall not be present in commission of a continuing offence comprised of two or more similar acts connected by one criminal intent”.³⁸

It follows from the above that in all criminal laws examined, in defining a continuous criminal offence, first of all, it is noted that the offence is committed by several criminal acts, in some countries allowing not only the same but also similar acts, and, secondly, it is emphasised that these acts are encompassed by the offender’s uniform purpose and these are directed towards a common objective. This, in turns, leads to the conclusion that the definitions of a continuous criminal offence, included in the Criminal Law of this country and the examined criminal laws of foreign countries, substantially do not differ.

In those countries, where the concept of a continuous criminal offence is not normatively regulated, its features are identified on the basis of findings of the criminal law doctrine and case law. In view of certain succession in the criminal law regulation, a brief insight into the way this matter has been resolved in the Russian Federation is provided and the opinions of criminal law experts from other countries are analysed.

In the Russian Federation, similarly to Latvia, by the reform of 2003, recurrent commitment of criminal offences, which is a variety of repetition, was deleted from the criminal code, hence, as noted by N. Kuznetsova, the problem of differentiating between a recurrent and continuous crime disappeared; however the problem remained in the qualification of actual recurrent crimes, although not recognised as such legally. The author gives an example that hundreds of committed thefts with simple constituent elements of the crime are qualified according to the episodes as single instances of theft, thus abandoning

³⁴ Criminal Code of Georgia. Available: https://www.legislationline.org/download/id/8540/files/Georgia_CC_2009_amAug2019_en.pdf [last viewed 13.03.2020].

³⁵ The Criminal Code of the Republic of Moldova. Pieejams [http://www.legislationline.org/download/id/3559/files/Criminal Code RM.pdf](http://www.legislationline.org/download/id/3559/files/Criminal%20Code%20RM.pdf) [last viewed 13.03.2020].

³⁶ Criminal Code of the Czech Republic. Available: [https://www.legislationline.org/download/id/6370/file?Czech Reppublic_CC_2009_am2011_en.pdf](https://www.legislationline.org/download/id/6370/file?Czech%20Republic_CC_2009_am2011_en.pdf) [last viewed 13.03.2020].

³⁷ Criminal Code of Ukraine. Available: <https://www.legislationline.org/documents/action/popup/id/16257/preview> [last viewed 14.03.2020].

³⁸ Kuznetsova, N. F. Problemy kvalifikacii prestuplenij. Lekcii po speckursu “Osnovy kvalifikacii prestuplenij” [Problems in Qualifying Crimes. Lectures of the Special Course “Fundamentals of Qualifying Crimes”]. Moskva: Gordec, 2007, p. 313.

the principle that qualification must be compatible with the severity of the offence.³⁹

Thus, noting that in the situation, where the Criminal Code of the Russian Federation does not comprise the legal concept of a continuous crime and the main features thereof but the Russian criminal law doctrine does not have uniform views on how to solve the problem related to the understanding of a continuous crime and differentiation thereof from the concurrence of crimes, G. Agayev and E. Zorina are offering their own concept of a continuous crime: a continuous crime should be understood as a threat that arises from several legally similar actions, which are mutually united by a single purpose and directed at reaching a common objective, which in their totality form a unitary crime. It is noted in the substantiation that the specificity of a continuous crime is manifested, in particular, in the unity of all committed criminal acts and their internal mutual relatedness because each act is only a necessary stage (part) of the totality, where each offence is targeting the same object, in the similarity of the way of committing them, in the unity of the consequences that have set in, as well as the unity of the criminal purpose of the perpetrator.⁴⁰

Also A. Kozlov and A. Sevastyanov point to similar features of a continuous criminal offence and the understanding thereof, although their views differ slightly. Thus, the authors referred to above, in proposing to recognise as one of the typical features of a continuous crime several acts of conduct, recommend recognising as such not only the same acts but also actions of the same type, for example, open theft or stealth theft. Likewise, the authors believe that reference to the same source is not necessary since a continuous criminal offence would not change if some of the acts it comprises would be committed in another place, from another source. Moreover, there are such criminal offences that have no source and the location where these are committed is insignificant. In characterising the final objective, it is emphasised that it should be, to the extent possible, specified as to its scale, amount, number, mass, etc., but as regards the unitary purpose, it is emphasised, that this concerns direct purpose. The person is aware of the harm inflicted by their several common acts, is aware that the outcome can be achieved only by several acts, is aware of the development of an objective link between separate offences, separate outcomes and the common outcome, wishes to achieve each outcome separately and the common outcome.⁴¹

J. Sudnik, a representative of the Belarus State University, has expressed his opinion on the features of a continuous crime that should be included in the Criminal Code of the Republic of Belarus, noting that 1) the actions that constitute a continuous crime could be the same or of the same type; 2) a unitary purpose, which encompasses all episodes of the continuous crime, is a necessary feature of a continuous crime; 3) there should be one direct object (but one source, although this possibility is not excluded, is not a mandatory feature;

³⁹ *Agayev, G. A., Zorina, E. A. Prodolzhaemye prestuplenija i ih otgranichenie ot sovokupnosti prestuplenij* [Continuous Crimes and Differentiation thereof from Concurrent Crimes]. Available: <https://zakoniro.ru/?p=27116> [last viewed 13.03.2020].

⁴⁰ *Kozlov, A. P., Sevast'janov, A. P. Edinichnye i mnozhestvennye prestuplenija* [Unitary and Multiple Crimes]. Sankt-Peterburg: Juridicheskij centr Press, 2011, pp. 56–68.

⁴¹ *Sudnik Ju. G. Prodolzhaemye prestuplenija: poisk ischerypvajushhego opredelenija ponjatija dlja razreshenija problem kvalifikacii* [Continuous Crimes: Search for an Exhaustive Definition of the Concept to Resolve Problems of Qualification]. Available: elib.bsu.by/bitstream/123456789/35398/1/Судник.pdf [last viewed 13.03.2020].

4) the interval between separate episodes of a continuous crime can be of different length – from some minutes to several years.⁴²

The publication by N. Pryahina and V. Schepel'kov is noteworthy; the authors advance a most interesting issue, which, in our opinion, calls for theoretical discussions, with respect to the concept of a continuous criminal offence. Not denying that a continuous criminal offence is a phenomenon of general nature, at the same time it is admitted that some of its aspects (features) are manifested differently in different criminal offences, pointing out that a line of demarcation should be drawn between the general features of a continuous criminal offence, which all criminal offences have and which should be regulated on the level of the general part of the criminal law, and those features, which are typical only of a certain type of criminal offence.

In view of the above, it is proposed to define a continuous criminal offence as committing several legally similar offences, having an objective and subjective link that allows assessing them as a whole, which would be the common features of a continuous criminal offence.

The authors explain that the legal sameness of actions means that actions in various episodes formally have the features that are set out in the same section of the criminal law, for example, two thefts.

The objective link between several offences can be manifested in different ways since, on the one hand, it is a common feature that is typical of the phenomenon in general but, on the other hand, with respect to various types of crime it can manifest itself differently. Thus, for example, for a continuous theft the objective link will be manifested by the fact that it has been committed from one source, fraud in the form of a financial pyramid is characterised by causing damage as the result of a mechanism that has been triggered once, and this condition objectively links several episodes of fraud; bribery would be continuous if money is transferred in several instalments for the same actions of a public official or their failure to act.

It must be noted that the criteria of a continuous criminal offence once used to be explained in the decisions of the plenary meeting of the Supreme Court of the Republic of Latvia and in the digests of case law, by taking into account the peculiarities of the constituent elements of certain criminal offences. Thus, for example, it is explained in para. 7.5 of the decision of 14 December 2001 by the plenary meeting of the Supreme Court of Latvia No. 3 “Application of law in criminal cases regarding robbery of another person’s property” that such unlawful taking of another person’s property from the same owner or from the possession of the same possessor, which consists of several uniform criminal acts, have a unitary purpose and common objective – to rob property in a certain amount or scope – and which in their concurrence constitute a unitary criminal offence, should be considered as continuous robbery. Likewise, it is noted that robbery of property cannot be considered continuous if it has been committed in different places, from different sources, by different type of robbery or in different circumstances, or if the successive robbery of property had occurred after a longer

⁴² Pryahina, N. I., Schepel'kov, V. F. Otgranichenie prodolzhaemogo prestuplenija ot sovokupnosti prestuplenij [Differentiation between a Continuous Crime and Concurrence of Crimes]. *Kriminalist*#, No. 1 (8), 2011, pp. 7–11.

period of time or with purpose that had arisen separately, although the type of robbery had been the same.⁴³

It follows from Para 6 of the decision of 21 June 1993 by the plenary meeting of the Supreme Court of Latvia No. 7 “On Case Law in Bribery Cases” that continuous bribery can manifest itself as receiving a certain amount of the bribe in several instalments as well as receiving the amount of the bribe, in accordance with a previous agreement, from several persons for the same official act. Likewise, the receipt of a bribe in a double or larger amount for various actions by a public official required by the same person or various actions required by several persons also should be assessed as continuous taking of a bribe.⁴⁴

Whereas Para 4 of the decision of 22 December 1997 by the plenary meeting of the Supreme Court of Latvia No. 6 “On applying law in criminal cases regarding illegal (arbitrary) felling of trees, destruction or damaging of forests” indicates that the time and place of felling trees, as well as the interval between the instances of felling, the type of use of the timber as well as other circumstances in the case could be indicative of continuous arbitrary felling of trees.⁴⁵

As regards qualification of evading payment of taxes and similar payments, it has been explained in the digest of the Supreme Court of Latvia: if the offender’s offence is constituted by several acts or failures to act that are mutually interconnected and are directed at a common objective – evasion of paying taxes or similar payments, which are encompassed by the offender’s unitary purpose, the offence should be recognised as being a separate (unitary) continuous criminal offence. In determining the losses caused to the state or the local government as the result of the continuous criminal offence, the total amount of all losses inflicted upon the state or the local government by evading the payment of one or several types of taxes is taken into account. However, if the offender had a separate intention to commit two or more evasions to pay taxes or similar payments each instance of evasion should be qualified independently.⁴⁶

⁴³ Likuma piemērošana krimināllietā par svešas mantas nolaupišanu: Augstākās tiesas plēnuma 2001. gada 14. decembra lēmums Nr. 3, 7.5. punkts [Application of law in criminal cases regarding robbery of another person’s property: Para. 7.5. of the Supreme Court’s plenary meeting on 14 December 2001]. In: Latvijas Republikas Augstākās tiesas plēnuma lēmumu krājums Collection of Decisions by the Plenary Meeting of the Supreme Court of the Republic of Latvia]. Rīga: Latvijas Policijas akadēmija, 2002, p. 76.

⁴⁴ Par tiesu praksi kukuļošanas lietās: Augstākās tiesas plēnuma 1993. gada 21. jūnija lēmums Nr. 7 [On the Case Law in Bribery Cases. Decision No. 7 of the Supreme Court’s Plenary Meeting on 21 June 1993]. In: Latvijas Republikas Augstākās tiesas plēnuma lēmumu krājums [Collection of Decisions by the Plenary Meeting of the Supreme Court of the Republic of Latvia]. Rīga: Latvijas Policijas akadēmija [Police Academy of Latvia], 2002, p. 39.

⁴⁵ Par likumu piemērošanu krimināllietā par koku nelikumīgu (patvaļīgu) ciršanu, meža iznīcināšanu vai bojāšanu: Augstākās tiesas 1997. gada 27. decembra lēmums Nr. 6, 4. punkts [Para. 4 of Decision No. 6 by the Supreme Court’s the plenary meeting on 27 December 1997 “On Applying Law in Criminal Cases Regarding Illegal (Arbitrary) Felling of Trees, Destruction or Damaging of Forests”]. In: Latvijas Republikas Augstākās tiesas plēnuma lēmumu krājums [Collection of Decisions by the Plenary Meeting for the Supreme Court of the Republic of Latvia]. Rīga: Latvijas Policijas akadēmija, 2002, p. 59.

⁴⁶ Tiesu prakse lietās par noziedzīgi iegūtu līdzekļu legalizēšanu un par izvairīšanos no nodokļu nomakās: Augstākās tiesas prakses apkopojums [Case law in cases regarding legalisation of the proceeds of crime and tax evasion: Digest of the Supreme Court’s Case Law], 2013, Summary, para. 7, p. 90. Available: www://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas [last viewed 09.03.2020].

In the opinion of N. Pryahina and V. Schepel'kov, the subjective link comprises also a unitary purpose, which can be identified in the following cases: 1) the specified purpose with respect to all offences or the common result arises before committing the first offence; 2) initially, there is an unspecified purpose; allowing the possibility, however, that several offences could be committed; 3) the purpose to commit successive acts arises in the process of committing the previous ones or within an insignificant interval in time.⁴⁷

Upholding this presentation of the subjective part in general, the approach taken by the authors that the unitary purpose can be also indirect, hence, contesting the need to recognise the common objective as a feature of the subjective link, seems to be controversial. The objective is the intended outcome that the person wishes to reach by committing a criminal offence,⁴⁸ in the case of a continuous criminal offence, by committing several interconnected acts, which have to be directed at a common objective. Without identifying such final objective, there are no grounds for talking about a continuous criminal offence either.

An opposite view can be found in the criminal law literature regarding the features of a continuous criminal offence, i.e., that the understanding of a continuous criminal offence cannot depend upon the type of criminal offence, for example, one understanding in the case of robbery of property and different understanding in the case of another criminal offence.⁴⁹

On the other hand, U. Krastiņš' view must be upheld that, in deciding on whether a continuous criminal offence has been committed or several similar criminal offences constitute the real concurrence of criminal offences, each case needs to be analysed individually, in accordance with the actual circumstances of the particular offence.⁵⁰

In deciding on the issue of the existence of a continuous criminal offence, M. Leja's point should also be taken into account, i.e., that theses, which are used in the digests of case law and in court rulings to specify the features that characterise a continuous criminal offence, are sometimes perceived as an exhaustive enumeration and, therefore, in the absence of one feature, the possibility of a continuous criminal offence is excluded, without assessing other features. The author referred to above underscores that this is only an approximate guidance since due to the diversity of circumstances in the case an exhaustive list is altogether impossible. "Moreover, by taking only the features indicated in court rulings or digests as the guide, actually, distancing from the law the occurs, forgetting about the points made in it that a continuous criminal

⁴⁷ Pryahina, N. I., Schepel'kov, V. F. Otgranichenie prodolzhaemogo prestuplenija ot sovokupnosti prestuplenij [Differentiation between a Continuous Crime and Concurrence of Crimes]. *Kriminalist*#, No. 1(8), 2011, pp. 7–11.

⁴⁸ Krastiņš, U. Noziedzīga nodarījuma sastāvs un nodarījuma kvalifikācija. Teorētiskie aspekti [Constituent Elements of a Criminal Offence and Qualification of an Offence. Theoretical Aspects]. Rīga: Tiesu namu aģentūra, 2014, pp. 184–185.

⁴⁹ Kozlov, A. P., Sevast'janov, A. P. Edinichnye i mnozhestvennye prestuplenija [Unitary and Multiple Crimes]. SPb: Juridicheskij centr Press, 2011, p. 57.

⁵⁰ Krastiņš, U. Turpināta noziedzīga nodarījuma problemātika krimināltiesībās [The Problems of a Continuous Criminal Offence in Criminal Law]. In: Tiesību zinātnes uzdevumi, nozīme un nākotne tiesību sistēmās. LU Juridiskās fakultātes 7. starptautiskās zinātniskās konferences rakstu krājums [The Objectives, Significance of the Legal Scientific and the Future in Legal Systems. Proceedings of the 7th International Scientific Conference of the Faculty of Law of the University of Latvia]. Rīga: LU Akadēmiskais apgāds, 2019, p. 348.

offence is constituted by 1) several mutually related similar criminal acts, 2) that are directed to a common objective if 3) they are encompassed by the unitary purpose of the offender. This definition of a continuous criminal offence, provided by the law, cannot be specified by a pre-prepared and detailed list of features”.⁵¹

Summary

1. In defining a separate continuous criminal offence, the legislator has indicated the general features of a continuous criminal offence, which all criminal offences have and which must be regulated on the level of the General Part of the Criminal Law, pointing to several mutually related similar acts directed at a common objective, which are encompassed by the offender's unitary purpose, therefore they, in their totality, constitute a continuous criminal offence.
2. In difference to a continuous criminal offence, the real concurrence of criminal offences is constituted by several mutually unrelated offences, committed by a person, that comply with the constituent elements of several criminal offences.
3. In view of the peculiarities of the constituent elements of separate criminal offences, the theory and practice of criminal law add to the general features of a continuous criminal offence features that comply with the constituent elements of particular criminal offences, therefore, in deciding on whether a continuous criminal offence has been committed or several similar criminal offences constitute the real concurrence of criminal offences, each case requires an individual assessment, in accordance with the actual circumstances of the case, focusing mainly on the mutual link between the external manifestation of the criminal offence and the person's mental activities.
4. The Criminal Law has construed also such criminal offences as, for example, sexual offences, which, due to their content and objective manifestations, cannot be considered as being continuous criminal offences altogether. If in the case of a continuous criminal offence all identical acts by the perpetrator occur within the framework of one criminal offence and are deemed to be completed at the moment when these acts have been discontinued in accordance with the person's will or due to reasons beyond their control, the crimes provided for in CL Sections 159, 160 and 161 are deemed to be completed at the moment of initiating a sexual act or other sexual activities. With each successive, newly initiated act of sexual nature, another criminal offence is committed, which jeopardises a person's interests anew and is to be assessed as an independent criminal offence.
5. To ensure compatibility of the qualification of criminal offences with the severity of the offence and its degree of hazardousness, the matter of returning to the case law, where, in the case of several similar crimes directed at property, the total amount of damage had to be calculated, in accordance with which the offender had to be made criminally liable, should be resolved.

⁵¹ *Leja, M.* Krimināltiesību aktuālie jautājumi un to risinājumi Latvijā, Austrijā, Šveicē, Vācijā. Noziedzīga nodarījuma uzbūve; cēloņsakarība; vaina; krimināltiesību normu interpretācija un spēks laikā. I daļa [Current Criminal Law and the Solutions to them in Latvia, Austria, Swizerlans and Germany. The Structure of a Criminal Offence: Causality, Guilt; Interpretation of the Norms of Criminal Law and their Validity Period. Part I]. Rīga: Tiesu namu aģentūra, 2019, pp. 867–868.

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