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Problems of Classifying an Aggregation of Criminal Offences

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This article analyses an aggregation of criminal offences as one of types of multiplicity of criminal offences and the problems of its qualification. The issue is topical from both theoretical and practical point of view, since the process of applying legal norms is often associated with difficulties in determining whether a separate (unitary) criminal offence has been committed, or a multiplicity of criminal offences is to be established; errors are made in distinguishing a factual aggregation of criminal offences from the legal institute, such as collision of legal norms. By emphasising different elements of the said legal institutes, recommendations correspondent to practice needs, which are based on the legal framework, conclusions of the theory of criminal law and of case-law, as well as analysis of practice are offered. Particular attention is paid to compound criminal offences, the structure of which includes serious consequences, reference to the application of violence or inflicted bodily injuries, and in the process of qualification of which one has to encounter the formation of a conceptual aggregation, which is related to serious problems in practice. Likewise, the authors establish that the legislator, in designing the norms of the Special Part of the Criminal Law, has failed to observe all the conditions of development thereof. Thus, a conceptual aggregation of criminal offences, which, in our opinion, should be an exception in cases of compound criminal offences, becomes a regularity authorised by the legislator. Likewise, the article provides a reasoned opinion on the qualification solution in the event if one criminal offence is a way (tool, method) by which another criminal offence is committed, as well as on the formation of an aggregation of criminal offence stipulated by CL Sections 177 and 178 implemented in practice, thus violating provisions of collision of general and special norms included in CL Section 26 Paragraph five.

Keywords: separate (unitary) criminal offence, multiplicity of criminal offences, conceptual aggregation of criminal offences, factual aggregation of criminal offences, collision of criminal law norms.

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Introduction

The current article analyses an aggregation of criminal offences as one of many types of criminal offences and the problems of its qualification. The issue is topical from both theoretical and practical point of view, since the process of application of legal norms is often associated with difficulties in determining whether a separate (unitary) criminal offence was committed or a multiplicity of criminal offences is to be established; errors are made in distinguishing factual and conceptual aggregation, distinguishing a conceptual aggregation of criminal offences from the legal institute such as collision of legal norms. The aim of this article is to emphasise different elements of the said legal institutes, thus offering recommendations compliant with practical needs, which are based on the legal framework, theory of criminal law and case-law conclusions, as well as the analysis of judicial practice, and, in the opinion of authors, to promote a uniform understanding of norms of criminal law and their application in practice.

1. Separate (Unitary) Criminal Offence and Aggregation of Criminal Offences

According to Section 23, Paragraph 1 of the Criminal Law¹ (hereinafter, also “CL”), a separate (unitary) criminal offence is one offence (act or failure to act), which has the constituent elements of one criminal offence, or two or more mutually related criminal offences encompassed by the unitary purpose of the offender, and which correspond to the constituent elements of only one criminal offence.

This regulatory framework includes a reference to the fact that in criminal law, observing the structure peculiarities of the constituent elements of a criminal offence, separate (unitary) criminal offences are divided into **simple** separate (unitary) criminal offences implemented by one act or failure to act, posing a threat to one object of offence, as well as committed according to one form of guilt and having one harmful consequence,² and **complicated** separate (unitary) criminal offences.

In describing the types of complicated criminal offences, Professor Uldis Krastiņš indicates the following elements: two or more actions, two or more

¹ Criminal Law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 199/200, 8 July 1998.

² For more details see: Krastiņš, U., Liholaja, V. Comments on the Criminal Law. Part One (Chapter I–VIII¹). Riga: Courthouse Agency, 2015, pp. 117–120.

objects of threat, two harmful consequences, two forms of guilt, compound body of the criminal offence (the body of one criminal offence includes the elements of several other independent (simple) criminal offences), body of an offence, wherein harmful consequences are included in addition to act or failure to act, and other elements.³ Within the framework of this article, particular attention is paid to compound criminal offences, the structure of which includes serious consequences, reference to the application of violence or inflicted bodily injuries, and in the process of qualification of which one has to encounter the formation of a conceptual aggregation, which is related to serious problems in practice. However, first of all, the understanding of multiplicity and aggregation of criminal offences will be briefly considered.

CL Section 24, Paragraph 1 stipulates that a **multiplicity of criminal offences** is the commission (or allowing) by one person of two or more separate offences (act or failure to act), which correspond to the constituent elements of at least two different criminal offences. **An aggregation of criminal offences** is distinguished as one of the types of multiplicity of criminal offences, which, in accordance with provisions of CL Section 26, Paragraph 1, shall be constituted by one offence or several offences committed by one person, which correspond to the constituent elements of two or more criminal offences, if such person has not been convicted for any of these offences and also a limitation period for criminal liability has not set in. An offence committed by a person, which corresponds to the constituent elements of several different related criminal offences, constitutes a **conceptual aggregation of criminal offences** (CL Section 26, Paragraph 2), while two or more mutually unrelated offences committed by a person, which correspond to the constituent elements of several different criminal offences, constitute a **factual aggregation of criminal offences** (CL Section 26, Paragraph 3). As indicated by U. Krastiņš, “depending on whether several independent criminal offences were committed at the same time, or there was a certain time gap between them, what the relation between them was, an aggregation of criminal offences is classified into factual and conceptual aggregation”.⁴

Since the analysis carried out further in this article will mostly be closely related to the legal evaluation of a conceptual aggregation of criminal offences, it is necessary to emphasise elements that, according to the theory of criminal law, describe this type of aggregation: 1) criminal offences forming a conceptual aggregation are interrelated and are not limited in terms of time; 2) basically, these offences are causally related, since the commission of the first offence causes the commission of some other independent offence; 3) a conceptual aggregation is characterised by that the criminal action commenced by a person is aimed at the attainment of one goal, yet the process of implementation of this action results in some other harmful consequences that were not desired initially, and they do not comprise the constituent elements of one criminal offence, or a threat is posed to other interests protected by law, which are not protected by a particular norm of the Criminal Law;⁵ 4) a conceptual aggregation usually consists of offences that are not

³ Krastiņš, U. Guilt in Complicated Criminal Offences. *Jurista Vārds*, No. 19, 11 May 2010, pp. 13–14. See also: Krastiņš, U. Criminal Offence. Riga: Courthouse Agency, 2000, p. 23.

⁴ Krastiņš, U. Constituent Elements of a Criminal Offence and Qualification of an Offence. Theoretical Aspects. Riga: Courthouse Agency, 2014, pp. 307.

⁵ *Ibid.*, pp. 308–309.

so closely interrelated in terms of their nature for the legislator to join them into one compound criminal offence.

For comparison, it is possible to note that in the criminal law of Lithuania, as Tomass Girdenis writes, a conceptual aggregation of criminal offences is recognised also in cases when several offences are committed one after another within a short period, acting with a single intent. It is also recorded in the decision of the Senate of the Supreme Court of Lithuania dated 30 December 2004 “On judicial practice in criminal cases regarding rape and sexual violence”, specifying that in the event a person first commits an act of sexual intercourse and then sexual gratification or vice versa, these offences form a conceptual aggregation of rape and sexual violence; as well as in a range of decisions of the Supreme Court of the Republic of Lithuania mentioned by the author, critically assessing the understanding of the conceptual aggregation.⁶

Legal literature includes an opinion that the goal and meaning of a conceptual aggregation of criminal offences is to fill in breaches caused by the legislator that has been unable to stipulate all the possible combinations of offences in the norms of criminal law.⁷ It is thought that it is possible to agree to the expressed opinion, which invites the legislator to include as many so-called “legal aggregations” as possible in the structure of legal norms, only partially, since no criminal law is able to reflect all possible combinations of offences in reality; therefore, a conceptual aggregation of criminal offences, which is also called a legal fiction,⁸ is an inevitable institute of criminal law. Moreover, it is suitable to add that these aggregations of criminal offences timely formulated by the legislator, forming compound offences, in practice cause rather many ambiguities.

Hence, it is to be concluded that the legislator of our state has strictly defined principal elements that describe a separate (unitary) criminal offence and an aggregation of criminal offences as a type of multiplicity; they have created their own characteristic and analysis in the theory of criminal law, mostly in the already mentioned and other publications of U. Krastiņš. Furthermore, as suggested by the analysis of judicial practice, problems in the process of qualification of criminal offences are most often caused by peculiarities of constituent elements of criminal offences, forming compound criminal offences that also comply with the fact justifiably emphasised in the theory of criminal law that it is both theoretically and practically difficult to distinguish a conceptual aggregation of criminal offences from a compound criminal offence that poses a threat to two objects or causes two consequences, since the precise qualification of offences depends on the precise delimitation of these cases.⁹ However, it is to be added that, taking into account structure deficiencies of criminal law norms, in the cases referred to a matter is to be resolved on both the distinguishing of a compound criminal offence from a conceptual aggregation of criminal offences and formation of a conceptual aggregation among criminal offences, one of which has already been designed as a compound criminal offence. Several more complex qualification solutions are offered for a wider analysis.

⁶ *Girdenis, T.* New Understanding of a Conceptual Aggregation of Crimes in Criminal Law of Lithuania. *Administratīvā un kriminālā justīcija*, No. 4, 2014, pp. 30–36.

⁷ *Kozlov, A. P., Sevastyanov, A. P.* Single and Multiple Crimes. Saint-Petersburg: Publishing House “Juridichesky Center–Press”, 2011, p. 185.

⁸ *Sharapov, R. D.* Criminal Violence. Moscow: Publishing House “Yurлитinform”, 2009, p. 333.

⁹ *Krastiņš, U.* Constituent Elements of a Criminal Offence and Qualification of an Offence. Theoretical Aspects. Riga: Courthouse Agency, 2014, p. 311.

2. Compound Criminal Offences with a Reference to Serious Consequences

The reason for development and inclusion of compound criminal offences in the Criminal Law is the typicality of joining of offences, distribution of combinations of offences in practice, etc.¹⁰ In the process of development of these elements, in addition to the requirements to be set for any structure of constituent elements of a criminal offence, it is necessary to take into account the set special requirements, for example, balance of sanctions, taking into account the punishability limits of both a joint criminal offence and separate criminal offences included therein, as well as their mutual compliance.¹¹

The matter concerning the structure of legal norms using the category “serious consequences” has a rather great practical significance in the legal evaluation of criminal offences, since the correct qualification of a criminal offence as well as determination of an adequate and just punishment depend on the correct understanding of this element and its equivalent application in practice.¹²

Serious consequences as a qualifying element of a criminal offence are included in 53 norms of the Special Part of the Criminal Law. According to the provisions of Section 24, Paragraph one of the Law On the Procedures for the Coming into Force and Application of the Criminal Law,¹³ liability for a criminal offence stipulated by the Criminal Law that has caused serious consequences shall apply, if the criminal offence has resulted in death of a person, or serious bodily injuries or psychological trauma to at least one person, moderate bodily harm to a number of persons or financial loss on a large scale have been inflicted, which amounted to at least a total of fifty minimal monthly salaries determined at the time in the Republic of Latvia at the moment of the criminal offence, or other serious harm has been caused to the interests protected by law.

As can be seen from the legal explanation of serious consequences, the legislator mostly links this evaluation definition with physical harm (death of a person, serious bodily injuries), as well as with the physical harm of another nature, which can be assessed as a different serious harm, for example, suicide committed by a person or a suicide attempt, serious psychological suffering. The content of serious consequences is directly related to a particular category of criminal offences.¹⁴ Thus, for instance, on 28 February 2016, Section 24 of the Law On the Procedures for the Coming into Force and Application of the Criminal Law was supplemented with Paragraph three, wherein it is explained that liability for a criminal offence stipulated by Section 193² of the Criminal Law, which causes serious consequences,

¹⁰ *Gulieva, N. B.* Compound Crimes in Russian Criminal Law. Author's Summary. Kemerovo, 2006, p. 8–9. Quoted according to: *Ivanchin, A. V.* Integrated Elements of Crimes and Problems of Their Designing. Criminal Law: Origins, Realias, Transfer to Sustainable Development. Materials of the VI Russian Criminal Law Congress. Moscow: Prospekt, 2011, p. 256.

¹¹ *Ivanchin A.V.* Integrated Elements of Crimes and Problems of Their Designing. Criminal Law: Origins, Realias, Transfer to Sustainable Development. Materials of the VI Russian Criminal Law Congress. Moscow: Prospekt, 2011, p. 256.

¹² *Liholaja, V.* Understanding of Qualifying Elements in Criminal Offences Against a Person. Topical Problems in Exercising Rights. Collection of Articles of the 69th Conference of the University of Latvia. Riga: University of Latvia Press, 2011, p. 349.

¹³ On the Procedures for the Coming into Force and Application of the Criminal Law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 331/332, 4 November 1998.

¹⁴ For more details, see: *Hamkova, D., Liholaja, V.* Crucial Understanding of Harm: Law, Theory, Practice. *Jurista Vārds*, No. 2, 10 January 2012, p. 11.

shall be imposed, if obtained profit, eliminated losses, total amount of issued orders, value of used financial instruments or immediate goods transaction agreements or total amount of used funds at the moment of commission of a criminal case exceeds a total of fifty minimal salaries determined at the time in the Republic of Latvia.¹⁵

Focusing on the norms of the Criminal Law, wherein the legislator, forming a compound criminal offence, included **serious consequences**, it is to be concluded that their structure is associated with serious problems, since a matter is to be resolved as to in which cases, committing compound criminal offences, the collision of norms of criminal law occurs; when, in accordance with collision regulations, an offence is to be qualified as a separate (unitary) criminal offence; and in which cases the collision of norms and, as a result thereof, a separate (unitary) criminal offence does not occur, yet a conceptual aggregation of criminal offences is to be established, which are different institutes of criminal law with qualification regulations typical thereof.

In explaining the difference between the collision of norms and an aggregation of criminal offences, U. Krastiņš indicates that it is “essentially: in case of collision of norms, one criminal offence corresponds to constituent elements of several independent criminal offences, while in case of a conceptual aggregation of offences – several independent criminal offences are committed by means of one unlawful action”,¹⁶ when each criminal offence is to be qualified separately unlike the collision of norms, when a criminal offence is to be qualified only in accordance with one colliding norm of criminal law.

In forming a compound criminal offence, the qualifying element of which is serious consequences, the legislator included therein constituent elements of criminal offences, formulating, for example, liability for causing of harm to health of a person, which manifests as intentional infliction of a serious bodily injury to at least one person (CL Section 125) or intentional infliction of less serious bodily injuries to several persons (CL Sections 126 and 130). In this case, a part of the norm (narrower content) collides with another whole norm (wider content), when an offence is to be qualified in accordance with the norm of a wider content, yet, taking into account that “the collision of norms of wider and narrower content is to be recognised insofar the colliding norm of a narrower content does not go beyond the limits of a narrower norm due to a more serious harm stipulated in the former”.¹⁷ It means that, in forming a compound criminal offence, the legislator should seriously consider the balance of sanctions, otherwise it is related to uneven judicial practice, violations of the principle of justice, as well as inexpediency of formation of a compound criminal offence.¹⁸

To confirm the aforementioned, for comparison we will first use a sanction determined for rape, which is a complicated compound criminal offence, which is formed by an act and serious consequences as a qualifying element (CL Section 159, Paragraph three), and for the intentional infliction of a serious bodily injury, which is one of criteria of serious consequences (CL Section 125). In this case, the

¹⁵ Amendments to the Law On the Procedures for the Coming into Force and Application of the Criminal Law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 31, 15 February 2016.

¹⁶ Krastiņš, U., Liholaja, V. Comments on the Criminal Law. Part One (Chapter I–VIII¹). Riga: Courthouse Agency, 2015, pp. 134.

¹⁷ *Ibid.*, p. 138.

¹⁸ Hamkova, D. Problems of Structure of the Qualified and Compound Element of a Criminal Offence. Effectiveness of Law in Post-Modern Society. Collection of Articles of the 73rd Scientific Conference of the University of Latvia. Riga: University of Latvia Press, 2015, p. 161.

collision of norms of a narrower content and wider content is to be established, i.e., a situation when one criminal offence committed by a person corresponds to several constituent elements of a criminal offence, stipulated in several sections of the Special Part of the Criminal Law or paragraphs (clauses) thereof, from which one that corresponds to the caused harm most fully is to be selected, since only one criminal offence was committed.¹⁹

For a person who commits rape, if serious consequences have been caused thereby, the applicable punishment is a life imprisonment or deprivation of liberty for a term of ten years and up to twenty years. Since for a person who commits intentional infliction of serious bodily injuries without qualifying elements (CL Section 125, Paragraph 1), the applicable punishment is deprivation of liberty for a term up to seven years; for a person who commits a crime stipulated by CL Section 125, Paragraph 2 – for a term of two years and up to ten years, while for a person who commits a crime stipulated by Paragraph 3 of this Section – for a term of three years and up to fifteen years, an offence is to be qualified as a separate (unitary) crime in accordance with CL Section 159, Paragraph three, since this compound criminal offence includes rape and infliction of a serious bodily injury – intentional infliction of a serious bodily injury, including also cases when it resulted in death of a person due to the negligence of the offender, which are independent criminal offences themselves. Moreover, it is necessary to establish the already mentioned one of conditions of collision of narrower and wider norms that the criminal offence stipulated by the norm of a narrower content should be more serious as compared to the criminal offence stipulated by the norm of a narrower content, namely that “the colliding norm of a narrower content, due to a more serious harm stipulated thereby (as compared to the seriousness of sanctions), does not go beyond the limits of a wider norm”.²⁰

At the same time, it is possible to name a range of cases when the sanction stipulated by CL Section 125, which is a norm of a narrower content, is more severe in comparison to the sanction stipulated for a compound criminal offence, which resulted in serious consequences, and when a conceptual aggregation of criminal offences is formed. Thus, for instance, for a person who commits intentional acts using his or her official position in bad faith, if such acts have caused serious consequences, (CL Section 318, Paragraph three), and for a person who, being a public official, commits failing to perform his or her duties, if serious consequences have been caused thereby (CL Section 319, Paragraph 3), the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, which is a less severe sanction even in comparison to the punishment stipulated for intentional infliction of a serious bodily injury without qualifying elements. In other cases, for example, if kidnapping caused serious consequences (CL Section 153, Paragraph 3), serious consequences were caused by adding narcotic or psychotropic substances of new psychoactive substances against the will of a person (CL Section 252, Paragraph 3), or seizing an air or water transport vehicle (CL Section 268, Paragraph 2), the compound sanction is significantly lower than the one stipulated by CL Section 125, Paragraph 3 for intentional infliction of a serious bodily injury which, as a result of

¹⁹ *Krastiņš, U.* Collision of Norms and Conceptual Aggregation of Criminal Offences. Effectiveness of Law in Post-Modern Society. Collection of Articles of the 73rd Scientific Conference of the University of Latvia. Riga: University of Latvia Press, 2015, p. 176.

²⁰ *Ibid.*, p. 179.

the negligence of the offender, has been the cause of death of the victim, which is also covered by serious consequences.

As explained by U.Krastiņš, “thus, the collision of norms is legalised, forming a conceptual aggregation of criminal offences, based on the principle of criminal law that a more serious criminal offence cannot be joined with a less serious one, which, in turn, follows from the principle of justice generally accepted by criminal law within the widest meaning thereof”.²¹ Although the authors of this article arrive at the expressed opinion, since this legal evaluation of criminal offences corresponds to the amount of sanctions determined for a compound criminal offence with serious consequences, and for relevant harm to health or life of a person, it is still impossible to assert that this solution in general is not to be assessed critically, since the legislator, in designing the norms of the Special Part of the Criminal Law, has not observed all the conditions of development thereof.

Criminal law, as compared to other fields of law, is characterised by a particularly strict influence mechanism on offences harmful for society, which sets forth particularly high requirements for the design of norms of the Criminal Law, namely, they must be precisely formulated and stable, likewise, a range of methods of legal technique must be used in the development thereof. The wholeness, i.e. integrity, of any legal system is reflected by the high organisation level, order and mutual compliance of its design elements.²² Non-observance of the listed requirements causes defects of the system of legal norms and their mutual compliance, which, in turn, hinders ensuring the fair regulation of criminal-legal relations. It is suggested also by the fact that, in forming a conceptual aggregation of criminal offences, different legal consequences occur, since every criminal offence as an independent offence is qualified individually depending on the collision of norms, and the final punishment is to be determined according to the aggregation of criminal offences, both including a lighter punishment in a more severe one and applying the full or partial principle of cumulation of adjudged punishments.

3. Qualification of Compound Violent Criminal Offences

The majority of violent criminal offences stipulated by the Criminal Law are the so-called multiple-object criminal offences, since the physical or psychological violence included in the objective side thereof, which is a tool, manner or method for the commission of another criminal offence, poses a threat to the physical or mental security as an additional direct object, at the time, when the main direct object of threat is other interests protected by law – constitutional fundamental rights and freedoms of another person, property interests, administration procedures, etc. Violence aids, facilitates the commission of the principal offence, as it is, for example, in case of a robbery, when violence is applied as a means to paralyse the will of the victim to resist the stealing of property, to suppress the

²¹ Krastiņš, U. Collision of Norms and Conceptual Aggregation of Criminal Offences. Effectiveness of Law in Post-Modern Society. Collection of Articles of the 73rd Scientific Conference of the University of Latvia. Riga: University of Latvia Press, 2015, p. 180.

²² Marchenko, M. N. System and Systemic Nature of Law. Systematicity in Criminal Law. Materials of the II Russian Criminal Law Congress. Moscow: Prospekt, 2007, p. 17.

resistance of the victim or to retain the property immediately after stealing it.²³ According to the method of description of constituent elements of a criminal offence, they are still compound criminal offences, since they indicate two objects of threat.²⁴

In formulating these compound criminal offences committed with the application of violence, **the violent manner of commission** is often marked with a general reference that a criminal offence has been committed with the application of violence. Since in criminal law violence is classified as physical and psychological violence,²⁵ one should agree to N. Kuznetsova, stating that ambiguities in the process of qualification of criminal offences are caused by the legislator's reference to violence, without specifying its type.²⁶ However, this formulation of the norm of criminal law inevitably causes a question regarding which amount of harmful physical consequences caused as the result of physical violence will be covered by a violent manner in the compound body of a particular criminal offence, and when additional qualification of caused consequences is necessary in accordance with sections of the Criminal Law on general criminal offences against the health, life, and physical freedom of a person, forming a conceptual aggregation of criminal offences.

In criminal law, physical violence means both physical impact on the human body causing physical pain to the victim, manifesting as battering, beating, infliction of bodily injuries of different seriousness, and violence that does not result in the aforementioned, for example, actions that only limit the movements of the victim or his/her freedom of movement, etc.²⁷ There is no doubt that violence without causing physical pain, as well as without inflicting bodily injuries in any case will be covered by the body of a criminal offence stipulated by a relevant section of the Criminal Law, since violence is included therein as a way of committing a criminal offence and is a mandatory element of the objective side. This conclusion is expressed also in case law, specifying in a particular criminal case that Section 317, Paragraph two of the Criminal Law stipulates criminal liability for exceeding official authority, if it is related to violence; in turn, the infliction of bodily injuries is not a mandatory element of the objective side of this criminal offence, i.e., to impose liability in accordance with Section 317, Paragraph two of the Criminal Law, it is necessary to establish the application of violence and it is not necessary for bodily injuries to be inflicted as the result of this violence.²⁸

At the same time, in a situation, when any harm is caused to health of the victim as the result of applying violence, the legal evaluation of a criminal offence

²³ Application of law in criminal cases regarding the stealing of property of another. Decision of the plenum of the Supreme Court No. 3 of 14 December 2001, Clause 3.1. Collection of decisions of the plenum of the Supreme Court of the Republic of Latvia. Riga: Police Academy of Latvia, 2002, p. 70.

²⁴ *Krastiņš, U., Liholaja, V., Niedre, A.* Criminal Law. General Part. Third Enlarged Edition. Riga: Courthouse Agency, 2008, pp. 80–81.

²⁵ For more details see: *Sharapov, R. D.* Criminal Violence. Moscow: Publishing House "Yurlitinform", 2009, p. 124.

²⁶ *Kuznetsova, N. F.* Problems in Qualifying Crimes. Moscow: Gorodets, 2007, pp. 287–288.

²⁷ Application of law in criminal cases regarding the stealing of property of another. Decision of the plenum of the Supreme Court No. 3 of 14 December 2001, Clause 3.2. Collection of decisions of the plenum of the Supreme Court of the Republic of Latvia. Riga: Police Academy of Latvia, 2002, p. 70.

²⁸ Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia dated 28 February 2013 in case No. SKK-7/2013; criminal case No. 11819004205.

is not longer unambiguous, since the offence can be qualified as both separate (unitary) criminal offence and conceptual aggregation of criminal offences. Despite that in the last case an offence is legally assessed in accordance with two norms of the Criminal Law, namely, the section stipulating liability for a compound violent criminal offence, and the section stipulating liability for physical violence as a separate criminal offence (murder, intentional infliction of serious or medium-serious bodily injuries), judicial literature indicates that the principle of *ne bis in idem* is not violated and the formation of an aggregation is justified by interconnection of applied violence and the principal offence.²⁹

Formation of an aggregation is based on the seriousness degree of physical harm caused as the result of violence. If it exceeds the degree of harmfulness of a compound violent criminal offence, thus causing of physical consequences goes beyond the body of a compound violent criminal offence and liability for that, and grounds for liability for the caused physical harm are present in a separate norm of criminal law.³⁰ As indicated by V. Malkov, the so-called inclusion of elements and qualification of an offence as a unitary compound criminal offence are possible only provided that the included offence should not lead to a more severe punishment than a criminal offence that has been the way of commission thereof.³¹

The theory of criminal law includes no discussions of the fact that compound criminal offences, which consist of several criminal offences, have a higher degree of harmfulness, and, therefore, the legislator should determine, in the sanction for it, the measure of punishment, which, just as in case of an aggregation, would ensure a more serious criminal liability of the offender, since otherwise it would not comply with the principle of justice and would devalue the idea of a compound criminal offence itself.³²

Theoretically, the sanction stipulated for a particular criminal offence should indicate the significance of the object threatened by a criminal offence and the seriousness degree of harm caused to the object; whereas the sanction for a compound criminal offence should be adequate for the harmfulness degree of criminal offences included therein, which would be determined by both significance of objects of threat and harm caused thereto. If this provision was observed in the process of legislation, the vast majority of compound criminal offences would be qualified as separate (unitary) criminal offences, which, presumably, was the goal of the legislator, forming compound criminal offences, which is suggested by the “tendency to reduce cases of a conceptual aggregation of criminal offences, forming bodies of offences, wherein the constituent elements of two criminal offences are combined, and in the majority of cases, they are qualified as constituent elements of criminal offences”.³³

However, out of all compound criminal offences, wherein violence is a constructive (constitutive) element or a qualifying element, it is possible to mention just a few, the sanction of which allows covering elements integrated

²⁹ Sharapov, R. D. *Criminal Violence*. Moscow: Publishing House “Yurlitinform”, 2009, p. 310.

³⁰ *Ibid.*, p. 311.

³¹ Malkov, V. P. *Aggregation of Crimes: (Matters of Qualification and Determination of a Punishment)*. Kazan: Publishing House of the University of Kazan, 1974, p. 138.

³² Sharapov, R. D. *Criminal Violence*. Moscow: Publishing House “Yurlitinform”, 2009, pp. 308–309; Gorelik, A. S. *Collision of Norms of Criminal Law*. Krasnoyarsk: Publishing House of the University of Krasnoyarsk, 1998, p. 67.

³³ Krastiņš, U., Liholaja, V. *Comments on the Criminal Law. Part One (Chapter I–VIII¹)*. Riga: Courthouse Agency, 2015, p. 132.

therein and forming a separate (unitary) criminal offences, as it is, for instance, in CL Sections 159, 160 and 176. In other cases, the most diverse variations of forming of an aggregation are observed, when a compound criminal offence covers only infliction of minor bodily injuries, harm to health, including moderate bodily injuries without qualifying elements, moderate bodily injuries under qualifying circumstances, serious bodily injuries without qualifying circumstances. Thus, a conceptual aggregation of criminal offences, which, in our opinion, should be an exception in cases of compound criminal offences, becomes a regularity authorised by the legislator.

In certain cases, the legislator has included in the design of a compound criminal offence a reference to bodily injuries of a certain degree of seriousness caused by a criminal offence, or to **the link of an offence to the infliction of bodily injuries**, as it is, for example, in CL Section 231, Paragraph 2, without clarifying the seriousness degree of bodily injuries, which, as it is known, can be minor, moderate and serious bodily injuries. As it has already been mentioned, the criminal law of Latvia includes a conclusion that in case of a compound criminal offence, which is also qualified as hooliganism, a separate (unitary) criminal offence will be present only provided that the punishment for a compound criminal offence is more severe as compared to the punishment for a general criminal offence, while harmful consequences caused by a criminal offence are to be punished more seriously in accordance with another norm of the Criminal Law as compared to a compound criminal offence, a conceptual aggregation will be formed.³⁴ It followed also from Clause 6 of recommendations of the Judicial Practice Summary of the Supreme Court for 2016 “Judicial Practice in Hooliganism Cases”, wherein it is indicated that in cases when hooligan actions are related to the infliction of minor or moderate bodily injuries provided that they have not been committed under aggravating circumstances, the offence is to be qualified only in accordance with Section 231, Paragraph 2 of the Criminal Law, without forming a conceptual aggregation with other criminal offences. In turn, in cases when the offence contains qualifying elements stipulated by Section 126, Paragraph 2 of the Criminal Law, the offence is to be qualified as a conceptual aggregation of criminal offences stipulated by Section 231, Paragraph 2 and Section 126, Paragraph 2 of the Criminal Law.³⁵ This recommendation fully complied with the regulatory framework of criminal law at the time, since for a person who committed hooliganism related to the infliction of bodily injuries the applicable punishment was deprivation of liberty for a term up to seven years, while for a person who committed intentional infliction of a moderate bodily injury under aggravating circumstances, the deprivation of liberty was for a term up to eight years.

An analogous qualification solution is justifiably secured also in case law,³⁶ assessing [pers. A] an offence on 24 May 2011, which complies with the constituent elements of criminal offences and sanctions stipulated by Section 126, Paragraph 1 and Section 231, Paragraph 2 during the preparation of the study, on the day the criminal offence is committed and in the currently applicable wording of the

³⁴ *Krastiņš, U., Liholaja, V.* Comments on the Criminal Law. Part One (Chapter I–VIII¹). Riga: Courthouse Agency, 2015, p. 129.

³⁵ Judicial Practice in Hooliganism Cases. Available at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/> [last viewed 20.06.2017].

³⁶ Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia dated 14 June 2016 in case No. SKK-262/2016; criminal case No. 11221195811.

Criminal Law. In the particular criminal case, taking into account the time of commission of the criminal offence, the reference to the formation of a conceptual aggregation of criminal offences stipulated by CL Section 231, Paragraph 2 and Section 126, Paragraph 2 is justified. However, it is possible to discuss a matter concerning the application of provisions of Clause 6 of recommendations of the aforementioned study to a situation if hooligan actions related to intentional infliction of moderate bodily injuries under aggravating circumstances were committed after 1 April 2013, since following amendments introduced to the Criminal Law by the law of 13 December 2012,³⁷ sanctions stipulated by CL Section 231, Paragraph 2 and Section 126, Paragraph 2 fully coincide – deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine and with or without probation supervision for a term up to three years.

The doctrine of Latvian criminal law practically does not discuss this situation; however, several foreign lawyers³⁸ have expressed an opinion that a conceptual aggregation of criminal offences is formed not only if a punishment for a compound criminal offence is less severe as compared to a punishment stipulated for a general criminal offence, but also if punishments in both cases are equal. As an argument for this legal evaluation of offences, it is indicated that components making a compound criminal offence cannot be similar to the principal criminal offence due to their harmfulness, and that a compound criminal offence has to have a higher degree of harmfulness as compared to the harmfulness of its constituent elements. It is thought that this opinion is interesting and discussable, including with regard to the matter concerning whether the formation of a conceptual aggregation does not result in the violation of the principle *ne bis in idem*.

4. Qualification of an Offence That is a Way (Tool, Method) of Committing Another Criminal Offence

The cases when one criminal offence is committed to facilitate or ensure the commission of another criminal offence are often established in practice. This situation can occur, for example, if a person illegally purchases narcotic or psychotropic substances to inebriate and rob the victim, or a firearm is illegally purchased to commit a murder. The theory of criminal law includes a justified conclusion that in the event one criminal offence causes favourable circumstances for the commission of another offence, each of them has to be qualified as an independent offence.³⁹

However, the legal evaluation of a criminal offence is not that unambiguous in the event one criminal offence is a way (tool, method) by which another offence is committed. And one of these criminal offences is forgery of a document, liability for which is stipulated by CL Section 275.

³⁷ Amendments to the Criminal Law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 202, 27 December 2012.

³⁸ See, e.g.: Naumov, A. V. Criminal-Legal Purpose of Violence. *Violent Crimes*. Moscow: Spark, 1997, pp. 63–64; Kuznetsova, N. F. Qualification of Compound Elements of Crimes. *Criminal Law*, No. 1, 2000, pp. 26–27, 30; Panov, N. I. Qualification of Violent Crimes. Kharkiv: Kharkiv Institute of Law, 1986, p. 52; Sharapov, R. D. *Criminal Violence*. Moscow: Publishing House “Yurlitinform”, pp. 323, 326.

³⁹ *Ibid.*

Forgery of documents and use of forged documents included in CL Section 275 are two independent alternative objective sides of a criminal offence, and as justifiably noted by N. Kuznetsova, the forgery of document itself, regardless of its purpose of commission, **cannot be** a way of commission of another criminal offence.⁴⁰ Therefore, if a document is forged, for example, before committing a fraud to commit this criminal offence or after the committed fraud to hide it, the offence is to be qualified as a conceptual aggregation of criminal offences stipulated by CL Sections 177 and 275.

In turn, the use of a forged document regardless of whether this forgery was committed by a person charged with fraud or another person does not form an independent body a criminal offence, since it is a way of committing a fraud, it is a part of deceit, a component of a unitary compound criminal offence,⁴¹ which is an integral element of fraud, therefore fraud committed by using deceit (a forged document) is to be qualified as a separate (unitary) criminal offence, rather than as a conceptual aggregation of criminal offences.⁴² This particular explanation followed from Clauses 4.3 and 4.4 of the already mentioned Decision of the plenum of the Supreme Court No. 3 of 14 December 2001 “Application of law in criminal cases regarding the stealing of property of another”, stating that deceit is a type of fraud; deceit can be manifested in writing, orally, can be included in a forged document or can be manifested in the use of this forgery.

In this regard, it is necessary to mention the judicial practice summary in cases regarding fraud and Clause 32 of the Decision of the general meeting of the Department of Criminal Cases and the Court Chamber of Criminal Cases of the Senate of the Supreme Court dated 22 May 2009, indicating the following: “actions of the offender, which manifest as production of forged documents that grant the right or release from duties, as well as use of a forgery for the purposes of committing fraud, is an independent criminal offence to be qualified in accordance with CL Section 275, Paragraph 2 – forgery of a document and/or use of a forged document for the purposes of acquiring property. If the offender both forges the said document and uses it to deceive another person and to obtain property of another or the right to such property by deceit, the offence is to be qualified as an aggregation of criminal offences in accordance with CL Section 175, Paragraph 2 and, taking into account the extent of fraud, in accordance with the relevant paragraph of CL Section 177 or 180. An aggregation of the said criminal offences is to be established also when the offender him/herself has forged documents, seals, stamps for the purposes of using them in fraudulent activities, or knowingly used forgeries produced by other persons”.⁴³

This explanation, in our opinion, is to be assessed critically, taking into account the aforementioned assumptions; moreover, it contradicts both the opinion expressed by the Supreme Court with regard to the qualification of fraud

⁴⁰ Kuznetsova, N. F. Problems in Qualifying Crimes. Moscow: Gorodets, 2006, pp. 291–292.

⁴¹ Bukalerova, L. A. Criminal-Legal Protection of Official Information Exchange. Moscow: Yurlitinform, 2006, pp. 224–260.

⁴² Mežulis, D. Criminal-Legal Protection of Property. Riga: Turība University, 2006, pp. 225–227. Plētiena, E. Problems in Qualifying Forgery of Documents. *Jurista Vārds*, No. 14, 5 April 2016, pp. 23–29. See also: Comments on the Criminal Code of Latvian SSR. Riga: “Avots”, 1982, p. 304.

⁴³ Decision of the general meeting of judges of the Department of Criminal Cases and the Court Chamber of Criminal Cases of the Senate of the Supreme Court dated 22 May 2009 on judicial practice summary in criminal cases regarding fraud. Available at www.at.gov.lv/lv/judikatura/tiesnesu-kopsapulces-lemumi [last viewed 20.06.2017].

and its conclusions in criminal cases of other categories. Thus, for instance, in the summary of the Supreme Court “Judicial Practice in Cases regarding Money Laundering and Evasion of Tax Payments”,⁴⁴ establishing that an aggregation of criminal offences stipulated by CL Section 218 and 219 is formed in practice, indicated the erroneousness of this qualification, justifying it with the fact that Section 1 Clause 14 of the Law On Taxes and Fees⁴⁵ stipulates that evasion of tax or fee payments can be manifested as deliberate provision of false information in tax declarations, which forms the objective side of the criminal offence stipulated by CL Section 218, and additional qualification in accordance with CL Section 219 is unnecessary. In qualifying an offence as an aggregation of criminal offences, fraud committed by deceit is indicated as both stealing of property by using forged documents and use of the tool of a criminal offence stipulated by CL Section 275, Paragraph 2, i.e. a forged document, which is already to be assessed in relation to the observance of the principle of inadmissibility of double jeopardy (*ne bis in idem*).

5. Collision of Norms of Criminal Law or Aggregation of Criminal Offences

Depending on the peculiarities of the structure of criminal offences, the theory of criminal law distinguishes several types of collision of norms. **The collision of norms occurs also if one criminal offence is committed with several qualifying circumstances of these offences**, which are stipulated by different paragraphs of the sections of the Special Part of the Criminal Law, which we will examine by using CL Section 262.

In accordance with amendments to the Criminal Law introduced by the law of 29 October 2015,⁴⁶ CL Section 262 was expressed in a new wording, stipulating liability in Paragraph 1 of the Section for a person who operates a vehicle without a vehicle driving licence (the vehicle driving licence has not been acquired or taken away according to specific procedures), and if the driver is under the influence of alcohol, or narcotic, psychotropic, toxic or other intoxicating substances. In turn, CL Section 262 Paragraphs 2–5 stipulate liability for the violation of road traffic regulations or vehicle operation regulations, if it has been committed by a person who operates a vehicle under the influence of alcohol, or narcotic, psychotropic, toxic or other intoxicating substances, and if it resulted in respectively a minor bodily injury (CL Section 262, Paragraph 2), a moderate bodily injury (Paragraph 3 of the Section), a serious bodily injury (Paragraph 4 of the Section) to the victim or resulted in death of a person (Paragraph 4 of the Section), death of two or more persons (Paragraph 5 of the Section).

If the same violation of road traffic regulations or vehicle operation regulations resulted in consequences to several victims, as stipulated by different paragraphs of CL Section 262, for example, Paragraphs 3 and 4, in accordance with collision regulations, an offence is to be qualified in accordance with the paragraph of the section, which stipulates liability for serious consequences, namely, Paragraph four

⁴⁴ Judicial Practice Summary. Judicial Practice in Cases regarding Money Laundering and Evasion of Tax Payments, 2013. Available at www.at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/ [last viewed 20.06.2017].

⁴⁵ On Taxes and Fees: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 26, 18 February 1995.

⁴⁶ Amendments to the Criminal Law: Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 227, 19 November 2015.

of the Section,⁴⁷ which conforms to the principle that the norm stipulating a more serious liability covers less serious consequences or less harmful action,⁴⁸ which is basically observed in the process of qualifying a criminal offence.

However, with the aforementioned amendments coming into force, unfavourable practice will set in with regard to the application of the norm included in CL Section 262, Paragraph 1. For example, in its judgement of 12 August 2016, Riga District Court established that the accused, who has failed to obtain a driving licence pursuant to set procedures, operated a vehicle on 5 December 2015 under the influence of alcohol and committed a violation of road traffic regulations, which resulted in death of the victim. The court qualified the offence of the accused as an aggregation of criminal offences stipulated by CL Section 262, Paragraph 1 and CL Section 262, Paragraph 4.⁴⁹ The same solution for the qualification of the offence can be established in other court rulings as well.⁵⁰ At the same time, there are criminal proceedings, wherein persons are held liable for the commission of similar offences, yet no aggregation of criminal offences is formed and qualification is carried out only in accordance with the Paragraph of CL Section 262 that stipulates liability for an offence that resulted in a particular harm to health or life of the victim.⁵¹

A. Judins, examining qualification problems in relation to CL Section 262, admits that “from the point of view of the theory of criminal law, it is possible to find arguments for both approaches to the qualification of criminal offences and objectively there is a possibility to develop a single practice, both seeing an aggregation of criminal offences in committed actions and qualifying it as a separate criminal offence in accordance with the relevant Paragraph of CL Section 262; however, for solving the problem it is important to understand the purposes of introduced CL amendments and legal consequences, accepting one or the other approach to the qualification of the said offences”.⁵² In reasoning his opinion that the committed criminal offence is to be qualified in accordance with one, i.e. the most serious, Paragraph of CL Section 262, A. Judins justifiably indicates that there are no grounds to recognise crimes described in CL Section 262, Paragraphs 2–5 as qualified elements in relation to the provisions of CL Section 262, Paragraph 1, since “the structure of the qualified element of a criminal offence presumes that all principal constituent elements and in addition stipulate also another feature/other features, due to which more serious liability is stipulated for committing the offence. Likewise, it is to be agreed that the element included in CL Section 262, Paragraph 1, i.e. operating a vehicle without a vehicle driving licence, is not a mandatory feature of the element of criminal offences, qualifying the offence in accordance with CL Section 262, Paragraphs two, three, four or five, and upon establishing it, this fact is to be assessed as one of violations of road traffic regulations and vehicle operation regulations.”⁵³

⁴⁷ Decision of the Department of Criminal Cases of the Senate of the Supreme Court dated 28 December 2010 in case No. SKK-616/2010; criminal case No. 11170054406.

⁴⁸ *Krastiņš, U., Liholaja, V.* Comments on the Criminal Law. Part One (Chapter I–VIII¹). Riga: Courthouse Agency, 2015, p. 140.

⁴⁹ Judgement of Riga District Court of 12 August 2016 in criminal case No. 11520096415.

⁵⁰ See Judgement of Ogre District Court of 24 November 2016 in criminal case No. 11310049016; Judgement of Madona District Court of 5 December 2016 in criminal case No. 11300028116.

⁵¹ See, for example, Judgement of Dobele District Court of 2 November 2016 in criminal case No. 11200053215; Judgement of Liepāja Court of 1 December 2016 in criminal case No. 11261124214.

⁵² *Judins, A.* Criminal Offences against Traffic Safety: Topical Issues of Application of the Law. *Jurista Vārds*, No. 51, 12 December 2016, p. 19.

⁵³ *Ibid.*, p. 20.

In the opinion of authors of this article, this qualification solution can be justified with the fact that norms included in CL Section 262, Paragraphs 2, 3, 4 and 5 are broader in terms of their content as compared to the norm included in Paragraph 2 of this Section, since operating a vehicle without a vehicle driving licence is one of possible violations of road traffic regulations and vehicle operation regulations, and it, in turn, excludes even the theoretical possibility of forming an aggregation of criminal offence stipulated by CL Section 262, Paragraph 1 and other Paragraphs.

Criminal law distinguishes also **the collision of general and special norms**, when, in accordance with conclusions of the theory, a special norm is applied, “wherein a particular act or failure to act is distinguished, for the commission of which the legislator has increased or reduced liability”.⁵⁴ By the law of 13 December 2012, this guideline is enshrined also by standards with the legislator supplementing CL Section 26 with Paragraph five and determining that if one criminal offence corresponds to the general and special norms stipulated by the Special Part of this Law, then an aggregation of criminal offences is not formed and criminal liability is imposed only in accordance with the special norm.

It is to be said that in practice CL Section 26, Paragraph one stipulates the implementation of the guideline is not that unambiguous, which will be illustrated by using the regulatory framework included in CL Sections 177 and 178. We will remind the reader that CL Section 177 stipulates liability for fraud, which is the acquisition of property of another or the right to such property, using trust in bad faith or by deceit, while in Section 178 the legislator, forming a special body of fraud, has stipulated liability for insurance fraud, when, in accordance with Paragraph one of this Section, a person who has intentionally destroyed, damaged or hidden his/her property for the purposes of receiving insurance indemnity is to be held liable. If the same acts are committed with property of another, including property possessed by a person, yet owned by a leasing company, bank, another legal entity or natural person, the acts committed are to be qualified as fraud in accordance with CL Section 177 or 180.⁵⁵ The same conclusions on the limitation of these two bodies of fraud are enshrined in case law, explaining that person’s activities aimed at the unjustified receipt of insurance indemnity, if they are not related to the destruction, damaging or hiding of a vehicle, are to be qualified in accordance with CL Section 177, rather than CL Section 178. In this case, the affiliation of the vehicle has no significance in the qualification of the criminal offence.⁵⁶

U. Krastiņš indicates that insurance fraud is a special type of fraud, since general characteristics of fraud are typical thereof.⁵⁷ D. Mežulis also writes that the legislator, taking into account the peculiarities of offences, has examined the need for distinguishing a special body of property insurance fraud, determining the

⁵⁴ Krastiņš, U., Liholaja, V., Niedre, A. Criminal Law. General Part. Third Enlarged Edition. Riga: Courthouse Agency, 2008, pp. 281.

⁵⁵ Judicial Practice in Criminal Cases regarding Fraud. Judicial Practice Summary of the Supreme Court 2008/2009, p. 54. Available at www.at.gov.lv/lv/judikatura/tiesu-prakses/apkopojumi/kriminaltiesibas/ [last viewed 20.06.2017].

⁵⁶ Decision of the Department of Criminal Cases of the Supreme Court dated 21 June 2016 in case No. SKK-174/2016; criminal case No. 11094107911.

⁵⁷ Krastiņš, U., Liholaja, V., Hamkova, D. Comments on the Criminal Law. Part Three (Chapters XVIII–XXV). Riga: Courthouse Agency, 2016, p. 50; Krastiņš U. Criminal Offences in Economy I. Riga: Police Academy of Latvia, 1999, p. 23.

particular elements of the body of this offence.⁵⁸ In the opinion of authors of this article, there are no doubts regarding that the legislator, by including Section 178 in the Criminal Law, stipulating therein liability for a special body of fraud, taking into account peculiarities of insurance fraud.

Although the intent itself is justified, it is to be assessed nonetheless that the structure of CL Section 178 causes several problems. Firstly, the norm included in CL Section 178 covers only those cases of fraud related to fraud in the field of property insurance, despite that the circle of insurance objects is significantly wider. Secondly, according to the structure of the said norm, insurance fraud formed as a split criminal offence is to be recognised as a finished criminal offence once the owner of the insured property that was destroyed, damaged or hidden has submitted a false claim to the insurer regarding the payment of insurance indemnity, regardless of whether the offender has managed to receive insurance indemnity, whether it has not been received.⁵⁹

Clause 4.6 of Decision of the plenum of the Supreme Court of the Republic of Latvia No. 3 of 14 December 2001 “Application of law in criminal cases regarding the stealing of property of another” explains that in cases when the owner of the property has received insurance indemnity on the basis of this application, his offence is to be qualified as an aggregation of criminal offences in accordance with CL Sections 177 and 178.⁶⁰ This qualification solution is recognised as correct by U.Krastiņš as well, justifying it with the formulation of CL Section 178, as well as indicating that consequences included in CL Section 177 are left outside the body of the offence in CL Section 178.⁶¹ It is to be indicated that legal literature features critical notes regarding the qualification of fraud and insurance fraud according to an aggregation of criminal offences, emphasising that a person, taking into account this qualification variant, has to be liable for several criminal offences, even though only one criminal offence was committed.⁶²

In our opinion, an aggregation of criminal offences stipulated by CL Sections 177 and 178 should not be formed since, thus, collision regulations of general and special norm included in CL Section 26, Paragraph 5 are violated, which is suggested by the following. First of all, taking into account the fact that one criminal offence committed by a person is qualified in accordance with two sections of the Criminal Law, there are grounds for speaking about a conceptual aggregation of criminal offences. And, secondly, the fact that one is a general norm (CL Section 177) and the other one is a special norm (CL Section 178) excludes the possibility of qualification according to a conceptual aggregation of criminal offences, and criminal liability should be imposed only in accordance with a special norm. Otherwise, there is no sense of creating a special norm. The situation can be resolved by supplementing CL Section 178 with a new paragraph, which would stipulate enhanced liability for insurance fraud that resulted in the receipt of insurance indemnity.

⁵⁸ Mežulis, D. Criminal-Legal Protection of Property. Riga: Turība University, 2006, p. 245.

⁵⁹ Application of law in criminal cases regarding the stealing of property of another. Decision of the plenum of the Supreme Court No. 3 of 14 December 2001, Clause 4.5. Collection of decisions of the plenum of the Supreme Court of the Republic of Latvia. Riga: Police Academy of Latvia, 2002, p. 73.

⁶⁰ Ibid.

⁶¹ Krastiņš, U. Theoretical and Practical Issues of Qualification of Property Offences. *Jurista Vārds*, No. 44, 22 November, 2005.

⁶² Mežulis, D. Criminal-Legal Protection of Property. Riga: Turība University, 2006, p. 243.

In conclusion, it is to be noted that topical issues referred to herein are not typical of countries belonging to the system of common law, wherein in similar situations a punishment for several criminal offences is determined by applying the principle of inclusion of a lighter punishment into a more severe punishment. Thus, for instance, in Great Britain, punishments are determined by joining them, if simultaneous similar offences, which are committed simultaneously and are parts of one crime, are committed, or when the commission of one crime is practically impossible without committing another crime.⁶³ Likewise, in Australian law, the principle of inclusion of punishments is applied for several offences committed by means of one offence (*transaction*), recognising as such not only cases when several crimes are committed by one action, but also cases when several crimes are committed by several actions at the same time and place and in relation to the same victim, or these actions are performed one after another.⁶⁴ An analogous solution can be found in the criminal law of USA⁶⁵, as well as Roman-German countries such as Poland⁶⁶ and Spain⁶⁷. It is possible to discuss the introduction of this solution in Latvian criminal law in perspective, thus replacing a conceptual aggregation of criminal offences.

Conclusions

1. A separate (unitary) criminal offence is distinguished from the multiplicity of criminal offences by the fact that it is one offence (act or failure to act) which has the constituent elements of one criminal offence (simple separate (unitary) criminal offences), or also two or more mutually related criminal offences encompassed by the unitary purpose of the offender and which correspond to the constituent elements of only one criminal offence (complicated separate (unitary) criminal offences). In turn, multiplicity of criminal offences is the commission (or allowing) by one person of two or more separate offences (act or failure to act) which correspond to the constituent elements of at least two different criminal offences.
2. An aggregation of criminal offences as one of types of multiplicity is constituted by one offence or several offences committed by one person, which correspond to the constituent elements of two or more criminal offences, if such person has not been convicted for any of these offences and also a limitation period for criminal liability has not set in. An aggregation of criminal offences is classified into a conceptual aggregation, when an offence committed by a person, which corresponds to the constituent elements of several different related criminal offences, and a factual aggregation, which is constituted by two or more mutually

⁶³ Newark, M., Samuels, A., White, S. Sentencing the Multiple Offender: Concurrent and Consecutive Sentences. Northern Ireland Legal Quarterly, 1972, No 23, pp. 143–145.

⁶⁴ Lovegrove, A. Sentencing the Multiple Offender: Judicial Practice and Legal Principle. Research and Public Policy Series, 2004, No. 59, pp. 34–36.

⁶⁵ Unites States Sentencing Commission Federal Sentencing Guidelines Manual, 2007. Available at <http://www.ussc.gov/2007quid/CHAP3.pdf>, [last viewed 20.06.2017], p. 349. Quoted according to: Girdenis, T. New Understanding of a Conceptual Aggregation in Criminal Law of Lithuania. Administratīvā un kriminālā justīcija, No. 4, 2014.

⁶⁶ Criminal Code of the Republic Poland. Available at www.legislatioline.org/documents/section/criminal-codes/country/10 [last viewed 20.06.2017].

⁶⁷ Criminal Code of the Kingdom of Spain. Available at www.legislationline.org/documents/section/criminal-codes [last viewed 20.06.2017].

unrelated offences committed by a person, which correspond to the constituent elements of several different criminal offences.

3. Complicated separate (unitary) criminal offences are also compound criminal offences, when one body of the criminal offence includes the constituent elements of other individual (simple) criminal offences, when it is both theoretically and practically difficult to distinguish a conceptual aggregation of criminal offences from a compound criminal offence, which poses a threat to two objects or causes two consequences.
4. The matter as to in which cases, in committing compound criminal offences, the collision of norms of criminal law occurs, when, in accordance with collision regulations, an offence is to be qualified as a separate (unitary) criminal offence, and in which cases the collision of norms and, as a result thereof, a separate (unitary) criminal offence do not occur, and a conceptual aggregation of criminal offences is to be established, what different institutes of criminal law with qualification provisions typical thereof are, is to be resolved also in case when the legislator, in forming a compound criminal offences, included therein reference to severe consequences as a qualifying element.
5. Taking into account that liability for harm to health of a victim (intentional infliction of a serious bodily injury to at least one person, less serious bodily injuries inflicted on several persons, which are the criteria of severe consequences) is stipulated by separate norms of the Criminal Law, the collision of a part of the norm (narrower content) with another whole norm (wider content) occurs, when an offence is to be qualified according to the norm of a narrower content provided that the criminal offence stipulated by the norm of a wider content is more serious as compared to the offence stipulated by the norm of a narrower content.
6. Otherwise, i.e., if harmful consequences caused by a criminal offence, in accordance with another norm of the Criminal Law, are to be punished more severely as compared to a compound criminal offence, as it is often established in the applicable framework of criminal law, a conceptual aggregation of criminal offences is formed, which is justified by the principle of criminal law stating that a more serious criminal offence cannot be covered by a less serious one, which, in turn, follows from the principle of justice generally accepted by criminal law within the widest meaning thereof.
7. An analogous qualification issue occurs also if the formulation of compound criminal offences includes a reference to the application of physical violence or relation to the infliction of bodily injuries, which inevitably results in a question regarding which amount of harmful consequences, caused as the result of physical violence, will be covered by the violent type in the compound body of a particular criminal offence, and when additional qualification of caused consequences is necessary in accordance with sections of the Criminal Law regarding general offences against health, life, personal freedom of a person, forming a conceptual aggregation of criminal offences.
8. Also in these cases the formation of an aggregation is based on the degree of seriousness of the caused physical harm and, if it exceeds the degree of harmfulness of a compound violent criminal offence, the causing of these physical consequences goes beyond the body of a compound criminal offence and liability therefore, while the grounds for liability for caused physical harm

is included in a separate norm of criminal law, then a conceptual aggregation of criminal offences is formed.

9. The theory of criminal law has admitted that compound criminal offences have a higher degree of harmfulness, and therefore, the legislator should determine the measure of punishment for it, which, just as in case of an aggregation, would ensure more serious criminal liability of the offender, since otherwise it would not comply with the principle of justice and would devalue the idea of a compound criminal offence itself. If this provision was observed in the process of legislation, ensuring the balance of sanctions, taking into account the punishability limits of both a joint criminal offence and separate criminal offences included therein, as well as their mutual compliance, a conceptual aggregation of criminal offences should be an exception in cases of compound criminal offences, rather than a regularity authorised by the legislator.
10. If one criminal offence is a way (tool, method), by which another criminal offence is committed, for instance, utilisation of a forged document to compel another to give up his or her property, or the right to such property, an independent criminal offence is not formed. It is a type of fraud, a part of deceit, one component of a compound criminal offence, which is an integral part of fraud, therefore, fraud committed by deceit (using a forged document), regardless of the fact whether this forgery was committed by a person charged with fraud or another person, is to be qualified as a separate (unitary) criminal offence, rather than a conceptual aggregation of criminal offences. The forgery of documents itself regardless of its purpose of commission cannot be a way of commission of another criminal offence, therefore, if a document is forged, for example, before committing a fraud to commit this criminal offence or after the committed fraud to hide it, the offence is to be qualified as a conceptual aggregation of criminal offences stipulated by CL Sections 177 and 275.
11. If one criminal offence is committed with several qualifying circumstances of these offences, which are stipulated by different paragraphs of the section of the Special Part of the Criminal Law, in accordance with collision regulations, an offence is to be qualified in accordance with the paragraph of the section, which stipulates liability for serious consequences, since the norm stipulating more serious consequences covers less serious consequences or less harmful action. However, in comparing constituent elements included in CL Section 262, Paragraph 1 and Paragraphs 2–5 of this Section, it is to be concluded that the norm included in Paragraph 1 is narrower in terms of content, since the operation of a vehicle without a driving licence is one of types of violation of road traffic regulations or vehicle operation regulations, and it excludes even a theoretical possibility of forming an aggregation of criminal offences included in CL Section 262, Paragraph 1 and other Paragraphs, which is sometimes observed in practice.
12. Criminal law also distinguishes the collision of general and special norms, when an aggregation of criminal offences is not formed either, and criminal liability is imposed in accordance with a special norm. In implementing the recognition enshrined in theory and practice that in cases when the owner of the insured property that was destroyed, damaged or hidden has received insurance indemnity on the basis of a false application for the payment of insurance indemnity, his offence is to be qualified as an aggregation of criminal offences in accordance with CL Sections 177 and 178, which are general and special

norms respectively, collision regulations of general and special norms included in CL Section 26, Paragraph 5. The situation can be resolved by supplementing CL Section 178 with a new paragraph, which would stipulate enhanced liability for insurance fraud that resulted in the receipt of insurance indemnity.

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