



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.  
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RFC: ATI120618V12

**Revista Dilemas Contemporáneos: Educación, Política y Valores.**

<http://www.dilemascontemporaneoseducacionpoliticayvalores.com/>

**Año: VII      Número: Edición Especial      Artículo no.:38      Período: Diciembre, 2019.**

**TÍTULO:** Problemas de calificación de delitos únicos complejos.

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**RESUMEN.** El trabajo proporciona un análisis jurídico penal sistemático de un delito único complejo basado en el derecho penal interno actual y la práctica de su aplicación. Se da una breve descripción de cada tipo de delito único complejo. Se analizan crímenes compuestos; delitos basados en acciones alternativas; delitos con dos actos; crímenes en curso; delitos continuos y delitos de actos repetidos. Las bases de la diferenciación de un solo delito y su diferenciación de una pluralidad de actos criminales se generalizan e investigan. Se llega a una conclusión general sobre qué delitos deben atribuirse a delitos únicos complejos, así como también cómo la ley interpreta el delito único y la totalidad de los delitos.

**PALABRAS CLAVES:** crimen compuesto, conjunto de delitos, calificación, crimen complejo.

**TITLE:** Problems of qualification of complex single crimes.

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**ABSTRACT:** The work provides a systematic criminal legal analysis of a complex single crime based on the current domestic criminal law and the practice of its application. A brief description of each type of complex single crime is given. Complex single crimes, compound crimes are analyzed; crimes based on alternative actions; crimes with two acts; ongoing crimes; continuing crimes and crimes of repeated acts. The bases of differentiation of a single crime and its differentiation from a plurality of criminal acts are generalized and investigated. A general conclusion is made about which crimes should be attributed to complex single crimes, as well as how the single crime and the totality of crimes are interpreted by law.

**KEY WORDS:** compound crime, set of crimes, qualification, complex crime.

**INTRODUCTION.**

Crime as a kind of volitional behavior of people is a complex activity aimed at achieving a specific goal, and therefore, has internal unity. In the course of achieving this goal, a person resorts to such actions, which in many cases do not have independent criminal legal significance, but acquire the character of a method or means of committing a crime or are a stage (stage) in achieving a criminal result.

Some of these actions may correspond to the signs of specific individual crimes, but since they are assessed in criminal unity with other socially dangerous acts by a criminal law, this gives them a special social and legal significance that differs from that which they have when committed separately. Therefore, such actions - as components of a complex single crime - are not subject to independent qualification.

In Russian legal science, a single crime is characterized as a socially dangerous act (action) falling within the scope of one norm of criminal law and containing signs of one crime [Garbatovich D.A., Sumsky D.V. (2015)]. At the same time, the analysis of the norms of the Special Part of the Criminal Law shows that the legislator invests a different content in the concept of a single crime. In one case, a single crime is understood as a socially dangerous act consisting structurally of one action (inaction), or one action (inaction) together with a criminal consequence (for example, murder). In another case, a single crime is understood as a socially dangerous action (inaction) consisting of a system of certain actions or inaction (for example, involving minors in the commission of a crime).

In the criminal law literature, there are various classifications of complex single crimes. So, crimes with a complex composition stand out; crimes consisting of a number of acts; continued crimes and ongoing crimes [Krivolapov G.G. (1989), p. 5]. According to another opinion, “except for complex acts, continuing and ongoing crimes, as well as criminal activity, should be classified as single crimes” [Tarasova Yu.E. (2018)]. Given that the latter classification is broader, it will be taken as the basis for us in the subsequent criminal law analysis of certain types of complex single crimes.

These circumstances determine the complexity of determining a single crime and its delimitation from the multiplicity of criminal acts. Assessing a specific action or inaction or a specific set of actions as a crime, the legislator proceeds from their ability to cause significant harm to social relations in this form. Therefore, when deciding whether one or several crimes has been committed

by the perpetrator, it is necessary to keep in mind the particularities of the legislative structure of individual elements of crimes.

## **DEVELOPMENT.**

### **Research methodology.**

The aim of the study is a comprehensive criminal analysis of the institution of a complex single crime based on the current domestic criminal law and the practice of its application.

The object of the study is the laws that take shape in the field of criminalization and qualification of complex single crimes. The subject of the study is: criminal law on complex single crimes; the practice of applying criminal law on complex single crimes; existing theoretical concepts and scientific views on complex single crimes.

The methodological basis of the research is formed by the general scientific dialectic method of cognition, as well as private scientific methods: historical, formal logical, comparative legal, statistical, concrete sociological and others.

### **Study results.**

A composite crime is a crime consisting of two or more acts, each of which, individually evaluated, qualifies as an independent crime. A composite crime, as a rule, encroaches on several objects protected by criminal law and this is what distinguishes this from a simple single crime. In criminal law literature, it is often emphasized that a composite crime is a set of crimes provided for in the law [Tretyakov K.V. (2015), p. 261-263]. Based on a similar interpretation of the legal nature of a composite crime, experts suggest distinguishing two of its types:

- 1) A composite crime, which in fact constitute two or more independent different acts (the real aggregate provided for in the law).

2) A composite crime, consisting of one act, entailing two or more socially dangerous consequences (the ideal totality provided for in the law) [Volzhenkin B.V. (1998), p. 7].

A composite crime, which is based on two or more different acts, includes, in particular, robbery, in the commission of which the mercenary purpose of seizing someone else's property is achieved by means of assault combined with violence that is dangerous to the health and life of the victim, or with the threat of such violence. In fact, each of the indicated criminal actions can be considered as an independent crime, however, due to their internal unity, these actions are combined by the legislator into one composition and in this connection form a single criminal offense.

Compound crime, which is based on one act, which entailed several socially dangerous consequences, in particular, is the deliberate infliction of grievous harm to the health of the victim, which entailed the death of the victim. This crime as a whole consists of the intentional infliction of grievous bodily harm (primary consequence) and causing death by negligence (second consequence, which is a consequence of the first). The aforementioned consequences could be considered as independent crimes, but due to their close interconnection they are combined into one structure and therefore form one crime.

The legislator combines different types of crimes into one structure in those cases when in reality these crimes form an “inextricably linked chain of criminal behavior characterized by a much greater social danger than every single crime that is part of this structure” [K. Vinokhod (2018), p. 62-65]. As rightly pointed out in the literature, the construction of a composite crime makes it possible to more accurately take into account the aggregate degree of social danger and express it in the sanction of a criminal law norm [Volzhenkin B.V. (1998), p. 7].

However, in the theory of criminal law, discussions are currently ongoing regarding the criminal law nature of single composite crimes [Robinson P.H. (2010)].

First, it should be noted that in the theory of criminal law, provisions have been developed on a single crime and on the multiplicity of crimes that are mutually exclusive, i.e. the same crime at the same time cannot be a single crime and form a multiplicity of crimes, since the concept of multiplicity is based on a person committing two or more independent separate and single crimes.

In the Criminal Law, the concepts of both a separate criminal act and several types of them are given, as well as the concept of the multiplicity of criminal acts, as well as its two main types (totality and relapse). Such legislative guidelines also determine a different solution to qualification issues, depending on whether a single crime has been committed or a combination of crimes has taken place [I. Vozhannikova. (2014)].

Since some separate criminal acts in the disposition of the criminal law have a complex description, in the theory of criminal law, as well as in judicial practice in interpreting the signs of some corpus delicti, there are still opposing opinions on the qualification of complex single crimes [Schwartz L.B. (1962)].

We are talking about complex single crimes, the totality of (ideal) crimes as one of the types of multiplicity of crimes and their delimitation in qualifying the deed.

If you agree that in criminal law a single crime and the multiplicity of crimes are clearly distinguished, then there should be no ambiguities in the qualification of the offense. However, in reality, everything is not so clear.

The subject of the dispute was the qualification of a murder related to robbery (clause "h" part 2 of article 105 of the Criminal Code of the Russian Federation) and murder related to rape (clause "to" part 2 of article 105 of the Criminal Code of the Russian Federation).

Some lawyers adhere to the old position, which for many years dominated both in the theory of criminal law and in judicial practice. The essence of this position is that the crimes mentioned should be qualified according to the aggregate of crimes - as murder under qualifying circumstances

and, accordingly, as robbery (another related crime from the number specified in part 2 of article 105 of the Criminal Code of the Russian Federation) - also under qualifying circumstances.

It should be noted that such an opinion, as before, is reflected in the legal literature [G. Dosaeva (2016), p. 138-140]. Apparently, the jurisprudence is of the same opinion, since a similar point of view is set forth in the relevant resolution of the Plenum of the Supreme Court of the Russian Federation.

At the same time, on the issue of qualifying a murder involving robbery, according to the rules on the totality of crimes, it is believed that such a solution to the question was apparently correct under the conditions of Art. 102 of the Criminal Code of the RSFSR of 1960, the disposition of which did not cover either robbery or banditry. But now the situation has changed and full confidence in the correctness of such a decision under the conditions of the operation of paragraph "h" of part 2 of article 105 of the Criminal Code of 1996 is no longer [Volzhenkin B.V. (1998), p. 7].

We believe that the above crimes are single crimes, and they should be qualified according to only one article, which contains signs of a single, albeit complex, crime.

Traditionally, in the theory of criminal law, a single (single) criminal act is recognized as one act (action or inaction) that has signs of the composition of one criminal act or two or more of several related criminal acts, covered by the uniform intent of the guilty person and containing signs of the composition of only one criminal deeds.

On the basis of this concept of a single criminal act, the following main types of a single act are distinguished: a complex compound or alternative act, a continuing or continuing criminal act, as well as a single act, which constitute the same offenses repeatedly during the year, if such a composition is provided for in the Special Part of the Criminal Code.

It does not exclude the recognition of the acts in question as a single crime and the fact that the concept of a complex single crime, as well as the concepts of a continuing, lasting criminal act, the frequency of criminally punishable offenses committed during the year are not directly fixed in the Criminal Code of the Russian Federation.

Another argument is the provision that two or more interrelated criminal acts are a single act, if they are covered by the single intent of the perpetrator, and when committing, for example, a murder related to rape, in their opinion, there is no single intent.

However, such an argument does not prevent the proponents of the double qualification of the crimes under consideration from recognizing that the intentional infliction of grievous bodily harm, which, due to the negligence of the guilty party, resulted in the death of the victim (part 4 of article 111 of the Criminal Code of the Russian Federation) should be qualified only for this article, although in this case the composition crimes included two forms of guilt, and there can be no talk of a single intent.

So, it is recognized that the Special Part of the Criminal Code of the Russian Federation also provides for other unregulated types of single crimes, the criteria for which are developed by the theory of criminal law. The basis of a single crime is that a single crime corresponds to the characteristics of only one crime, i.e. stipulated by the disposition of the relevant article or part (paragraph) of the article. And the article stipulating responsibility for a murder committed under qualifying circumstances contains elements of separate, independent crimes - murder connected with robbery and murder combined with rape.

One type of single crime is a complex composite single crime, the criteria for which are developed by criminal law science. A complex compound crime consists of two or more actions, each of which is separately provided for in the criminal law as an independent crime.



There are quite a few such compositions in the Criminal Code of the Russian Federation. This is the robbery already mentioned, associated with grievous bodily harm to the victim (paragraph “c” of part 3 of article 162 of the Criminal Code of the Russian Federation), deliberate destruction or damage to property as a result of negligence of the guilty party, resulting in the death of a person (part 2 of article 167 of the Criminal Code of the Russian Federation ), the previously mentioned crime provided for in part 4 of Art. 111 of the Criminal Code.

There is no dispute that the crimes mentioned should be classified under one article only as single complex composite crimes, since they correspond to one corpus delicti and therefore are single crimes.

One has only to touch upon such complex complex crimes as murder connected with robbery or rape, the opposite decision is immediately proposed.

There is no legal or theoretical basis for applying different principles of qualification of crimes for the qualification of single crimes. It should fully agree with Professor A.V. Naumov, who expressed a generally recognized position in the theory of criminal law, according to which a single complex crime, like a simple one, forms one corpus delicti and is qualified under one article of the Criminal Code, but unlike a single simple crime its objective side is characterized by a complex content (we are talking , for example, the number of acts committed, the presence of additional criminal consequences) [Naumov A.V. (1996), p. 316].

Legislative provisions and theoretical developments on a single crime and on the multiplicity of crimes give rise to murder related to robbery or rape, as a single complex compound crime to qualify under only one article.

By including the most severe penalties for the crimes under consideration (life imprisonment or imprisonment from 8 to 20 years), the legislator excludes the tempting practical desire for the crimes under consideration to determine the punishment for the totality of crimes.

Judicial practice is currently aimed at establishing a common understanding of the issues of qualification of single criminal assaults.

So, we believe that in cases where the perpetrator, taking possession of other people's property, used violence that resulted in the death of the victim, and the perpetrator wished for such a result or consciously admitted, the crime should be qualified only as murder, which was committed in the presence of aggravating circumstances, those under paragraph "h" h. 2 Article 105 of the Criminal Code. Similarly, criminal qualifications should be implemented in all similar cases. This position appears to be consistent with the law and theoretical provisions on a single complex composite crime. Such a fundamental decision of the legal assessment of the deed should also be applied in the qualification of other complex single criminal manifestations.

## **CONCLUSIONS.**

Summarizing the above, we emphasize that complex single crimes should include compound crimes, crimes with two acts, crimes with alternative actions, continuing crimes, ongoing crimes, crimes consisting of repeated acts, crimes that are based on criminal activity.

A single crime and a combination of crimes are interpreted by the law as independent phenomena; therefore, they cannot be replaced among themselves if necessary, including because murder, robbery or rape under aggravating circumstances are especially serious crimes, which should be reflected in the qualification of the offense, using the terms of the aggregate of crimes and considering the sentencing.

There is no legal or theoretical basis for applying different principles of qualification of crimes for the qualification of single crimes. Otherwise, the general principles of criminalization of crimes that create the basis for differentiating criminal liability for related types of criminal activity are ignored.

**Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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**RECIBIDO:** 1 de noviembre del 2019.

**APROBADO:** 10 de noviembre del 2019.