Erzincan Binali Yıldırım Üniversitesi
Hukuk Fakültesi Dergisi
Erzincan Law Review
Cilt/Vol: 28 Sayı/No: 1 Haziran/June 2024

The Act Singularity in the Scope of Conceptual Aggregation in Turkish Criminal Law

Türk Ceza Hukukunda Fikri İçtima Bağlamında Fiil Tekliği

Arş. Gör. Burak TAŞ*

10.60002/ebyuhfd.1410454

ABSTRACT

The scope of the concept of act in criminal law is highly controversial. This discussion proceeds on two grounds. Although it is generally accepted that the concept of act expresses the conduct in Turkish doctrine and the Turkish Penal Code No. 5237, the other view argues that the concept of act expresses the conduct, result and causal relation. These differences of view create a problem in explaining the concept of singularity of act in conceptual aggregation. In the study, the concept of singularity of act has been tried to be explained on the basis of conduct and opinions on singularity of act are given. In this context, as a

* Bolu Abant İzzet Baysal Üniversitesi, Hukuk Fakültesi, Ceza ve Ceza Muhakemesi Hukuku Anabilim Dalı.

Makale Bilgisi/Article Info: Araştırma Makalesi/Research Article
Geliş/Received: 26.12.2023 | **Kabul/Accepted:** 01.05.2024.
Bu makale, intihal programında taranmış ve iki (kör) hakem incelemesinden geçmiştir. This article was submitted in a plagiarism program and reviewed by two (blind) referees.
Atıf/Cite as: Burak Taş, "The Act Singularity in the Scope of Conceptual Aggregation in Turkish Criminal Law", EBYÜ-HFD, C. 28, S. 1, Haziran 2024, s. (207-228).

requirement of the criminal justice that the TPC aims to establish, it has been concluded from these opinions that singularity of conduct in the legal sense should be applied. It is very important to ensure unity in practice on this issue related to personal liberty. The authority to ensure this unity rests with the Court of Cassation through unification of case law. It has been concluded that the Court of Cassation should make a choice about what should be understood by the concept of act and ensure unity in the implementation of singularity of act.

Keywords: Act, Conduct, Result, Singularity of Act, Conceptual Aggregation.

ÖZET

Ceza hukukunda fiil kavramının kapsamı oldukça tartışmalıdır. Bu tartışma iki temelde ilerlemektedir. Türk doktrininde ve 5237 sayılı Türk Ceza Kanunu'nda genel olarak fiil kavramının hareketi ifade ettiği kabul edilmekle birlikte diğer görüş fiil kavramının hareket, netice ve nedensellik bağını ifade ettiğini savunmaktadır. Bu görüş farklılıkları ise fikri içtimada fiil tekliği kavramını açıklamada problem oluşturmaktadır. Çalışmada fiil tekliği kavramı hareket temeli üzerinden açıklanmaya çalışılmış ve fiil tekliği üzerine görüşlere yer verilmiştir. Bu kapsamda TCK'nın tesis etmeyi amaçladığı ceza adaletinin gereği olarak bu görüşlerden hukuki anlamda hareket tekliğinin uygulanması gerektiği sonucuna ulaşılmıştır. Kişi özgürlüğüne ilişkin bu konuda uygulamada birliğin sağlanması oldukça önem arz etmektedir. Bu birliği sağlama yetkisi ise içtihatları birleştirme yoluyla Yargıtay'a aittir. Yargıtay'ın fiilden anlaşılması gereken hakkında bir tercih yapıp fiil tekliği uygulamasında birlik sağlaması gerektiği sonucuna ulaşılmıştır.

Anahtar Kelimeler: Fiil, Hareket, Netice, Fiil Tekliği, Fikri İçtima

INTRODUCTION

The general theory of crime considers crime as a legal institution.[1] The main subject of the general theory of crime is the criminal act.[2] What should be understood from the concept of act is one of the most controversial issues in criminal law.

1 Nurullah **Kunter,** Suçun Kanuni Unsurları, 2th Press, Der Publishing, İstanbul 2022, p. 1.

2 **Kunter,** Suçun Kanuni Unsurları, p. 1.

In criminal law, the more acts there are, the more crimes; and the more crimes, the more punishments.[3] This principle states that *"in criminal law, determining crimes and penalties separately is the rule, and combining crimes is the exception"*.[4] According to this principle, each act[5] constitutes a separate crime and penalty for each crime. The point that constitutes the exception is the cases where a separate responsibility is not foreseen for each crime related to more than one crime committed by the perpetrator and it is necessary to punish only one of these conducts. These situations, on the other hand, show themselves as a combination of crimes in criminal law.[6] In TPC No. 5237, the determination of the number of crimes committed is not based on the result but on the act.[7] It will be necessary to determine the number of acts in the context of determining the number of crimes committed in the consolidation of penalties. This reveals the importance of the concept of act. In the preparation of the Turkish Penal Code No. 5237, the rule of actual aggregation[8] was adopted.[9] There are some exceptions to the rule of actual aggregation and these exceptions are regulated under the section of "joinder of crimes" in TPC, including

3 Neslihan **Göktürk,** "Türk Hukuku'nda Suçların İçtiması", Journal of Criminal Law Criminology, V. 2, I. 1-2, 2014, p. 31.

4 Çetin **Akkaya,** "Suçların İçtiması Bağlamında Fiil Tekliği", Journal of Court of Jurisdictional Disputes, V. 7, I. 13, 2019, p. 2.

5 In this study concept of "act" used as *"fiil"* in Turkish. Also concept of "conduct" used as *"hareket"* in Turkish.

6 **Göktürk,** "Türk Hukuku'nda Suçların İçtiması", p. 31-32.

7 İzzet **Özgenç**, Türk Ceza Hukuku Genel Hükümler, 16th Press, Seçkin Publishing, Ankara 2020, p. 642.

8 The aggregation, which is also called as union, fusion or gathering, is divided into two as the aggregation of crimes and punishments. The combination of crimes leads to the non-implementation of the punishment of some of the crimes that are associated with the perpetrator. The aggregation of punishments, on the other hand, makes it possible to combine more than one sentence given in one or different trials against the same perpetrator. Mustafa **Avcı,** "İslam ve Osmanlı Ceza Hukukunda İçtima", Kırıkkale Law Journal, V. 1, I. 1, 2021, p. 3.

9 In Philippines, conceptual aggregation is considered in the same way with Turkey. In Philippines Penal Code it is called "Penalty for Complex Crimes". This provision says that: *"When a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."* https://amslaw.ph/philippine-laws/criminal-law/revised-penal-code-of-the-philippines Access Date: 5.3.2022.

successive crime, conceptual aggregation and compound crime.[10] The concept of act and the singularity or plurality of the act are important within the scope of conceptual aggregation. More than one crime may be caused by a single act, or the same crime may be committed more than once with a single act.

In the TPC numbered 5237, in terms of deviation from the target, no regulation was made contrary to Art. 52 of the TPC numbered 765.[11] In the case of deviation from the target, the provisions of the disparate (*farklı nev'iden*) or congenerous (*aynı nev'iden*) conceptual aggregation will be applied according to the conditions of the fact.[12] Considering the justification of Art. 44 of the TPC, it is foreseen that in the case of deviation from the target, the provisions regarding the conceptual aggregation will be applied.[13]

Art. 43/2[14] of the TPC regulates that if the same crime is committed with a single act against more than one, a penalty will be imposed. In Art. 44[15] of the TPC, it is regulated that a person who causes more than one different crime to occur with an act committed will be punished for the crime that requires the heaviest punishment. In congenerous conceptual

10 Ö. Ceren **Yavuz,** Hedefte Sapma ve Ceza Sorumluluğu, Seçkin Publishing, Ankara 2020, p. 95.

11 **Özgenç,** p. 654.

12 **Özgenç,** p. 654; **Yavuz,** p. 95.

13 *"Both in doctrine and in practice, the opinion that the rule of conceptual aggregation should be applied in the case of deviation from the target is dominant. For this reason, it has been abandoned in the legal regulation to evaluate the deviation in the target together with the mistake in the individual. For instance, a stick thrown to injure a person may break the glass of the shop window after injuring the victim or without hitting the victim. In this case, with the act of throwing a stick, both the crime of injury, which has been completed or at the stage of attempt, and the crime of damaging someone else's property are committed. In the same way, a bullet fired from a gun to kill a person may cause the death or injury of another person, due to hitting the wall without hitting the victim by bouncing. In this case, the crime of willful killing for the targeted person remained at the stage of attempt; However, in terms of the person whose death or injury is caused as a result of bouncing, the crime of killing by negligence or injuring by negligence is committed. In such cases, the person causes the formation of more than one different crime with an act, and it should be contented with the punishment of the heaviest punishment among these crimes."* The Justification of TPC Art. 44, https://ceza-bb.adalet.gov.tr/ Access Date: 9.5.2021

14 *"The provisions of the paragraph one shall apply where a crime is committed against more than one person with a single act."*

15 *"A person who commits more than one crime with a single act shall only be sentenced for the crime that requires the heaviest penalty."*

aggregation, the perpetrator commits the same crime against more than one person with a single act, whereas in disparate conceptual aggregation, the perpetrator causes the formation of more than one crime with a single act. In this context, in terms of both institutions, the *"singularity of the act"* committed by the perpetrator emerges as a common condition.[16] From this point of view, the concept of act is important in terms of determining criminal responsibility. Accordingly, criteria based on the singularity or plurality of the act emerges from the meaning of the act.

The provision on conceptual aggregation is mainly regulated in general part of the TPC. However, spesific provisions about this topic are also included in special part of the TPC. Since the study focuses on the singularity of act in the application of conceptual aggregation in general, spesific aggregation issues will not be mentioned.

I. THE CONCEPT OF ACT

There are two basic views in the doctrine about what should be understood from the act in the context of the joinder of crimes. One of them is that the *"conduct"* should be understood from the act, while the other is that the *"conduct, result and causal relation"* should be understood. the basis of this difference of opinion is based on whether the act element includes the result or whether the result should be evaluated as a separate material element.

In the natural (*causal*) conduct theory adopted by the classical crime theory, it is argued that the act element contains conduct, result and causal relation.[17] However, in practice the act means result for this theory. Based on the fact that every crime has a result, it is argued that one act does not constitute one conduct. According to *Kunter*[18], who is the first defender of this view in Turkish doctrine, the concept that violates various rules and should be evaluated as a single act is not a conduct, but an act that contains the result. Conduct, according to the author, is the way the perpetrator

16 **Yavuz,** p. 96.

17 See. Nevzat **Toroslu**/Haluk **Toroslu,** Ceza Hukuku Genel Kısım, Savaş Publishing, Ankara 2019, p. 369; Sulhi **Dönmezer**/Sahir **Erman,** Nazari ve Tatbiki Ceza Hukuku Cilt II, Der Publishing, İstanbul 2019, p. 683; On causal conduct theory, see. Selçuk, **Sami**, *Suç Genel Kuramı*, Seçkin Publishing, Ankara 2021, 68 ff.

18 Mehmet Emin **Artuk**/Ahmet **Gökcen**/Mehmet Emin **Alşahin**/Kerim **Çakır,** Ceza Hukuku Genel Hükümler, Adalet Publishing, 14th Press, Ankara 2020, p. 804.

realizes her/his behavior.[19] Conduct is the nexus and means between subjective and objective elements of the crime. The act is the result, which is the proximate goal achieved by the use of energy. According to those who support this view, in the case of damage to property with a single conduct such as shooting, conceptual aggregation will not be on the agenda; as a matter of fact, the act evaluated as the result is not singular.[20]

Final (*finalist*) crime theory, on the other hand, accepts conduct, result and causality as independent material elements of typicality.[21] In this theory, the result is not a sub-element of the act. In this context, while the classical theory evaluates the concept of act as the result, the view that separates the conduct and the result from each other evaluates the concept of act as the conduct.[22]

Within the scope of preparatory works of the Italian Penal Code, which is the source of the Turkish Penal Code No. 765, it was first argued that the act should be one in the context of conceptual aggregation, but later on, this view has changed. Subsequently, it was argued that this thought was not appropriate, and that if the result was singular, disparate conceptual aggregation might come to the fore, and the concept of act indicating the result was consciously preferred instead of the conduct.[23]

In the classical understanding, which argues that the concept of act is determined according to the result, the singularity and plurality of the act are determined according to the result.[24] In the context of disparate conceptual aggregation, in this understanding, despite the plurality of conducts such as stealing flour sacks one by one, shooting against the

---

19 Nurullah **Kunter,** "Fikri İçtima Sebebi ile Suçların Birleşmesi", Istanbul Law Review, V. XIV, I. 1-2, 1948, 365 ff (Quoted by **Artuk/Gökcen/Alşahin/Çakır,** p. 804 (n. 511)).

20 Hamide **Zafer,** Ceza Hukuku Genel Hükümler (TCK m.1-75), 7th Press, Beta Publishing, İstanbul 2019, p. 593.

21 Hakan **Karakehya,** Ceza Hukuku Genel Hükümler, Adalet Publishing, Ankara 2022, p. 51.

22 **Yavuz,** p. 97; Demirbaş also argues that the concept of act expresses the conduct, the results and the causal relation (p. 233), but he also argued that the concept of act singularity in the context of conceptual aggregation is conduct since he accepts that the opinion that gives superiority to the conduct in terms of the time the crime was committed. See. Timur **Demirbaş,** Ceza Hukuku Genel Hükümler, 16th Press, Seçkin Publishing, Ankara 2021, p. 583.

23 **Dönmezer/Erman,** p. 683.

24 See. Faruk **Erem,** Ümanist Doktrin Açısından Türk Ceza Hukuku Genel Hükümler Cilt I, Sevinç Publishing, 11th Press, Ankara 1976, p. 355.

same victim more than once, and torturing family members, the act is singular because the result is singular.[25]

According to the view that conduct should be understood from the concept of act, the number of conducts performed by the perpetrator expresses the number of acts. Considering that there is not necessarily a result in every crime and that most of the crimes are purely conduct crimes, it cannot be concluded that the result is singular from the singularity of the act in terms of disparate conceptual aggregation. When it is concluded that the conduct should be understood from the concept of act, the application of the provisions of the conceptual aggregation requires that the perpetrator's conduct be singular.[26]

In the German Penal Code, there is no terminology association between the conceptual aggregation and the act with the TPC. German Penal Code Art. 52 regulates conceptual aggregation as *"if the same conduct violates more than one criminal statue or the same criminal statue more than once, only one penalty is imposed".* In this sense , the concept of act is excluded from German Penal Code, but a conduct-based approach is.[27] According to an opinion in the doctrine, due to this concept difference and the lack of term unity, the German Criminal Code cannot be taken as a basis in the interpretation of the institution of conceptual aggregation in terms of Turkish Law.[28] As a matter of fact, in this context, the principles used in the German doctrine to determine whether the act is singular or not will not be valid in Turkish Law.[29] In German law, the result is evaluated within the legal type, the objective element is considered to consist only of the concept of act, and the term act is used in exchange for the term crime.[30] For these reasons, the conduct is taken as the basis for determining whether the act is singular or not. According to this view, it

25 **Erem,** p. 355.

26 **Yavuz,** p. 98.

27 İlhan **Üzülmez**/Mahmut **Koca,** Türk Ceza Hukuku Genel Hükümler, Seçkin Publishing, 14th Press, Ankara 2021, p. 509-510; **Dönmezer/Erman,** p. 683; On the issue that a single conduct is sought in conceptual aggregation, see. Bernd **Heinrich,** Ceza Hukuku Genel Kısım-Cezalandırılabilirliğin Temel Esasları Tamamlanmış ve Teşebbüs Edilen Suçlarda Suçun Yapısı, transl. Hakan Hakeri/Yener Ünver/Veli Özer Özbek/Özlem Çakmut Yenerer/Barış Erman/Koray Doğan/Ramazan Barış Atladı/Pınar Bacaksız/İlker Tepe, Adalet Publishing, Ankara 2014, p. 400-402.

28 **Dönmezer/Erman,** p. 683.

29 **Dönmezer/Erman,** p. 683.

30 **Dönmezer/Erman,** p. 683.

does not seem possible to make direct inferences about Turkish Law in accordance with the acceptances listed in German law.[31]

In American law, there is no general acceptance about act singularity and conceptual aggregation. Generally, there is a distinction between conduct crime and result crime.[32] Therefore, it is observed that the concept of act in American law does not include conduct and result together. Within the scope of actus reus, which is the element of the crime, the act must cause a result prohibited by the legal order. The actus reus, not the act, requires the existence of the result if the crime is a result crime. Nevertheless, there are opinions that argue all types of acts include the result.[33] The general opinion is that separating the result from the act as an element will lead to more accurate results.[34] In terms of conceptual aggregation, there is an application within the scope of the merger doctrine.[35] According to the merger doctrine *"in criminal law, if a defendant commits a single act that simultaneously fulfills the definition of two separate offenses, merger will occur. This means that the lesser of the two offenses will drop out, and the defendant will only be charged with the greater offense. This prevents double jeopardy problems from arising."*[36] The doctrine of merger refers to the creation of a situation in favor of the perpetrator by prescribing a single criminal conviction instead of conviction for more than one crime. A conviction for the most serious crime creates an advantageous situation for the perpetrator, because the less important crime is not taken as a basis and will not be recorded in the judicial record. This requires that the crimes were not committed at different times and that different crimes were committed. However, it

31 Fulya **Eroğlu,** "Sapma Kavramı ve Türk Ceza Hukukunda Sapma Halinde Uygulanacak Hükümler", The Journal of Yeditepe University Faculty of Law, V. 9, I. 2, 2012, p. 650.

32 See. William **Wilson,** Criminal Law Doctrine and Theory, Pearson, England 2011, p. 152.

33 Michael **Moore,** Act and Crime-The Philosophy of Action and its Implications for Criminal Law, Oxford University Press, United States 2010, p. 387.

34 See for detailed information Selman **Dursun,** Disiplinlerarası Yaklaşımla Ceza Hukukunda Hareket Kavram ve Terimi, Seçkin Publishing, Ankara 2021, p. 225*ff.*

35 For detailed info, see. *People v. Burton* California Supreme Court, No: 15823, 28.12.1971. Paul H. **Robinson,** The Structure and Limits of Criminal Law, Routledge, New York 2016, p. 71.

36 Cornell Law School, https://www.law.cornell.edu/wex/merger_doctrine Access Date: 5.3.2022.

should be noted that this practice is not the same for each federation and federal state.[37]

The Turkish Penal Code No. 5237 continued to use the concept of act as it was used in the Law No. 765 in the provision on conceptual aggregation. However, in the justification of the Law, although the justification is excluded from the article, the concept of act is used in the sense of conduct. According to one of the views defending the classical understanding, since the justifications of the article are excluded from the text of the article and can only be used as a means of interpretation, it will not be possible to interpret the words used in the law, and in this context, it will not be possible to reach the conclusion that the term *"act"* can be accepted in the sense of conduct in conceptual aggregation.[38] However, the TPC Art. 8, clearly states that the act excludes the result.[39] In our opinion, the ratio legis of Art. 8 is intended to extend the state's territorial jurisdiction in the exercise of criminal jurisdiction. Therefore, it is not possible for this article, which is not directly related to the theory of crime and which is related to the determination of criminal jurisdiction in terms of location, to constitute a basis for the view that the act should be understood as the conduct.

---

37 LegalMatch, "Doctrine of Merger in Criminal Sentencing", https://www.legalmatch.com/law-library/article/doctrine-of-merger-in-criminal-sentencing.html, Access Date: 14.12.2022.
In *People v. Ireland* (70 Cal.2d 522, 539 (1969)), it had been concluded that, based on merger doctrine, in the cases where the felonious assault and the homicide were committed against the same victim; defendant could not be convicted of felony murder for killing his wife by assaulting her with a deadly weapon. The merger doctrine is needed to prevent every felonious attack that results in the death of a person from escalating to the level of first-degree murder. If the accused deliberately attacks another person with a deadly weapon and the victim dies, punishing the defendant for first degree murder regardless of whether the accused had intended to kill the victim would not be fair (see *State v. Jones*, 353 N.C. 159, 170 n.3 (2000)). Shea Denning, "Merger and Felony Murder: A 2017 Update", North Carolina Criminal LawA UNC School of Government Blog, May 3 2017, https://nccriminallaw.sog.unc.edu/merger-felony-murder-2017-update/ Access Date: 08.31.2022). Since armed robbery is sufficiently distinct from the homicide, felony murder could be considered seperately in the court. Claire **Finkelstein**, "Merger and Felony Murder", Defining Crimes: Essays on The Special Part of the Criminal Law ed. R.A. Duff-Stuart Green, Oxford: Oxford University Press, 2005, p. 219.

38 **Dönmezer/Erman,** p. 684; **Eroğlu,** p. 650.

39 **Koca/Üzülmez,** p. 510; Ahmet **Kılıç,** Suçların İçtiması Bağlamında Fiil Tekliği, Doctoral Thesis, Yıldırım Beyazıt University, 2023, p. 62-63.

In our opinion, there are provisions in the TPC that require the understanding of the conduct of the act. According to Art. 23 of the TPC, the statement *"if an act causes a graver or different result than intended..."* is an important argument in this discussion. According to the wording of this article, it is not logically possible for a result to cause a graver or different result than the one intended. When an act is understood as a conduct, it is grammatically possible that a graver or other result than the one intended by a conduct committed may be realized. It is possible to reach the same conclusion for the concept of *"an act committed intentionally and unlawfully for accomplicity"* expressed in Art. 40/1 of the TPC regulating the rule of dependency. Here, what is meant by the commission of the act should be considered as the commission of the conduct. Art. 44 of the TPC refers to the commission of the act. The commission of the result is not possible grammatically. The conduct is committed and the result is realised. Even in Art. 22/6 of the TPC, the concept of act is excluded in the expression *"the result caused as a result of reckless conduct."* In fact, the result caused by the negligent act cannot be committed. Based on the concept of committing the act, it can be concluded that the act should be understood as conduct in the context of Art. 44 of the TPC.

In our opinion, arguing that the act is the result will reduce the number of examples that can be given through conceptual aggregation and limit its application.[40] The most classic example given in the opinion that accepts that the result should be understood from the act is the case of the father having sexual intercourse openly and forcibly with his own daughter and sexual abuse in public openly (TPC no. 765 Art. 419, 440).[41] Thus, with a single act (*when it is accepted a the result*), both TPC Art. 102 and TPC rt. 225 are violated.[42] However, if the most common example is the result of two deaths with a single bullet, the provisions of conceptual aggregation will not be applicable.[43] According to the contrary view, since the intellectual aggregation is an exception to the general rule and the exception rules should be interpreted narrowly, there is no basis for the argument that understanding the result from the act will narrow the

40 See. **Artuk/Gökcen/Alşahin/Çakır,** p. 804; Ayhan **Önder,** Ceza Hukuku Dersleri, Filiz Publishing, İstanbul 1992, p. 458.

41 **Önder,** p. 458; **Artuk/Gökcen/Alşahin/Çakır,** p. 804.

42 Veli Özer **Özbek**/Koray **Doğan**/Pınar **Bacaksız,** Türk Ceza Hukuku Genel Hükümler, 12th Press, Seçkin Publishing, Ankara 2021, p. 558.

43 On example, see. **Özbek/Doğan/Bacaksız,** p. 572.

application area of the conceptual aggregation.[44] In our opinion, narrowing the application of conceptual aggregation, which is an important tool in ensuring criminal justice, will not serve the balance that the TPC is trying to establish.

II. THE ACT SINGULARITY IN THE CONCEPTUAL AGGREGATION

The concepts of act singularity and plurality and crime singularity and plurality are different.[45] However, the singularity and plurality of acts constitute the condition and connection point of the singularity and plurality of crimes.[46] In the distinction between crime singularity and plurality, the number of the conducts or the results is not taken as a basis, but the number of violated norms.[47] Since more than one crime is sought to be committed with a single act in TPC Art. 44, the number of the acts cannot be determined by the number of crimes.[48] The criterion of violation of norms, which constitute the mandatory and prohibitive elements of the provisions of the law, should be used in the distinction between the singularity and plurality of crimes. In other words, the violation of the legal provision in which tort (*unrecht*) is typically regulated should be based on the unity-multiplicity of crime. The basic idea of the necessity of determining the number of crimes based on the number of crime types violated is that it is possible to violate the same type of crime more than once with a single conduct and to violate different types of crimes with a

44 Hakan **Hakeri,** Ceza Hukuku Genel Hükümler, 26th Press, Adalet Publishing, Ankara 2022, p. 611.

45 **Akkaya,** p. 4.

46 **Akkaya,** p. 4.

47 **Akkaya,** p. 4; *"The act singularity or plurality and crime singularity or plurality do not mean the same. Despite the fact that the act is singular in the conceptual aggregation, it is seen that the plurality of acts is a prerequisite in the succesive crime where the number of crimes is plural. In practice and doctrine, according to the concept of violated norm, as a rule, there is as many crime as the number of acts, in other words, it means seeking the realization of a crime with all its elements based on the criterion of the violation of the norm in determining the number of crimes, but this is not always the case, as a single act or conduct may constitute more than one crime. It is seen that the act or conduct can result in a single crime."* Ct. of Cass. (the Court of Cassation), 7th CD. (Criminal Department), of the, F. (File no) 2010/7068, D. (Desicion no) 2010/1574, 01.03.2017 (https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/pf/sorgula.xhtml)

48 See the same direction **Akkaya,** p. 4.

single conduct.[49] However, according to an opinion in the doctrine, the singularity of the act stems from the fact that the decision to commit a crime is singular.[50] If there is a decision to commit a crime, even if the conduct is singular, there may be more than one crime even if the act is singular.[51] In American law, some writers support this view. [52] Even if there is more than one result in the incident, if there is only one intent (*decision-intention to commit a crime*), there will be a single crime.[53] According to this view, if the perpetrator's intention is in question in terms of the second result, actual aggregation will be applied, not conceptual aggregation.[54] According to another view in the doctrine,[55] if the subject of the crime is the same, it is mentioned that the crime is singular. If the subjects of the crime are different, there will be more than one crime. If a crime has been committed with a single act, but there is only one subject, TPC Art. 43/2 can be applied since the crime will also be singular. In the case of theft crime, when shoes belonging to more than one person are stolen from the mosque, there will be only one act, based on the legal point of view of singularity of conduct. According to this view, even if the shoes belong to different people and different people are victimized, there will be a crime of theft committed against more than one person with a single act.[56]

In the German doctrine, singularity of conduct is evaluated in three ways. The first of these, the singularity of natural conduct, is based on the principle that each bodily behavior performed by the human body is independent conduct. Typical singularity of conduct is based on the principle that more than one natural conduct is combined by the legal type

---

49 Neslihan **Göktürk,** Fikri İçtima (Suçların İçtiması), Adalet Publishing, Ankara 2013, p. 58.

50 **Zafer,** p. 593.

51 T. Tufan **Yüce,** Ceza Hukuku Dersleri Cilt:1, Şafak Publishing, Manisa 1982, p. 378; Fulya **Korkmaz,** "Hırsızlık Suçunda Fiilin Tekliğinin Belirlenmesi Sorunu", Journal of Turkey Bar Association, I. 151, 2020, p. 98-99; Berthold **Haustein,** "Alman Ceza Hukukunda İçtimanın Esasları", transl. M. Nihat Kanbur, Journal of Criminal Law, V. 9, I. 26, 2014, p. 223; In the opposite direction, see. **Koca/Üzülmez,** p. 536.

52 See. Frank Edward Jr. **Horack,** "The Multiple Results of a Single Criminal Act", Articles by Maurer Faculty, I. 1202, 1937, p. 806.

53 For critique of this opinion which is about single intent, see. Kayıhan **İçel,** "Fikri İçtima Üzerine Bir İnceleme", Istanbul Law Review, V. 30, I. 1-2, 1964, p. 174.

54 **Özbek/Doğan/Bacaksız,** p. 571.

55 **Özgenç,** p. 643.

56 **Özgenç,** p. 644.

and is subject to a common evaluation, and is a single conduct. Ultimately, the singularity of legal conduct is based on the principle of evaluating natural conducts as one for legal reasons.[57]

According to the approach adopted by the TPC, which considers the act as conduct, it is possible to apply the provisions of the conceptual aggregation even if the results of a single conduct are more than one. For instance, there are two results in the case of both the victim's death and the victim's jacket being damaged as a result of the perpetrator's shooting. Thus, TPC Art. 44 will be applicable.[58]

If the perpetrator commits another crime to commit a crime, a single act cannot be mentioned. For example, if the postman opens the envelope with the belief that there may be money in the letter to be distributed and takes the money inside (TPC Art. 132 and 141), there will be more than one conduct.[59]

Although the concept of singularity and plurality of the act is generally expressed in this way, it is necessary to take advantage of the views of singularity of conduct in the natural sense and singularity of conduct in the legal sense to determine this concept from a technical point of view.

A. SINGULARITY OF CONDUCT IN THE NATURAL SENSE (Handlung im natürlichen sinne[60])

According to the view of the singularity of conduct in the natural sense, conduct is an expression of personality that is considered important by criminal law.[61] According to this view, the number of body conducts that occur as a result of a voluntary decision made in the singularity of the act should be taken as a basis. There are as many crimes as the number of voluntary acts. The singularity of the conducts, on the other hand, is not related to the number of results realized.[62] In the fact that the perpetrator slaps the victim more than once with the intention of injuring, or kicks one or more times with more than one slap, each slap or kick based on a

57 For detailed info see. **Heinrich,** p. 407-415.

58 Ct. of Cass., 9th CD., F. 2010/690, D. 2010/3988, 07/04/2010 (https://kararara ma.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/pf/sorgula.xhtml)

59 **Artuk/Gökcen/Alşahin,** p. 805.

60 Fatih Selami **Mahmutoğlu**/Serra **Karadeniz,** Türk Ceza Kanunu Genel Hükümler Şerhi, 2th Press, Beta Publishing, Istanbul 2021, p. 1077.

61 **Akkaya,** p. 10.

62 **Artuk/Gökcen/Alşahin/Çakır,** p. 805.

voluntary decision will constitute a separate act.[63] The realization of more than one result based on a single conduct will not affect the singularity of the act. In the case of more than one shooting at different persons, it will be accepted that there is more than one conduct in the natural sense, since there is more than one voluntary conduct.[64] It does not matter if the legal values violated by the conduct are different.[65] In addition, it is not important that multiple conducts be performed simultaneously. For example, if a person shoots at the same person or different persons at the same time with his right and left hand, or picks up (*theft*) different items, there are two conducts in the natural sense.[66]

B. Singularity of Conduct in the Legal Sense (Handlung im juristischen Sinn[67])

In the legal sense of singularity of conduct, the act is evaluated from a legal point of view. When more than one act in the natural sense is considered legal, if it creates a whole meaning, there is only one single act.[68] In the natural sense, injuring a person with more than one knife blow at non-significant intervals is considered as a single act in the legal sense. Other results violated by the perpetrator's act towards a target are considered within the scope of conceptual aggregation.[69] According to this view, even if there is more than one act in the natural sense in two cases, there is only one act in the legal sense: Natural act singularity and typical act singularity (*normative singularity*[70]).[71]

---

63 **Artuk/Gökcen/Alşahin/Çakır,** p. 806.

64 **Akkaya,** p. 10.

65 **Akkaya,** p. 10.

66 **Koca/Üzülmez,** p. 511.

67 **Mahmutoğlu/Karadeniz,** p. 1078.

68 **Koca/Üzülmez,** p. 511; *"By not attending the hearings, dated 25/09/2007 and 07/09/2009, of the title cancellation and registration lawsuit, filed by the lawyer registered with the ... Bar Association, without any excuse, causing the file to be removed from the process and accepting filed case as non filed by not requesting a renewal, regardless of the fact that he caused the victimization of the participant and although there is more than one conduct naturally in the act in the legal sense it committed with a single act ... the determination of an excess penalty by applying Article 43 of the TPC necessitated annulment."* Ct. of Cass., 9th CD., F. 2010/15840, D. 2010//935, 26/01/2016 (**Akkaya,** p. 4-5).

69 **Özbek/Doğan/Bacaksız,** p. 570.

70 **Akkaya,** p. 12.

71 **Koca/Üzülmez,** p. 511; **Özbek/Doğan/Bacaksız,** p. 571; **Artuk/Gökcen/Alşahin/Çakır,** p. 807.

1. Natural Act Singularity (natürliche Handlungseinheit[72])

In natural act singularity (*natural unity of conducts*[73]); although there is more than one act in the natural sense, if these conducts are based on a single will and in the view of an objective and impartial observer (*reflected unity - the general integrity of the act*) and are closely related to each other in such a way that they can be evaluated as a single act in terms of place and time and there is a narrow connection between them, these conducts are considered as a single act.[74] According to an opinion in the doctrine, natural act singularity causes inconvenience in evaluating the acts committed with eventual intent within the scope of conceptual aggregation.[75] In the example of the perpetrator throwing a bomb into a crowded place with a single conduct, it is argued that in the case of death or injury results, it would not be fair to hold the perpetrator responsible only for the heaviest punishment within the scope of conceptual aggregation rule, and this acceptance would not be compatible with the eventual intent rules.[76] In this case, it is argued that there are as many crimes as the results and the perpetrator should be punished on the basis of the actual aggregation rule. According to this view, by connecting the singularity of the conduct to the singularity of the decision, if a single conduct is the result of a single decision, it follows that other consequences will be ignored. To prevent this, the result must be taken as basis for conceptual aggregiation. In this way, the application area of the rule of conceptual aggregation will be narrowed and unfair results can be prevented, and this institution will not be a reward for the perpetrator. The basis of this view is the acceptance that the result should be understood from the act, at the point of accepting more than one act with eventual intent as a single act in order to prevent an unfair result.

---

72 **Mahmutoğlu/Karadeniz,** p. 1080.

73 **Özbek/Doğan/Bacaksız,** p. 573.

74 **Mahmutoğlu/Karadeniz,** p. 1080-1081; **Özbek/Doğan/Bacaksız,** p. 574; Soner **Demirtaş,** "Doğal Hareket Tekliği", Justice Academy of Turkey Review, V. 7, I. 28, 2016, 130 ff.; **Göktürk,** p. 104; In succesive crime, there are naturally multiple crimes; however, conducts which are evaluated in legal unity, violate the same law provision and therefore it is concluded that there is only single crime. **Özbek/Doğan/Bacaksız,** p. 571;
On the German Federal Supreme Court's definition in the same direction see. **Koca/Üzülmez,** p. 515.

75 **Özbek/Doğan/Bacaksız,** p. 574.

76 See. **Özbek/Doğan/Bacaksız,** p. 574.

In practice, it is debatable whether there should be four elements in the natural act singularity in a concrete case, and this issue leads to the conclusion that the singularity of the natural act singularity has two different forms of appearance: *"Realization of the type of crime with repetitive conducts"* and *"realization of the type of crime in succession (with successive acts)"*.[77]

The realization of a type of crime with repetitive conducts is the realization of a crime with similar and repetitive conducts. In the crime of plundering, taking the phone first and then taking the money can be given as an example.[78] In the realization of a crime type with successive conducts, the perpetrator must go through different stages in terms of result.[79] Going through injuring which results in the crime of manslaughter can be an example for this.

According to the acceptance of the German doctrine, the successive crime is a special appearance form of the singularity of conduct in the legal sense. According to this understanding, more than one act in the natural sense in a successive crime should be considered as a single act in the legal sense, and since these acts that are legally united violate the same provision of law, a single crime should be mentioned. However, in Turkish law, since the same crime is committed more than once and there is more than one act in a successive crime, it will not be possible to mention a successive conduct.[80]

77 **Koca/Üzülmez,** p. 515.

78 *"The will of the defendants was determined from the very beginning to take a certain amount of money from the victim, and since it is understood that the conducts they carried out after the first conduct were aimed at taking from the victim 500 Liras that they initially aimed to take along with the other items they took, it should be accepted that the conducts of the defendants constitute the only crime of plunder. For this reason, the decision of the domestic court to punish the defendants on two separate charges of looting is not correct.."* Ct. of Cass. CACC. (General Assembly of Criminal Chambers of Court of Cassation, F. 2014/617 D. 2014/271, 20.05.2014 (https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/pf/sorgula.xhtml)

79 **Koca/Üzülmez,** p. 515.

80 See. **Koca/Üzülmez,** p. 517.

2. Typical Singularity of Conduct (tatbestandliche Handlungseinheit[81])

Typical singularity of conduct means that more than one conduct in the natural sense is subjected to a common legal evaluation in the legal definition of crime and linked together as a single conduct.[82] The typical singularity of conduct manifests itself concretely in active crime, compound crime, alternative crime and continuous crime.[83] For instance, completing the crime of forgery, which is an active crime, in a private document depends on the preparation of the private document as fake and the use of the fake private document. Even if there is more than one conduct here, it will be necessary to defend that a single act in the light of typical singularity of conduct. Naturally, various conducts are combined by law in continuous crimes. The multiplicity of conduct in continuous crimes is necessary for the emergence and continuation of illegality. These conducts are also considered singular.[84]

In some cases, behaviors in which the effect of illegality is not completed by being committed, but continues for a certain period of time, are also considered as a single act in normative terms.[85] For example, in the crime of torture (TPC Art. 95), typical conducts that are incompatible with human dignity and cause physical or mental suffering, affect perception or willpower, and humiliation should be committed systematically.[86] More than one systematic conduct that forms a whole will be considered as a single act.

Typical singularity of conduct is also in question when the types of crimes that are sufficient to be committed with a single conduct are committed with more than one repetitive conduct. For example, if the thief carries the items from the house to her/his vehicle one by one, and the conducts are repeated, the conduct will be considered as singular.[87] In the text of the law, more than one conduct may be expressed in the commission of some crimes. For example, in the crime of sexual assault, all sexual behaviors that show temporal and spatial coexistence with

81 **Mahmutoğlu/Karadeniz,** p. 1078.
82 **Göktürk,** p. 130; Eric **Hilgendorf**/Brian **Valerius**, Alman Ceza Hukuku Genel Kısım. transl. Salih Oktar, Yetkin Publishing, Ankara 2021, p. 347.
83 **Koca/Üzülmez,** p. 511.
84 **Koca/Üzülmez,** p. 512.
85 **Hilgendorf/Valerius,** p. 347.
86 **Koca/Üzülmez,** p. 513.
87 **Koca/Üzülmez,** p. 513.

expression of "with sexual behavior" will typically be considered as a single act.[88]

ASSESSMENT CONCLUSION

On the basis of the classical theory, conduct refers to human behavior, while the concept of act covers conduct, result and the causal relation between them. In this understanding, the concept of act is broader than conduct.[89]

The majority opinion we agree with in the doctrine is that the concept of act should be understood as conduct. In our opinion, it should be concluded from the provisions of Art. 22/6, 23, 40/1, 43/2, 44 of the TPC that the expression "act" should be understood as "conduct". Grammatically, when these articles are interpreted, it is not possible to commit the result. However, the conduct can be committed and the result is realized. At this point, the singularity of conduct should be understood from the concept of act singularity at the point of conceptual aggregation. Reaching a decision by making a separate evaluation in each concrete case will constitute a more effective solution in ensuring substantial justice.

It is important to adopt an understanding of the unity of acts. In which cases will more than one act be considered as a single act? At this point, there are two main views in the doctrine: singularity of act in the natural sense and singularity of act in the legal sense. The singularity of conduct in the legal sense offers the most logical solution in terms of the applicability of conceptual aggregation. The fact that the act is singular in the conceptual aggregation does not imply the singularity of the voluntary conduct. Although there is more than one natural body conducts, the conduct that serves to violate the crime type is still evaluated within the concept of a single conduct.[90] If conducts are based on a single will and in the view of an objective and impartial observer (*reflected unity - the general integrity of the act*) and are closely related to each other in such a way that they can be evaluated as a single act in terms of place and time and there is a narrow connection between them, these conducts are considered as a single act.

88 **Koca/Üzülmez,** p. 513.
89 **Karakehya,** p. 54.
90 **Zafer,** p. 594; **Artuk/Gökcen/Alşahin/Çakır,** p. 809-810.

It is not important to make a decision to commit the same or different crime in conceptual aggregation.[91] Although singularity is not important in terms of the will to commit a crime, if more than one crime is caused by a single act, the foreseeing of other results besides the actual desired result will not affect the singularity of the conduct unless this result is taken into account.[92] Since the act is singular, the perpetrator will be evaluated as if a single crime has been committed and will be punished for the crime for the heaviest punishment. An evaluation has been made on the example of the singularity of conduct in the doctrine.[93] In other words, in the case that the perpetrator fires repeatedly with the intention of killing A, and in the case A is killed by one of the bullets, B is injured and property is damaged by a bullet, in the determination of a single act, the decision to commit a crime is based on the opinion that there is only one act in question. According to the view based on the number of acts in the legal sense, there will be single act; however, according to the view based on the result and the legal value protected by crime, there should be three acts. This shows how important it is to reveal the singularity of the act. To accept the approach adopted by the TPC No. 5237 on an issue that has fundamental results in the field of the punishability of individuals and to understand the conduct from the concept of act. In our opinion, if there is a single conduct, it would be appropriate to accept the singularity of conduct in the legal sense.

It is also not fair that there are differences of jurisprudence on such an important issue related to personal liberty. In Turkish law, the task of ensuring unity in the interpretation of the law in the judicial jurisdiction belongs to the Court of Cassation. It is important for the establishment of the principle of legal certainty that the Court of Cassation clarifies what should be understood by act and the singularity of act. In order to ensure unity in practice, the Court of Cassation should clarify this issue with a decision on the unification of conflicting judgments on an important issue regarding personal liberty.

91 **Özbek/Doğan/Bacaksız,** p. 572.
92 **Özbek/Doğan/Bacaksız,** p. 572.
93 **Zafer,** p. 593.

REFERENCES

Akkaya, Çetin, "Suçların İçtimaı Bağlamında Fiil Tekliği", Journal of Court of Jurisdictional Disputes, V. 7, I. 13, 2019, pp. 1-38.

Artuk, Mehmet Emin/**Gökcen,** Ahmet/**Alşahin,** Mehmet Emin/**Çakır,** Kerim, Ceza Hukuku Genel Hükümler, Adalet Publishing, 14th Press, Ankara 2020.

Avcı, Mustafa, "İslam ve Osmanlı Ceza Hukukunda İçtima", Kırıkkale Law Journal, V. 1, I. 1, 2021, pp. 1-30.

Demirbaş, Timur, Ceza Hukuku Genel Hükümler, 16th Press, Seçkin Publishing, Ankara 2021.

Demirtaş, Soner, "Doğal Hareket Tekliği", Justice Academy of Turkey Review, V. 7, I. 28, 2016, pp. 129-144.

Denning, Shea, "Merger and Felony Murder: A 2017 Update", North Carolina Criminal LawA UNC School of Government Blog, (May 3 2017) https://nccriminallaw.sog.unc.edu/merger-felony-murder-2017-update/ Access Date: 08.31.2022.

Dönmezer, Sulhi/**Erman,** Sahir, Nazari ve Tatbiki Ceza Hukuku Cilt II, Der Publishing, İstanbul 2019.

Dursun, Selman, Disiplinlerarası Yaklaşımla Ceza Hukukunda Hareket Kavram ve Terimi, Seçkin Publishing, Ankara 2021.

Erem, Faruk, Ümanist Doktrin Açısından Türk Ceza Hukuku Genel Hükümler Cilt I, Sevinç Publishing, 11th Press, Ankara 1976.

Eroğlu, Fulya, "Sapma Kavramı ve Türk Ceza Hukukunda Sapma Halinde Uygulanacak Hükümler", The Journal of Yeditepe University Faculty of Law, V. 9, I. 2, 2012, pp. 633-657.

Finkelstein, Claire, "Merger and Felony Murder", Defining Crimes: Essays on The Special Part of the Criminal Law, ed. R.A. Duff-Stuart Green. Oxford University Press, Oxford 2005.

Göktürk, Neslihan, "Türk Hukuku'nda Suçların İçtimaı", Journal of Criminal Law and Criminology, V. 2, I. 1-2, 2014, pp. 31-59.

Göktürk, Neslihan, Fikri İçtima (Suçların İçtimaı), Adalet Publishing, Ankara 2013.

Hakeri, Hakan, Ceza Hukuku Genel Hükümler, 26th Press, Adalet Publishing, Ankara 2022.

Haustein, Berthold, "Alman Ceza Hukukunda İçtimanın Esasları", transl. M. Nihat Kanbur, Journal of Criminal Law, V:9, I:26, 2014, pp. 223-224.

Heinrich, Bernd, Ceza Hukuku Genel Kısım-Cezalandırılabilirliğin Temel Esasları Tamamlanmış ve Teşebbüs Edilen Suçlarda Suçun Yapısı, transl. Hakeri, Hakan/Ünver, Yener/Özbek Veli Özer/Yenerer, Çakmut

Özlem/Erman, Barış/Doğan, Koray/Atladı, Ramazan Barış/Bacaksız, Pınar/Tepe, İlker, Adalet Publishing, Ankara 2014.
Hilgendorf, Eric/**Valerius**, Brian, Alman Ceza Hukuku Genel Kısım, transl. Salih Oktar, Yetkin Publishing, Ankara 2021.
Horack, Frank Edward Jr., "The Multiple Results of a Single Criminal Act", Articles by Maurer Faculty, I. 1202, 1937, pp. 805-822.
İçel, Kayıhan, "Fikri İçtima Üzerine Bir İnceleme", Istanbul Law Review, V. 30, I. 1-2, 1964, pp. 115-200.
Karakehya, Hakan, Ceza Hukuku Genel Hükümler, Adalet Publishing, Ankara 2022.
Kılıç, Ahmet, Suçların İçtimaı Bağlamında Fiil Tekliği, Doctoral Thesis, Yıldırım Beyazıt University, 2023.
Korkmaz, Fulya, "Hırsızlık Suçunda Fiilin Tekliğinin Belirlenmesi Sorunu", Journal of Turkey Bar Association, V. 33, I. 151, 2020, pp. 85-102.
Kunter, Nurullah, "Fikri İçtima Sebebi ile Suçların Birleşmesi", Istanbul Law Review, V. XIV, I. 1-2, 1948.
Kunter, Nurullah, Suçun Kanuni Unsurları, 2th Press, Der Publishing, İstanbul, 2022.
Mahmutoğlu, Fatih Selami/**Karadeniz,** Serra, Türk Ceza Kanunu Genel Hükümler Şerhi, 2th Press, Beta Publishing, Istanbul 2021.
Moore, Michael, Act and Crime-The Philosophy of Action and its Implications for Criminal Law, Oxford University Press, United States 2010.
Önder, Ayhan, Ceza Hukuku Dersleri, Filiz Publishing, İstanbul 1992.
Özbek, Veli Özer/**Doğan,** Koray/**Bacaksız,** Pınar, Türk Ceza Hukuku Genel Hükümler, 12th Press, Seçkin Publishing, Ankara 2021.
Özgenç, İzzet, Türk Ceza Hukuku Genel Hükümler, 16th Press, Seçkin Publishing, Ankara 2020.
Robinson, Paul H., The Structure and Limits of Criminal Law, Routledge, New York 2016.
Selçuk, Sami, Suç Genel Kuramı, Seçkin Publishing, Ankara 2021.
Toroslu, Nevzat/**Toroslu,** Haluk, Ceza Hukuku Genel Kısım, Savaş Publishing, Ankara 2019.
Üzülmez, İlhan/**Koca,** Mahmut, Türk Ceza Hukuku Genel Hükümler, Seçkin Publishing, 14th Press, Ankara 2021.
Wilson, William, Criminal Law Doctrine and Theory, Pearson, England 2011.
Yavuz, Ö. Ceren, Hedefte Sapma ve Ceza Sorumluluğu, Seçkin Publishing, Ankara 2020.

Yüce, T. Tufan, Ceza Hukuku Dersleri Cilt:1, Şafak Publishing, Manisa 1982.
Zafer, Hamide, Ceza Hukuku Genel Hükümler (TCK m.1-75), 7th Press, Beta Publishing, İstanbul 2019.
https://amslaw.ph/philippine-laws/criminal-law/revised-penal-code-of-the-philippines.
https://ceza-bb.adalet.gov.tr/.
https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/pf/sorgula.xhtml.