Concurrence of Crimes under Somali Law (Articles 44 – 46 of the Penal Code of Somalia)

Abstract: There are many cases when an actor commits two or more crimes before he is convicted for any of them. In such cases, a concurrence of crimes occurs. The Somali Penal Code provides the general legal regime for such crimes. Some special laws in Somalia (drafted or already in force) also affect their regime. The provisions on the concurrence of crimes and also other related legal provisions of the General Part of the Penal Code need modernization. The present paper is an attempt to clarify the basic ideas of the concurrence of crimes and also lay the foundations for improvement of its legal framework for as well as for the situations where this concurrence is ruled out.

Keywords: concurrence, ideal, real, preparation, attempt, continuing crime.

INTRODUCTION

The national penal law of Somalia is in the process of modernization. Its basic element is the Penal Code of the Somali Republic [PC] was approved by Legislative Decree in December 1962, but came into force on 3 April 1964. This PC has been in force for almost 60 years. Over this period of time significant changes occurred. Penal law theory made remarkable progress. Also, new crimes and complex forms of criminal activities appeared. In response, foreign countries introduced a number of new penal provisions to oppose them.

The current situation dictates serious innovation of the Somali PC also. This innovation means not only new criminalization of modern harmful or dangerous acts or omissions. It requires also improvement of the traditional legal institutions in the general part of the penal law. The concurrence of crimes is no exception. The closely related legal frameworks for the criminal attempt and the continuing offence are also in need of some improvement.

The modernization of the penal law in Somalia may be effected not only through the improvement of the PC by the Federal Authorities of this country. The Member States in Somalia also take part in this process. They develop Somali penal law for their territories. The Anti-Piracy Law of Puntland constitutes a remarkable example. Along with the PC this Law also contains interesting provisions related to the topic of this research paper.

I. CONCURRENCE OF CRIMES IN GENERAL

1. Article 44 of the Somali Penal Code [PC] defines the concurrence of crimes in its two modalities, consecutively: the ideal concurrence and the real concurrence of crimes. The former concurrence has been outlined as “a single act or omission” which “violates various provisions of law” whereas the latter one is explained as “more than one breach of the same provision of law”.

Like collaboration in crime (Article 71 of the PC), the concurrence of crimes involves some typical complication relevant to the penal law. They display the common negative peculiarity that none of them consists of a single offender who has committed one criminal offence only. However, a principle difference exists between these two substantive law constructions: the collaboration in crime and the concurrence of crimes. Collaboration means a single crime with multiple penally liable actors (more than one) participating in it [therefore, the complication is on the side of

1 The terms “ideal concurrence” and “real concurrence” are well understood in civil law systems and have been incorporated into the jurisprudence of the International Criminal Tribunals, e.g. the International Criminal Tribunal for the Former Yugoslavia. See http://hrlibrary.umn.edu/instree/ICTR/SEMANZA_ICTR-97-20/ SEMANZA_ICTR-97-20- T_Dissenting_Opinion_of_Judge_Pavel_Dolenc.htm, accessed on 15 Sept 2020.
the offender], whereas concurrence means, usually, a single penally liable actor who commits multiple crimes (more than one crime) not separated in time by a conviction for any of them [therefore, the complication is on the side of the offence(s)]. If the crimes are separated by a conviction, if the actor commits any crime after conviction for a previous one, this crime multiplicity would amount to recidivism under Article 61 of the PC. In particular, any crime committed after the conviction would be a recidivist crime. Inevitably, the punishment for it would always be imposed separately from the one in the previous conviction.

In every country, initially, punishment is determined for each included crime separately. The Somali peculiarity which follows thereafter is that according to Article 44 of the PC, where “the punishments are “imposed in the same judgment”, they “shall be added together, subject to the maximum limits fixed by law [126 – 139 PC]”. Although the result of these added together punishments is, often, regarded as a single punishment “for all legal purposes” (Articles 128 and 131 of the PC), this does not change anything. Either way, the culprit shall serve them all.

In many foreign countries not all determined punishments are added arithmetically; only the heaviest one is imposed and liable to execution. This legislative solution of serving only one of the punishments is designed to better differentiate the concurrence of crimes from the recidivism where the punishments included are always imposed and, as a general rule, are served separately. The concept of serving only one of the punishments is very popular. Under Article 143 of the Iraqi PC, Article 44 of the Turkish PC and Article 87 of the UAE PC, the punishments are combined into the heaviest one in cases of ideal concurrence, whereas under Article 53 (2) (a) of the Bosnian PC, Article 23 (1) of the Bulgarian PC and Article 32 (1) of the Egyptian PC, the combining of the punishments into the heaviest one is done in all cases of the concurrence of crimes. However, for compensation, this only punishment might be increased in all such cases, incl. ideal concurrence, to some limits provided for in law.

Besides, the imposition of the heaviest punishment is not dependent on the number of judgments – one or more. It shall be imposed, regardless of whether all punishments are in the same judgment. The difference cannot be justified as it, generally, does not depend on the offender. Multiple punishments on him/her, resulting solely from judgments multiplicity, run contrary to elementary principles of justice and may unfairly harm his/her essential interests.

II. The Ideal Concurrence of Crimes

2. The ideal concurrence of crimes occurs when by one deed (act or omission) more than one crime has been committed. They are always heterogeneous and most often, two in number only, e.g. illegal possession and contraband of firearms. Given their simultaneous commission, originating from a single deed, the crimes included can rarely be more.

When it comes to this modality concurrence, the most serious practical problem is to correctly identify the cases when the so-called putative (or apparent) ideal concurrence of crimes arises. These are cases where a deed (act or omission), on the one hand, corresponds to two legal descriptions of different crimes but, on the other hand, fills out only one of them because it excludes the applicability of the other. The crime with the excluding description carries a more severe punishment than the one excluded description.

In general, the exclusion of the applicability of one legal description by another can take place only by the virtue of the specific relations between the two legal descriptions. Such relations are those of specialty, consumption and subsidiarity.

In the situation of specialty, the excluding special description contains an additional ingredient (a qualifying or privileging circumstance) which cannot be found in the general excluded one which refers to a homogeneous (the same or a similar) kind of crime. For example, any of the qualified cases of theft under Article 481 of the PC and the ordinary case of theft under Article 480 of the PC; the participation in the political conspiracy by association under Article 233 and the participation in ordinary criminal association under Article 322 of the PC. In both situations, only the former legal descriptions are applicable, the latter ones are excluded. This is why no actual ideal concurrence of the two crimes from each pair may occur.

In the situation of consumption, the excluding consuming description inevitably contains the entire excluded one which always refers to some heterogeneous kind of crime. For example, rape (called also “carnal violence”) under Article 398 of the PC excludes the insult by an act in presence under Article 451 (1) of the PC as any inevitably contains all ingredients of the said insult. This is why one cannot commit any rape without insulting the victim by an act. As a result, no actual ideal concurrence of the two crimes may occur. Likewise, any accomplished crime (Article 16 of the PC)
consumes the attempt to commit the same crime (Article 17 of the PC). This is why there might never be any actual ideal concurrence of the accomplished crime and the respective attempt.

In the situation of subsidiarity, the excluded subsidiary description displays auxiliary nature. It would have been only applicable if a corresponding primary description is not. Some subsidiary legal descriptions contain a text indication their auxiliary nature and inapplicability when the corresponding primary legal description shall be applied. For example, the crime described in Article 329 of the PC (Carnage) is “other than in the cases referred to in Article 222” (Devastation, Pillage and Slaughter). Therefore, the former description of crime shall not be applied if the latter is applicable. This is why no actual ideal concurrence of the two crimes is possible.

3. In cases of putative ideal concurrence it is important to establish which of the three afore-mentioned relations between the two legal descriptions rule out the actual ideal concurrence. Article 7 (1) of the Somali Draft Law Sexual Intercourse Related Crimes illustrates the problem. This Paragraph reads as follows:

“Anyone who intentionally commits a sexual offence against another person with the intent to commit rape is guilty of an offence and is liable to imprisonment from ten to fifteen years”.

Obviously, the described sexual offence is an act which does not constitute any rape (carnal violence pursuant to Article 398 of the PC). Otherwise, the two acts would not have been mentioned separately in the text. Actually, as per Article 2 of the draft Law, this “Sexual Offence means direct sexual act or an act that can be related to sex that is against a part or an organ of a person’s body in order to arouse or hurt the person’s sexual desire”. In general, “Sexual Act means any act committed for sexual purposes, or any act that involves the touching of the genitals, genital area, breasts, mouth or any part of a person’s body, however slight, that a reasonable person would deem sexual in nature”.

However, such a sexual offence as the described one in Article 7 (1) of the draft Law is qualified as attempted rape, usually, in view of the actor’s intent to rape the victim. The legal description of this attempted rape consumes those of the other, less harmful sexual acts, which do not amount to sexual intercourse and should carry a comparatively milder punishment. Therefore, Article 7, expressly entitled “Sexual Offence”, is a bit misleading because it leaves the impression that Paragraph 1 envisages a sexual act, not directed to copulation, rather than a rape which has not been accomplished. Actually, it might be only the other way around as the sexual offence is consumed by the attempted rape.

Hence, the existence of a sexual act (one which is not any rape as it has not been directed to copulation/sexual intercourse) makes sense as a separate ground for criminal liability only if the act does not constitute any perpetration of rape at all. This subsidiary nature of the sexual act to the crime of rape [to my knowledge, accepted by most foreign countries] must be indicated in its legal description in any of the following ways:

“Anyone who intentionally commits a sexual offence against another person without copulation/without the intent to commit rape/which does not constitute any rape...”.

This relation of subsidiarity is preferable to any relations of consumption between the legal descriptions of rape and sexual offence. Either way, the ideal concurrence between the two crimes is excluded as each of the two relations: the consumption and the subsidiarity between their legal descriptions produce this result, a ‘putative ideal concurrence’. However, the expressly indicated relation of subsidiarity between the legal descriptions of the two crimes would be much more understandable and eventually, safer from the legal certainly point of view than the relation of consumption between them.

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2 There might be no ideal concurrence between them (as per Article 44-I of the PC) even if the legal description of accomplished crime contains no detrimental result, namely: a legal indication of some harmful or dangerous event caused by the offender as a consequence of his act or omission – see Articles 16 and 20 of the PC. This is why such accomplished crimes particularly need to be ascertained and eventually, distinguished from their respective attempts. Again, the reliable criterion might only be the specific conduct (the ‘executive conduct’) of the crime outlined in the legal description: whether or not the conduct in question has been concluded. Only if it is not, the crime would be attempted. Therefore, the legal definition of the uncompleted attempt under Article 17 of the PC is too general. It reads that uncompleted attempt exists “where the act or omission on the part of the offender... has not been entirely completed”. Actually, what should not have been completed is specifically the ‘executive conduct’ of the crime rather than any other act or omission. If this conduct was completed, this type of crime is accomplished and there is no room left for any attempt at all.
4. The problems relating to ideal concurrences end their possible exclusion need to be solved in the lawmaking process also. It is noteworthy that the potential consumption, which under future laws would exclude the ideal concurrence, is not always correctly established by law drafters. For example, Article 4 of the 2020 Puntland Anti-piracy Law criminalizes the preparation for piracy. It reads as follows:

“Whoever by supplying or making available the means to commit, removing the impediments to the commission, planning or organizing with another person the commission as well as by other activities that create conditions for the direct commission of a criminal offense defined under Article 3 intentionally prepares the offense, shall be punished with imprisonment from 1 to 5 years”.

According to some oral explanations made in Garowe, the capital of Puntland, this criminalization had been mostly designed to punish the possession of tools for piracy as such tools had often been found with different persons. However, the sole possession of tools for piracy, in general, does not constitute any preparation for piracy. The possession of such tools may be qualified as preparation, if they are for the actor’s own perpetration. Besides, the future target/victim of the intended criminal offence must be individualized. Otherwise, the actor would not have the necessary concrete direct intent. In any case, the future crime of piracy under Article 3 of the Law in question needs to be directly intended and therefore, individually determined.

It follows that the preparation for piracy does not always contain all the ingredients of the possession of tools for piracy because these tools might be held for third person(s) without any direct intent for a specific future act of piracy. This is why the legal description of this preparation (in Article 4 of the Law) cannot consume the potential legal description of the possession of tools for piracy. In view thereof, as the idea is to punish all cases of possession of tools for piracy, the sole possession of such tools needs to be criminalized separately. In many foreign countries, such a separate criminalization of possession of tools for future criminal activity exists for planned counterfeiting of currency regardless of whether the preparation for such counterfeiting is also punishable. This legal model might be borrowed. Thus, according to Paragraph 1 of Article 314 [Possession of Instruments to Falsify Values] of the Romanian PC,

“Manufacture, receipt, possession or transfer of instruments or materials in order to be used to forge values or securities ... shall be punished with imprisonment from one to five years”.

III. THE REAL CONCURRENCE OF CRIMES

5. The real concurrence of crimes occurs when a person commits several separate crimes before the sentence for any of them enters into force. Thus, this modality of concurrence arises when the actor commits more than one crime, either by violating the same criminalization a number of times, or by violating a number of different criminalisations by separate acts.

Article 44 of the Somali PC envisages only the homogenous real concurrence. This Article reads that the crimes included constitute “more than one breach of the same provision of law”. It means that they all are same kind of crime, e.g. only embezzlements, only arsons, etc.

However, in most foreign countries the real concurrence might also be heterogeneous and it is subject to the same legal regime as the homogenous one. Their laws do not make any difference between them; they regulate in the same way, by common rules both real concurrences. If there is any difference at all, it derives from the determined punishments rather than the type of the real concurrence. For example, pursuant to Article 65 of the Indonesian PC,

“(1) In case of conjunction of more acts which must be considered as separate acts and which form more crimes on which similar basic punishments are imposed, one punishment shall be imposed.
(2) The maximum of this punishment shall be the collective total of the maximum punishments imposed on the acts, but not exceeding one third beyond the most severe maximum punishment”.

Further on, in accordance with the next Article 66 of the same PC,

“(1) In case of conjunction of more acts which must be considered as separate acts and which form more crimes on which dissimilar basic punishments are imposed, each of said punishments shall be pronounced, but altogether their term shall not exceed the longest term by more than one third.

3 Similarly, Section 223 of the Dutch PC stipulates that “Any person who has in his possession materials or objects, which he knows are intended to be used in the commission of any of the offences defined in section 216 or in section 222bis in conjunction with section 216, shall be liable to a term of imprisonment not exceeding six months or a fine of the fourth category.”
(2) Fines are calculated in said cases according to the duration of the maximum substitutive light imprisonment imposed upon the act’. 6. As in the cases of ideal concurrence, again, the problem is to correctly identify when the so-called putative (or apparent) concurrence of crimes arises. When it comes to the exclusion of the real concurrence, two typical situations need to be taken into consideration.

The first such situation of excluding the real concurrence of crimes is the one where the grounds of this exclusion are, again, the relation of subsidiarity. However, it is a different from the exclusion of the ideal concurrence of crimes on the same grounds. In the cases of ideal concurrence [both actual and putative] only a single deed [act or omission] corresponds to two legal descriptions. But when the concurrence of crimes is real, then two different deeds [acts or omissions] are orientated to the two legal descriptions. If the real concurrence is putative (apparent), one of these two legal descriptions derogates the other. For example, the legal description of the primary crime excludes the one for the subsequent assistance to a suspect under Article 297 of the PC. According to this article, the crime of assisting a suspect may be committed only by a person who has not participated in the primary crime (“not being himself a participant thereto”). If he had fulfilled the legal description of the primary crime by any participation, this actor cannot thereafter fulfill also the derogated legal description of the subsequent assistance to a suspect under Article 297 of the PC.

7. However, the most common example of such putative real concurrence is the punishable preparation and the corresponding intended crime. Undoubtedly, they are performed by two consecutive acts. And when the intended crime is committed its legal description derogated the one of punishable preparation. This is why there might never be any actual real concurrence of the punishable perpetration and the intended crime, regardless of whether it was accomplished or constituted an attempted crime only.

Obviously, the legal description of the punishable perpetration is not applicable whenever the corresponding attempted crime occurs. This makes it necessary to safely identify its occurrence. According to Article 17 of the PC, “(Crimes Attempted), A crime shall be considered attempted where the act or omission on the part of the offender, unequivocally directed towards causing the event [19 P.C.], has not been entirely completed, or where the event has not resulted [125 P.C.]”.

It is too difficult, though, to distinguish attempt from any preparation on the basis of this Article. It is hardly sufficient, in particular, to determine attempt as conduct “unequivocally directed towards causing the event” as Article 17 of the PC reads. Unlike the acts of pure ‘manifestation of the intent/the decision to commit a crime’, the preparation is also some overt conduct which is, more or less, directed towards causing the event in question. This is why the word “unequivocally” can hardly distinguish the attempt from the preparatory activities as they also follow this direction, more or less.

It is to be highlighted that, unlike any preparation, the attempt is a part of the respective accomplished crime (this is why the latter consumes the former). The attempt constitutes “a commencement of the performance” – Article 53 (1) of the Indonesian PC, “perpetrating all or part of” its constitutive acts – Article 16 (1) of the Spanish PC. It, more or less, contains the ingredients of the accomplished crime provided by the legal description of the crime, consumes them being “a beginning of its execution” – Article 121-5 of the French PC, Article 59 of the Libyan PC and Article 34 (1) of the PC of the UAE. An attempt is the undertaking of the initial perpetration of the crime; the start of its consummation. It is an activity which, more or less, fulfils the legal description of the respective crime and in particular, the specific conduct, the acus reus (the ‘executive/perpetrating conduct’) of the crime outlined in the legal description – Article 13 (1) of the Polish PC. Unlike attempts, preparation, though also an overt act, does not go that far to begin satisfying the legal indications of the executive conduct of the crime.

Thus, attempt exists if the offender’s activity has begun satisfying the legal indications of the specific conduct of the respective crime. This is the so-called formal or technical criterion for the existence of attempt. If, however, the executive conduct is outlined too broadly or/and unclearly, e.g. as in the case of murder (Article 434 of the PC), then the

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4 Article 6 [Attempt of Piracy] of the Puntland Anti-piracy Law does not provide anything more specific either. It simply refers to Article 17 of the PC.
6 The attempt is distinguished from preparation also by legally defining it as “taking steps towards the realization of the actus reus”, which also includes the intention to com it the crime (France, Germany, Finland, Hungary, the Netherlands, etc). See Picoli, L. (2007). Expanding forms of preparation and participation. General report, in Revue Internationale de Droit Penal, 2007/3-4, Volume 78, p. 405. Available online at: https://www.cairn.info/revue-internationale-de-droit-penal-2007-3-page-405.htm#, accessed on 05 April 2020.
so-called material criterion comes into service as an auxiliary one. Essentially, it means that the interest/value, protected by the criminalization of the respective act or omission, is in some immediate danger This material criterion, actually, indicates the satisfaction of the 'formal' one. It assists the interpreter of law in finding whether or not a given activity has begun fulfilling the legal description of the specific criminal conduct. The fulfilling of this legal description occurs and therefore, the attempt takes place, whenever the activity immediately endangers the interest (value), protected by the respective criminalization. Otherwise, if such danger has not yet been produced, no attempt takes place.

8. The mental element of attempt is not defined by Somali law. Most often, it is argued that the attempt is performed “with the culpability required for commission of the offence”, e.g. Article 901 (Criminal Attempt), Paragraph 1 of the draft Somali Penal Code. This means that the attempt fulfils all mental (subjective) legal indications of the respective crime outlined in its legal description.

The main and mandatory such indication in the legal description of any crime is the one which outlines the specific type of guilt (guilty mind) necessary for the commission of this crime, namely: direct intent, indirect intent, recklessness or negligence. It is true that the fulfillment of this indication means, inevitably, the existence of guilt, in general. However, the existence of some guilt does not necessarily mean that this mental legal indication, outlining the specifically required type of guilt, has been fulfilled. If the existing guilt is different, it would not fulfill the indication in question. As a result, the legal description of the specific crime would not be fulfilled either. For instance, the crime of theft is committable only with direct intent. The existence of no other guilt can make a theft out of any offence.

Besides, the legal description of the criminal offence may contain another subjective indication which does not envisage a guilty mind at all. Such indications are named ‘special’ mental (subjective) indications. They envisage other psychological phenomena during the commission of the crime, such as purpose or motive. For example, the commission of carnage [creating a public danger of death or/and physical injury] as a crime against the Somali state under Article 222 of the PC requires not only direct intent but also the existence of a specific purpose, namely: the weakening the state security. The lack of such purpose excludes not only the accomplishment of carnage as a crime against the Somali state. It excludes also the attempt of this crime. The attempted creation of public danger of death or/and physical injury without the purpose in question may constitute only an attempt of the carnage as a crime against the public safety – Article 329 of the PC.

But if no such subsidiary crime exists, there might be no attempt of any crime at all. This opens the way to making the corresponding preparation relevant, if any and punishable.

9. The second typical situation of excluding the real concurrence of crimes is the one where a continuing offence (Latin: Delictum Continuatum) is committed. According to Article 45 (i) of the PC, “Whoever by more than one act or omission done within the same criminal intent commits, at the same time or at different times, more than one breach of the same provision of law, of the same or of different gravity, shall be guilty of a continuing offence”. Thus, all breaches of law make a single criminal offence. Inevitably, as a single, though complicated criminal offence in its totality, it excludes most often any real concurrence of the crimes constituting the separate breaches of law. Exceptionally, in cases when these included crimes are committed at the same time (e.g. the actor simultaneously participates in different criminal associations under Article 322 of the PC), the continuing offence would exclude ideal concurrence of the crimes.

The next sentence (ii) of the afore-mentioned Article 45 stipulates that “the punishment shall be that imposed in respect of the most serious of the breaches committed, increased up to three-fold”. Therefore, as the criminal offence is only one, the punishment for it is also one. The aggregate punishment for the continuing offence is the one deserved for the most serious of the included crimes. However, in many foreign countries, such is also the punishment for the concurrence of crimes, especially for the ideal concurrence; the aggregate punishment there is not the result of the adding

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10 Even when the judgements were more. This is why Article 90 of the PC of the UAE prescribes that “if the culprit ... has been sentenced for the crime whose penalty is lighter, he shall, thereafter, be prosecuted for the crime whose penalty is tougher, and in such a case, the court shall order the execution of the penalty awarded in the latter judgment, and whatever is effectively executed from the previous judgment shall be deducted”.

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all the punishments together, as in cases of concurrence under Somali law (Art. 128, 131 of the PC) but solely the heaviest of them. If the same legal regime for punishing the concurrence of crimes with only one of the punishments is accepted in Somalia, which is likely, then the one for continuing offence, also with the imposition of one of the punishments only, would look like a second version of the regime for concurrence rather than for a single offence one as the continuing offence is. As a result, the continuing offence would look like a concurrence of crimes rather than a single one.

The continuing offence must be consistently treated as a single criminal offence should its basic idea stay at all\textsuperscript{11}. First of all, since this offence is only one, it must have its own legal qualification as expressly contemplated in some foreign laws. Under the PC of many countries, this is the legal qualification of this included crime which carries the heaviest punishment, e.g. Section 56.1 (ii) of the Dutch PC. Article 45 (2) of the North Macedonian PC. Article 88 of the PC of the UAE, etc. Further on, the individual punishment for the entire continuing offence should be within the limits of the sanction corresponding to this legal qualification, which is for the gravest included crime. But in determining this punishment the harm from the entire continuing offence should be taken into account rather than only the harm resulting from the crime whose legal qualification is used, e.g. Article 26 (2) of the Bulgarian PC. Otherwise, the unity of this offence would be a non-content notion, more or less. Thus, some continuing theft might be qualified under Article 481 (1) (g) of the PC as “committed on movable property in public offices” on the grounds that one of the included acts was committed on such property. Its value, however, might be, for example, 1 000 USD whereas the object of the entire continuing theft may amount to 10 000 US dollars, in total. Therefore, the whole sum of the stolen property is 10 times more while the allowed increase of the initial aggregate punishment (1-6 years of imprisonment plus fine, in our case) is only up to 3 times, as per the existing rule of Article 45 (ii) of the PC. Undoubtedly, it would be fairer if the thief is punished for the whole stolen property amounting to 10 000 US dollars.

Also, as the continuing offence is a single one, it makes sense to expressly stipulate in the legal text for it that the commission of this offence excludes the application of the rules on the concurrence of crimes. Hence, they are applicable if no continuing offence has been committed.

Finally, it is worth mentioning that in some countries there might be no continuing offence if the included crimes are against different persons. Thus, pursuant to Article 49 (2) of the Montenegrin PC, “crimes against the person may constitute a continuing criminal offence only when committed against the same person”. If the victims are different the continuing offence is excluded, a concurrence of crimes would exist. This legislative solution, actually, introduces an exception in the continuing offence exception in the direction of the general case where concurrence of crimes exists.

**CONCLUSION**

The Somali legal framework for The General Part of the Somali Penal Code is in need of modernization. First of all, the rules on the continuing offence should be improved taking into consideration the achievements of foreign criminal laws. Secondly, the legal essence of the criminal attempt should be defined better by clarifying that unlike any preparation, it commences the fulfillment of the legal indications constituting the executive conduct of the specific crime. Thirdly, the legal framework for the continuing offence should be improved, especially the rules that regulate the punishment for it.

**REFERENCES**
