



El concurso ideal de delitos (Spanish Edition)

Margarita Roig Torres

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Los "concursos de delitos" revisten una extraordinaria trascendencia no sólo en el campo de la Ciencia penal sino también en la práctica forense, en tanto se trata de supuestos de concurrencia de infracciones cometidas por un mismo sujeto, que cuentan en el Código penal con unas reglas específicas para la aplicación de las penas. El objeto de este trabajo se centra en el denominado concurso ideal, regulado en el artículo 77, cuya esencia radica en la realización con un solo hecho de varias infracciones. Este presupuesto, la unidad de hecho, se erige en el punto de arranque para distinguir las tres modalidades de concursos de delitos. Por eso, en estas páginas tratamos de descifrar el significado de ese elemento, acudiendo a la literatura penal y a la jurisprudencia, indagando cuándo entienden los Tribunales que rige esa norma. Después de analizar las distintas posiciones, nos decantamos por atribuir eficacia a los resultados materiales, en sintonía con la postura de la Audiencia Nacional en sede de terrorismo y, de modo más tímido, mantenida también por el Tribunal Supremo, que en las últimas resoluciones se inclina cada vez con menores reservas hacia el criterio del resultado. Abordamos, además otros aspectos, como el fundamento del tratamiento penológico privilegiado de este concurso, negando que resida en el non bis in Ídem, así como la conveniencia de la supresión de ese régimen, la interpretación de las normas sobre determinación de pena, o la viabilidad del concurso ideal en los delitos omisivos e imprudentes. Nos sirven de soporte para algunas de nuestras tesis las resoluciones dictadas por el Tribunal Constitucional.

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