CZU: 343.97:343.211(479.24:1-87) https://doi.org/10.59295/sum3(183)2025_16

FEATURES OF THE CRIMINALIZATION OF CERTAIN OFFENSES COMMITTED BY OMISSION: A COMPARATIVE ANALYSIS OF THE CRIMINAL LEGISLATION OF AZERBAIJAN AND FOREIGN COUNTRIES

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In the criminal legislation of foreign countries, socially dangerous acts objectively committed by omission are established in various legal contexts and criminalized with their distinctive characteristics. It is well known that in the legislation of foreign countries, objective omission is, in most cases, defined as a legal fact constituting the basis of criminal liability, primarily in the form of failure to fulfill specific legal duties or their improper performance, manifesting as an infringement on social relations. This article will analyze the characteristics of the criminalization of certain offenses committed by omission in the legislation of foreign countries.

Keywords: *criminal law, criminal composition, objective aspect, omission, action, criminal legislation of foreign countries.*

ОСОБЕННОСТИ КРИМИНАЛИЗАЦИИ ОТДЕЛЬНЫХ ВИДОВ ПРЕСТУПЛЕНИЙ, СОВЕРШЕННЫХ ПУТЕМ БЕЗДЕЙСТВИЯ: СРАВНИТЕЛЬНЫЙ АНАЛИЗ УГОЛОВНОГО ЗАКОНОДАТЕЛЬСТВА АЗЕРБАЙДЖАНА И ЗАРУБЕЖНЫХ СТРАН

В уголовном законодательстве зарубежных стран общественно-опасные деяния, объективная сторона которых выражена бездействием, посягают на различные общественные отношения и криминализированы с учетом объекта посягательства. Известно, что в законодательстве зарубежных стран объективное бездействие в большинстве случаев определяется как юридический факт, являющийся основанием уголовной ответственности. Бездействие как форма преступного поведения выражается в том, лицо не выполняет или ненадлежащим образом выполняет возложенную на него обязанность, что приводит к причинению вреда объектам охраны уголовного права или создает угрозу причинения такого вреда. В статье дается сравнительный анализ криминализации отдельных видов преступлений, объективно совершенных путем бездействия, в законодательстве Азербайджанской Республики и ряда зарубежных стран.

Ключевые слова: *уголовное право, состав преступления, объективная сторона, бездействие, действие, уголовное законодательство зарубежных стран.*

First and foremost, it should be noted that when analyzing the criminogenic personality of individuals who commit crimes through inaction from an objective perspective, it often becomes evident that these individuals are not capable of considering the consequences of their behavior at the time of the act [5, p. 207]. Individuals who engage in criminal inaction, which entails severe legal liability-namely, criminal responsibility-sometimes fail to fully grasp the essence of their behavior and struggle to assess its legal consequences in advance. This is why the legal evaluation of criminal inaction and the grounds for liability are regulated differently in the criminal legislation of various countries. Consequently, these differences have a contradictory impact on the processes of criminalization and decriminalization in modern criminal law [7, p. 5].

At the same time, the absence of a unified approach to crimes committed through inaction in criminal law theory can be linked to the insufficient development of the category of inaction in legal doctrine. This situation is closely related to the interpretation of the grounds for liability for crimes committed through inaction by judicial authorities that generalize the judicial practices of various legal schools and foreign

countries. It is also influenced by the relevant principles of criminal legislation, as well as the material living conditions of society and the level of legal consciousness [12, p. 60].

This study primarily focuses on a comparative analysis of the specific characteristics of certain crimes committed through inaction in the model criminal legislation of the Turkic States Organization (TSO), the Commonwealth of Independent States (CIS), the Eastern Partnership (EaP) of the European Union, and the European Union (EU) member states, in relation to the criminal legislation of the Republic of Azerbaijan.

In the Penal Code (PC) of the Republic of Turkey, enacted in 2004, a significant number of offenses committed through inaction have been criminalized. One example of this is the failure to report a crime. The legal provisions concerning the failure to report a crime are enshrined in the second section, titled "Crimes Against the Administration of Justice", within the fourth part of the Penal Code, which is named "Crimes Against the Nation and the State and Final Provisions" [23]. In this regard, the specific (generic) and particular object of this act in the Penal Code of the Republic of Turkey coincide with those in the Criminal Code of the Republic of Azerbaijan.

However, compared to the Criminal Code of the Republic of Azerbaijan, the act of failing to report a crime is defined more comprehensively and through specific provisions in the Turkish Penal Code [6, p. 163]. In this regard, Article 278 of the Turkish Penal Code addresses „failure to report a crime", Article 279 covers „failure to report a crime by a public official", Article 280 concerns „failure to report a crime by healthcare professionals", and Article 284 pertains to „failure to report information regarding detained, convicted, or criminal evidence."

Among these crimes, Article 278 can be considered a general provision. Articles 279 and 280, as their titles indicate, involve the commission of the act by specific subjects. Additionally, Article 284 includes another particular case of failure to report a crime: it addresses situations where an individual, knowing the whereabouts of someone who has been detained or convicted, or knowing where criminal evidence is being concealed, fails to inform the competent authorities [8, p. 114].

When comparing the examples from the Penal Code of the Republic of Turkey with the national legislation, it becomes clear that the specific provisions related to the failure to report a crime, as established in the Turkish legislation, have not been criminalized in our national legal system. This is because the act of failing to report a crime, as defined in Article 307.1 of the Criminal Code of the Republic of Azerbaijan, is limited to „failure to report a crime knowingly related to the preparation or commission of a serious or particularly serious crime" [2, p. 664].

This differs from the provisions established in the Turkish Penal Code, as it only covers cases of failure to report crimes related to serious or particularly serious offenses. The responsibility for failure to fulfill the reporting obligation is applied only when the crime is serious or particularly serious. This difference highlights the contrasting approaches of the two countries' legal systems regarding the issue of failure to report.

On the other hand, another provision in the Turkish Penal Code concerning criminal inaction is noteworthy. According to Article 98 of the Turkish Penal Code, a person who fails to provide assistance or report the situation to the competent authorities when they are in a position to help someone who is unable to manage themselves due to age, illness, injury, or another reason, and when circumstances allow, is subject to imprisonment for up to one year or a fine. If the failure to assist or report results in the death of the victim, the person is subject to imprisonment from one to three years. This provision demonstrates that failing to fulfill the obligation to assist or report a crime leads to criminal liability and can result in severe consequences if the obligation is not met.

In contrast, the Criminal Code of the Republic of Azerbaijan establishes the obligation to assist as a criminal liability only in specific cases, primarily based on the duties of particular subjects, professional responsibilities, and the failure to assist after creating a danger. For example, the obligation to provide assistance is criminalized in only four instances in the Azerbaijani Criminal Code: failure to assist a patient (Article 142), endangerment (Article 143), fleeing the scene of a traffic accident (Article 264), and failure to assist those in distress by the captain of a vessel (Article 269) [11, p. 458].

In the Turkish Penal Code, the objective aspect of crimes committed through action and inaction is of particular importance in the establishment of separate criminal elements within specific articles. For in-

stance, Article 83 of the Turkish Penal Code addresses the issue of „intentional manslaughter committed through inaction”. According to this article, for a person to be held responsible for a death resulting from the failure to perform a particular action they are obligated to carry out, that inaction must be equivalent to active behavior (action). Furthermore, for inaction to be considered equivalent to active behavior, the person must have a legal or contractual duty to engage in a specific active behavior, or their prior behavior must have created a dangerous situation for others' lives. This regulation shows that in the Turkish Penal Code, crimes committed through inaction are criminalized by a separate legal norm, and the grounds for liability are clearly defined.

An important aspect here concerns the limits and thresholds of the sanctions prescribed for crimes committed through inaction. According to the Turkish Penal Code, for the failure to fulfill a certain obligation resulting in death, the person can be sentenced to imprisonment for a term ranging from 20 to 25 years, instead of aggravated life imprisonment; 15 to 20 years, instead of life imprisonment; and in other cases, from 10 to 15 years of imprisonment. Moreover, there may be no reduction in the sentence. This demonstrates the differentiation of intentional manslaughter committed by inaction in the Turkish Penal Code. Although the legislator imposes severe penalties for the act, there is a relatively different approach compared to intentional manslaughter committed through action. This is evident when we consider that the Turkish Penal Code prescribes a mandatory life imprisonment sentence for intentional manslaughter committed through action, with no possibility of any reduction [23].

Another provision, Article 88 of the Turkish Penal Code, criminalizes „intentional bodily harm committed through inaction”. It states that when intentional harm is caused to someone's health through inaction, the penalty may be reduced by up to two-thirds. In applying this provision, the conditions related to intentional manslaughter committed through inaction are also taken into consideration.

In contrast, the Turkish Penal Code takes a different approach in Article 94 regarding the crime of torture. It establishes that even when the crime of torture is committed through inaction, no reduction in the penalty is applied. This reflects the lack of a unified position on the sanctions imposed for crimes committed through inaction in the Turkish Penal Code.

In the Criminal Code of the Republic of Kazakhstan, the offense of failure to report a crime committed through inaction is established in a distinctive manner. Unlike the Criminal Code of the Republic of Azerbaijan, Article 434 of the Criminal Code of Kazakhstan, titled „Failure to report a crime”, specifies particular crimes, and the failure to report them to law enforcement authorities is criminalized. According to this provision, a person who has knowledge of a serious or especially serious crime committed against the sexual inviolability of minors, or a planned act of terrorism, and fails to report it, may be sentenced to up to six years of imprisonment, depending on the alternative sanctions provided [20].

The Note of Article 434 of the Criminal Code of the Republic of Kazakhstan also raises an interesting point. It specifies that criminal liability for failing to report a crime is exempted for certain individuals, and, unlike the Criminal Code of the Republic of Azerbaijan, it excludes not only close family members but also religious figures who obtain information during confessions as part of religious rituals from the obligation to report the crime [20].

An important example of an offense committed through inaction in the Criminal Code of the Republic of Kazakhstan is found in Article 343, which addresses the „failure to take measures to eliminate the consequences of environmental pollution”. This offense can be considered a significant example of inaction in the context of environmental crimes. The failure of specific subjects (officials) to fulfill their obligations under this provision is punishable by imprisonment for up to 7 years, depending on the alternative sanctions.

For comparison, it is worth noting that while certain environmental offenses in the Criminal Code of the Republic of Azerbaijan, established in Chapter 28, may be committed through inaction, the national legislation does not explicitly refer to inaction in the naming of these offenses. Instead, terms such as „violation of regulations”, „violation of legislation,” and „violation of protection regimes” are used [1, p. 258].

Objectively, in the comparison of crimes committed by inaction in foreign countries and national legislation, it is essential to highlight the criminal law practices of the countries of the Commonwealth of Independent States (CIS). Specifically, in the General Part of the Criminal Codes of CIS member states

(including the Model Criminal Code), inaction is considered as a manifestation of behavior characterizing criminal acts as a distinct category.

For example, Article 11 titled „The Concept of Crime" of the Criminal Code of the Republic of Belarus, dated 1999, states that an act (whether by action or inaction) characterized by the features provided in this Code and sanctioned with a penalty is considered a crime [14]. This example further illustrates that the act and inaction, which characterize a socially dangerous act, are accepted as part of the social-legal foundation of criminal liability [4, p. 68]. A similar provision is found in Article 14 of the Criminal Code of the Russian Federation, dated 1996 [10, p. 56], as well as in Article 14 of the Criminal Code of the Republic of Azerbaijan, where the legal definition of a crime aligns with this concept.

However, it must be stated with regret that neither the Criminal Code of the Republic of Azerbaijan nor the Model Criminal Legislation of the CIS countries provide a direct definition of the term 'inaction' as a criminal-legal category, nor have the special grounds for liability for criminal inaction been established.

By the way, it should be noted for comparison that the Criminal Code of the Russian Federation does not provide for liability for the act of failing to report a crime. This difference illustrates that the approaches to non-reporting in the criminal legislation of each country vary, with some countries not associating this issue with criminal liability.

Article 210 of the Criminal Code of Turkmenistan [24], one of the CIS countries, also establishes the act of failing to report a crime, just as it is defined in the Criminal Code of the Republic of Azerbaijan [3, p. 223].

Some crimes defined by omission in the Criminal Code of the Russian Federation are of interest. For example, Article 156 of this country's Criminal Code establishes the failure to fulfill the duty of raising a minor. According to this article, the failure or improper fulfillment of the duty to raise a minor by the parents or other persons entrusted with this duty, as well as by a teacher or employee of an educational, medical, or other relevant institution, is punishable by imprisonment for up to 3 years, provided that this omission is accompanied by the minor being subjected to cruel treatment [21].

This further demonstrates that the criminalization of the act, particularly the classification of acts committed by omission as socially dangerous, stems from the needs of society, the conditions of life, and the necessity for the state to regulate public relations.

It is highly important to analyze the category of inaction, its definition, and the grounds for liability in the exemplary criminal legislation of the countries that are members of the European Union.

Article 10 of the Spanish Penal Code of 1995 states that acts punishable under this Code are those committed intentionally or by negligence, either through action or omission. Furthermore, a positive step has been taken in the Spanish Penal Code by defining the concept of criminal inaction in Article 11 and clearly explaining the grounds for criminal liability for such inaction. The content of this article outlines the grounds for the criminalization of objective inaction in relation to material offenses. Specifically, in crimes based on result (material offenses), inaction is considered committed only when an individual fails to prevent the socially dangerous result, which would be treated as the same consequence as if caused by an act. According to formal offenses, if an individual who has a legal or contractual obligation to act, but engages in inaction instead, creates a threat to public interests, they will still be held criminally liable for their omission [22].

The liability for certain acts committed by omission in the Criminal Code of the Kingdom of Spain is of interest. For instance, Article 195 of this Code states that, in accordance with the law, everyone must assist another person or seek help when necessary, provided that offering assistance does not pose a personal danger.

On the other hand, according to Article 229 of this Code, parents or other individuals entrusted with the responsibility of caring for dependents are held criminally liable if they fail to fulfill their duties of care.

The grounds for liability for inactive behaviour [9, p. 21-22] in the criminal legislation of the Federal Republic of Germany are considered quite interesting. In the 'Omission' section (Section 13) of the German Penal Code of 1998, it is stated that the failure of an individual to prevent a result specified in the criminal law only leads to criminal liability if the individual has a legal obligation to prevent that result, and the

omission is treated as equivalent to an active act in fulfilling the elements of the criminal offense under the law. In other words, if an individual causes a criminal result by failing to take a certain action, the omission will be treated the same as the act, and the individual will be held criminally liable.

Another interesting point is that, in the second paragraph of Section 13, it is established that the penalty for an individual's act committed by omission can be reduced. This suggests the possibility of considering the crime committed by omission as a mitigating factor in the German Penal Code with respect to crimes committed by inaction.

Various acts of crimes committed by omission are criminalized in several provisions of the Penal Code of the Federal Republic of Germany. For example, Paragraph 323 criminalizes the 'failure to assist,' and Paragraph 221 criminalizes 'failure to provide care for dependents.' These provisions determine that, in specific circumstances, individuals will be held criminally liable for failing to provide assistance or fulfill their obligations[16].

The Penal Code of the Republic of Poland, dated 1997, also contains significant criminal-legal provisions regarding inaction. According to Article 2 of the Penal Code of the Republic of Poland, it is established that inaction will lead to criminal liability only when the individual has a specific legal obligation to prevent the criminal results caused by inaction. Based on this provision, a person is criminally liable for the crime resulting from inaction only if they fail to prevent such results, given their legal obligation.

Another important aspect regarding inaction in the Polish Penal Code is the inaction of an accomplice in the commission of a crime. In the second paragraph of Article 18, Section 3 of this Code, it is stated that if a person has a specific legal obligation to prevent an act prohibited by law, and by their inaction facilitates the commission of that act by another person, they are held criminally liable for aiding the crime. In other words, this can be considered as facilitating the commission of a crime [19]. Unfortunately, this aspect is not explicitly mentioned in the definition of an accomplice under Article 32.5 of the Criminal Code of the Republic of Azerbaijan. According to this provision, the phrase 'a person who has assisted by removing obstacles' could be interpreted broadly to include inaction, such as by not intervening, etc. [1, p. 28].

On the other hand, it should be noted that in the criminal legislation of the countries that are members of the EU, the criminalization of 'failure to assist' as an act committed by omission, stemming from the same rationale, is of interest. For example, Article 288 of the 1950 Penal Code of the Hellenic Republic (Greece), titled 'Obstruction of the Prevention of a Common Danger and Failure to Provide Necessary Assistance,' states that a person who fails to provide assistance, based on a request, during a deadly accident, common danger, or emergency situation, without exposing themselves to serious risk, shall be punished with imprisonment for up to six months as a mandatory penalty [17].

The aforementioned crimes emphasize the importance of individuals being responsible towards one another in different societies and demonstrate that the failure to provide necessary public assistance in specific circumstances is accompanied by severe legal consequences.

We consider it necessary to examine the crimes committed by omission, as established in the criminal legislation of the Eastern Partnership countries of the European Union, including the Republic of Azerbaijan.

For example, Article 129 of the 1999 Criminal Code of the Republic of Georgia is of interest in this regard. It states that 'failure to assist' in this article involves the failure to provide necessary and urgent assistance to a person whose life is in danger (if the accused could have provided such assistance without exposing themselves or another person to serious risk), or failure to inform the relevant authorities or individuals about the necessity of such assistance. This act is punishable by imprisonment for up to two years, according to the applicable sanctions [15].

On the other hand, the 2002 Criminal Code of the Republic of Moldova, an Eastern Partnership country of the European Union, establishes several crimes committed by omission in its Special Part (for example, Article 162 concerning leaving a person in danger without assistance, etc.). However, an important provision in the General Part of this Code regarding the category of criminal inaction deserves attention. According to Article 21, Section 3 of the Criminal Code of the Republic of Moldova, the grounds for the criminal liability of legal entities are outlined. This section states that a legal entity is considered guilty of failing to comply with or correctly execute direct legal provisions that establish obligations or prohibitions

related to specific activities [18]. For comparison, it should be noted that Article 99-4 of the Criminal Code of the Republic of Azerbaijan establishes criminal-legal measures for legal entities, which are applied in cases where a person authorized to represent the legal entity, make decisions on its behalf, or supervise its activities, as well as the failure to exercise such supervision by these officials, results in a crime committed by an employee of the legal entity for the benefit of or in defense of the legal entity's interests [1, p. 98].

Based on the current research, it is once again determined that the legislation regarding crimes committed by omission is regulated in different countries around the world with varying content and in accordance with different legal-technical frameworks. In many legal systems, criminal liability arises only in cases where the individual bears a specific legal obligation [13, p. 459]. This applies in cases where the individual is in a position where they are expected to act with a specific obligation (such as a parent, teacher, doctor, police officer, etc.).

In many countries, the existence of severe liability (criminal liability) for crimes committed by omission aims to strengthen societal cohesion, protect human life, and ensure the emergence of mutual responsibility among members of society.

Some countries, such as Germany, also incorporate the general obligation of assistance into the legal framework. In these cases, every citizen has the duty to assist another person when they observe that the individual is in life-threatening danger, or at least to inform the relevant authorities. This approach aims to increase social responsibility within society. In contrast, in the Hellenic Republic (Greece), this obligation only leads to liability when assistance is not provided upon request.

On the other hand, when an act is committed through both action and inaction, we find the 'Turkish model' of separate criminal law provisions for inaction within the relevant conditions to be acceptable. We believe that this model responds to the necessity of differentiating responsibility for crimes committed through inaction.

Overall, the responsibility for crimes committed through inaction varies according to the social values in the legal systems of different countries and their approaches to public safety and legal defense. In most cases, responsibility arises when an individual has legal obligations or when the situation demands urgent assistance or intervention from law enforcement agencies. These approaches reflect the distinct social, cultural, and legal conditions within the legislation of each country.

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Presented: 24.02.2025