

CRIMINOLOGICAL CHARACTERISTICS OF CRIMINAL OMISSION

Vuqar Gadimov*

Abstract

In contemporary criminological science, a unified and consistent theoretical approach to criminal omission has yet to be established. This is primarily due to the fact that the question of whether criminal omission that is, the failure to fulfill a legal duty constitutes a legal and social reality remains a subject of academic debate. The normative, social, and philosophical aspects of this category are interpreted differently across various legal schools and criminological approaches. Scholars and authors hold divergent views regarding the essence of this concept. Some authors emphasize that criminal omission, understood as the non-performance of a specific legal obligation, lacks material expression in objective reality and therefore hesitate to recognize it as an independent form of conduct in the legal sense. According to their perspective, the foundation of legal wrongdoing lies solely in active conduct namely, a volitional act that can be observed in the external world. Passivity, in contrast, is not a form of conduct in the material sense, but merely the absence of such conduct. This viewpoint is largely rooted in formalist and positivist theories of law. Nevertheless, according to the prevailing position in criminology, denying the existence of passive conduct i.e., the failure to fulfill a legal obligation as a valid legal category is scientifically unfounded. In some instances, the consequences of omission may pose a greater threat to public safety than those resulting from active conduct, thereby providing sufficient grounds for the imposition of legal liability. Such an approach allows for a broader interpretation of criminal behavior, particularly within the frameworks of social functionalism and normative legal theory. In this regard, omission as it reflects the breach of a certain duty to act both legally and socially has evolved into an independent object of criminal law and criminological analysis. On this basis, the present article will examine the criminological characteristics of criminal omission from multiple perspectives.

Keywords: *public dangerousness, elements of a crime, objective aspect, criminal omission, criminological characteristics, passive conduct, criminological prevention, latent crime.*

I. Introduction

In criminology, some scholars argue that criminal omission, i.e., the failure to perform a specific legal duty, does not have a tangible expression in objective reality, and thus hesitate to recognize it as a distinct form of conduct in legal terms [17, p. 354]. Nevertheless, according to the prevailing view among scholars, denying the existence of passive conduct as a real legal category is scientifically unfounded. From this perspective, although omission may not be directly observable in the physical world, its consequences and the liability it entails must be taken into account in legal analysis. Omission, defined as the failure to fulfill an obligation arising from law or other legal grounds, may be accompanied by socially dangerous consequences; therefore, omission also functions as a criminological category.

Among the authors, Associate Professor H. Qurbanov states that regardless of whether a crime is expressed through omission, this act violates the social values protected by criminal law and infringes upon the interests of the individual or society. Furthermore, omission leads to the commission of a crime and the occurrence of its

* PhD candidate in Law, Department of Criminal law and Criminology, Baku State University, member of Azerbaijani Bar Association

consequences, and is regarded as an act contrary to society and its moral principles [4, p. 8]. Although omission cannot be measured solely in physical terms, its legal aspects and social danger necessitate its recognition as a subject of criminological analysis. This indicates that the criminological characteristics of passive conduct, its social consequences, and normative-legal framework must be studied more thoroughly and systematically organized based on unified theoretical foundations.

II. Main provisions of criminal omission

The analysis of the criminological characteristics of omission is often shaped by various legal customs, theoretical approaches, and the material conditions of society. Each individual acquires knowledge of the prevailing legal and moral norms in society primarily through the initial stage of socialization within the family [9, p. 47]. The family performs the function of social control over existing behavior. However, when the family environment is unfavorable and the psychological climate unhealthy, the initial socialization process fails. All these factors negatively influence the individual's future behavioral patterns. The choice to adhere to legal norms is closely related to the characteristics of the individual's legal consciousness [7, p. 128].

Deficiencies in legal consciousness lead to legal negativism and indifferent attitudes toward the requirements of the law. For example, court practice shows that the crime of failure to report a crime is committed with the following motives: 33.9% criminal solidarity; 1.5% mercy; 13.8% fear; 36.9% false loyalty; 9.2% kinship feelings; and 4.6% other motives. In this context, based on certain demographic indicators, the crime of non-execution of court judgments, decisions, or other acts can also be noted. Due to the absence of direct statistical data on crimes committed by omission in the country, a direct inquiry was made to the court. According to information obtained from the Yasamal District Court, between 2022 and 2023, the majority of individuals held criminally liable under Article 306 of the Criminal Code (non-execution of court judgments, decisions, or other acts) were between 40 and 50 years old. During this period, a total of 13 cases were filed under Article 306 [2, p. 67].

The process of internalizing legal and moral norms in an individual's interactions with society primarily begins within the family institution. Each person acquires initial knowledge and understanding of the prevailing legal and moral norms in society through the early stage of socialization within the family environment. In this regard, the family functions not only as an educational institution but also as a fundamental social structure that exercises social control over potential behavioral forms, whether active conduct or omission.

However, when an unfavorable educational environment and an unhealthy psychological climate exist within the family, the initial socialization process is disrupted, creating significant difficulties for the individual in developing law-abiding behavior in the future. Deficiencies in the family's value system, as well as the presence of violence, neglect, or antisocial models, negatively affect the individual's social adaptation. These circumstances ultimately hinder the development of legal consciousness. Defects in legal consciousness, in turn, lead to legal negativism, characterized by indifferent or negative attitudes toward laws and legal norms [15, p. 688].

Furthermore, the social groups and immediate environment to which an individual belongs directly influence their behavior, whether action or omission. It is no coincidence that the renowned American expert Jim Rohn observed that a person is

essentially the average of the five individuals with whom they spend the most time [19]. If the social environment is permeated by criminogenic, marginal, or unlawful tendencies, the individual may come to perceive criminal behavior or illegal activity as normal. In such cases, the person loses the sense of social responsibility and, through omission, is unable to properly assess their own actions. In certain instances, the individual struggles to free themselves from the stereotypes created by their social environment and fails to adopt behavior consistent with legal norms [8, p. 348].

Alongside social factors, biological factors also play a significant role in the formation of criminal behavior, whether through action or omission. Throughout the history of criminology, various, sometimes contradictory, theories have been proposed regarding this issue. Some theories attribute the emergence of criminal behavior solely to biological factors such as hereditary predispositions, neurophysiological disorders, or anatomical structures, often denying or relegating the influence of social factors to a secondary role. Conversely, opposing theories emphasize the absolute role of social factors while disregarding biological influences [18, p. 118]. Contemporary criminological approaches recognize the interaction between these two factors.

In scholarly literature, the biological causes of criminal behavior are primarily interpreted within the context of psychological anomalies. These anomalies do not reach the level of mental illness but are characterized by deviations in personality traits that may lead to delinquent behavior. Such conditions reduce an individual's resilience to extreme situations, weaken social adaptation, impair self-control mechanisms, and ultimately give rise to impulsive, irrational, and often unlawful actions. According to author I. Rahimov, fear is a psychological state that arises within an individual and cannot be externally imposed. For fear to emerge, there must be a basis or cause. While the threat of loss of life can be one such cause, "a person can only be reasonably threatened over an action or omission that is contingent upon the will of the individual to whom the demand is directed." [5, p. 90].

As a result, the emergence of criminal behavior stems from the complex interplay of defects in the socialization process, the influence of the social environment, and biological factors. In this regard, combating criminality requires not only legal mechanisms but also comprehensive approaches aimed at improving the social and psychological environment.

In criminology, there are various theories concerning the causes of criminality and the criminal personality. One of the most prominent researchers of the 20th century, Austrian psychologist and psychiatrist Sigmund Freud (1856–1939), occupies a special place in this field with his psychoanalytic theory – Freudianism. According to Freud, human behavior is not determined by the laws of social development, but rather by irrational (Latin: *irrationalis* – not governed by reason) and unconscious psychic forces. He believed that a person is in a constant, hidden state of conflict with their environment. Freud introduced new concepts into psychological science, such as the unconscious and the subconscious. He explained the structure of personality through three primary components [13, p. 112]. According to Freud, the primary source of human behavior lies in the impulses arising from the id. However, the realization of these impulses is subject to certain restrictions imposed by the ego and the super-ego. A person's criminally inclined behavior may be driven by the urges of the id, but the stronger the super-ego, the more these impulses are kept under control.

According to this approach, the more developed a person's super-ego is (as a result of successful socialization, possession of high moral and legal values, and strong intellectual and volitional qualities), the more resistant they become to the impulses of the id, and thus are less likely to exhibit a tendency toward criminal omission.

In addition, Russian researcher O.E.Petruniya also identifies biological and natural factors among the stimuli leading to criminal behavior. According to him, chemical changes, radiation, the impact of atomic energy, and other environmental factors influence human psyche and, consequently, affect behavior [10, p. 68].

Despite all these explanations, we still encounter a controversial issue surrounding the "problem of punishment for omission." One possible explanation is that in the absence of an act, it may appear as if a person is being punished merely for their thoughts. This touches upon a sensitive and contentious matter within the criminal justice system. It seems universally accepted that punishing someone solely for their thoughts without any act would constitute a distortion of the legal institution. The question, however, is whether punishment for omission raises this problem. Apparently, it might, because if omission is defined as the "absence of voluntary bodily movement," then there is no act to be punished. In reality, we do not impose punishment merely for the omission itself, but rather for an omission that has created the conditions for a dangerous event usually resulting in the death of a helpless person. In this respect, a crime of omission manifests itself in the external world through the occurrence of an undesirable event.

When analyzing the criminological characteristics of criminal omission, it is also essential to pay special attention to its latent nature. Crimes committed through omission are often not detected in time, evidence may be lost, and other negative circumstances may arise, all of which further reinforce their latent character. This, in turn, undermines the effectiveness of criminal prosecution and, in a broader sense, results in a violation of constitutional rights. Moreover, the uncertainty surrounding the imposition of liability for offenses committed by omission sometimes leads to such acts remaining outside the attention of law enforcement authorities, thereby contributing to increased latency. According to Article 68 of the Constitution of the Republic of Azerbaijan, the rights of a person who has suffered harm as a result of a crime shall be protected by the state [1, p. 22]. The failure to detect and punish the crime in a timely manner hinders the realization of these rights.

In criminology, omission is analyzed as a broader concept characterized by the failure of an individual to fulfill legal obligations established either by legislation or social relations. Such passive behavior, resulting in socially dangerous consequences, is highlighted as one of the main factors causing crime. In particular, when a person has a specific duty to act or perform a certain behavior but fails to fulfill this duty, inactivity may constitute a cause of crime.

In the majority of criminal cases related to inactivity, duties that do not raise legal or moral disputes such as parental obligations towards children or spousal duties are involved, and courts generally do not find it necessary to engage in detailed discussions about the normative character of these duties. Accordingly, a view has developed in criminology that the mere existence of a legal duty is sufficient for establishing the act [16, p. 211].

The Michigan Court of Appeals in the United States has stated in its ruling that if a homicide is committed by means of inaction, such inaction must be the cause of death,

and the death must result from the failure to perform a clear legal duty established by law or contract [12, p. 22].

Omission as a criminal-legal category has been established in the scholarly literature since the 19th century. The German jurist and criminologist Adolf Feuerbach noted in this regard that, unlike crimes committed by action (*delicta commissionis*), offenses characterized by the failure to fulfill a legal duty (*delicta omissionis*) manifest in the form of omission [11, p. 147].

It is well established that for any behavior of a person to be regulated by law or classified as a criminal offense, there must be a certain number of similar and recurrent instances of omission within society that are characteristic of such conduct [3, p. 5]. In the criminological classification of latent criminality, offenses committed by omission are predominantly categorized under natural latency. This is primarily due to factors such as the failure to report the crime in a timely manner, the victim's or witnesses' fear of the perpetrators, unwillingness to provide information, and similar reasons [6, p.90].

In criminological victimology, omission holds a significant place. Within this field, omission is analyzed as a form of passive behavior exhibited by the victim. Although less frequent than active behavior, such passivity can, in certain cases, contribute to the offender's entry into psychological or social conflict, ultimately provoking the commission of a crime. For instance, the deliberate failure to fulfill mutual obligations within domestic relationships may act as a catalyst, provoking the other party and leading to aggressive behavior.

When objectively analyzing the personality of individuals who commit crimes through omission, it is often observed that such persons lack the ability to foresee and evaluate the consequences of their behavior in advance. In other words, individuals falling within this category commit acts of omission without fully realizing their socially dangerous nature and face difficulties in anticipating the legal consequences, thereby finding themselves in situations that entail criminal liability. These circumstances should be taken into account when determining sentencing.

This situation can primarily be attributed to the individual's low level of psychological maturity and legal awareness. Consequently, such persons are unable to anticipate the negative consequences their behavior may cause to society in advance, which in turn contributes to the formation of their criminogenic potential.

The legal qualification of criminal omission and the grounds for liability for such acts are regulated differently in the criminal legislations of various countries. In some legal systems, criminal liability is imposed solely for the omission of a person who has a specific legal duty. In other legal systems, additional conditions are required for the application of such liability; for example, the individual's prior awareness of a concrete danger or the possibility of preventing the consequences of their conduct.

These differences necessitate that the legal and criminological nature of omission be assessed not only within the framework of formal legal norms but also in the context of the psychological and social characteristics of the criminogenic personality.

Normative clarity regarding the legal recognition of crimes of omission should be enhanced: In Azerbaijan and other countries, the concept of a specific legal duty for defining crimes committed by omission must be unequivocally articulated with practical criteria. This would enable law enforcement agencies to more accurately identify such acts.

Preventive mechanisms should be strengthened to counteract the latent nature of criminal omission: Crimes committed by omission often escape the attention of law enforcement authorities. Therefore, the responsibilities of individuals working especially in healthcare, education, family, and social service sectors must be more clearly defined, and their legal awareness should be actively promoted.

Empirical research on the psychological and social characteristics of persons committing acts of omission should be expanded in criminological studies: A deeper understanding of the motives behind omission and the behavioral patterns of such individuals may assist in developing effective strategies for preventing this phenomenon.

The comparison of the public danger element of omission with that of action remains a contentious issue in criminology: For example, Ambos considers that an individual who actively kills another person with a bullet generally appears to bear greater responsibility than one who merely allows another person to drown by failing to prevent the death [12, p. 20].

For example, consider the argument critically discussed above: active conduct and omission differ in their nature, which is true from a naturalistic perspective. However, the conclusion drawn from this difference that omission is never morally wrong in itself or is less wrongful than acts is incorrect. Certainly, causing someone's death is a more serious and wrongful behavior than slapping someone in the face. Yet, the moral and motivational distinction between these two forms of conduct does not stem from whether they are acts or omissions but rather from the gravity of the harm resulting from them. If the harm were equivalent such as shooting someone fatally versus allowing them to drown and if, in both cases, there existed a duty to prevent the harm, then both forms of conduct should be considered equally wrongful.

In other words, the critical distinction lies not in the naturalistic dichotomy between "act" and "omission," but in the normative status of the behavior under discussion and the severity of the harm caused by it. Even if someone considers a passive individual less culpable than an active wrongdoer, this does not imply that the former bears no responsibility at all; rather, the responsibility may be lesser or of a "secondary" degree. This is particularly relevant in cases of "failure to rescue," where the behavior consists merely of not providing assistance to someone in need.

In criminology, some authors broadly conceptualize the criminality of offenses committed by omission as a restriction on the right to freedom and choice. Specifically, there are perspectives asserting that prohibiting criminal omissions imposes greater limitations on personal liberty and entails more significant interference in individuals' daily lives compared to the prohibition of active conduct [14, p. 379].

The United States Supreme Court, in its ruling, emphasizes that duties arising from legal grounds must be demanded in accordance with the principle of legal certainty. Specifically, the Court states that every ordinary citizen must have a reasonable opportunity to understand what criminal law requires or prohibits, and that the meaning of criminal statutes should not be based on speculation or conjecture.

The specification of a concrete legal duty limits the scope of liability for criminal omission and prevents the unjustified expansion of the scope of criminal law. This requirement aims to ensure consistency and legal certainty by clearly distinguishing for individuals which forms of omission may give rise to criminal liability and which do not warrant intervention by the criminal justice system.

III. Conclusion

Enhancing individual responsibility plays a crucial role in the prevention of crimes committed by omission; in this regard, it is essential to instill not only the legal but also the moral responsibilities of individuals, such as the concept of the "duty to assist." Within the framework of legal awareness campaigns, the legal consequences of omission should be widely communicated through media, educational institutions, and public events. Simultaneously, criminological training should be provided to students in schools and universities particularly those studying law, medicine, and social work to ensure their understanding and internalization of these responsibilities. For this purpose, members of society should not remain indifferent to dangerous situations (such as violence, neglect towards children, or appropriate conduct in case of accidents, etc.); awareness-raising efforts must be undertaken to inform them about the legal and moral responsibilities associated with such circumstances.

Alongside the principle of legal certainty, legal transparency specifically, statistical accessibility is also a highly significant issue. It is essential that the official crime statistics in the country objectively include data on crimes committed by omission. The separate categorization of crimes by omission in statistical reports would provide law enforcement and criminological agencies with several advantages: analyzing the actual scale and dynamics of omission crimes; more accurately assessing latent crime in this area; identifying gaps in the application of legislation; and planning preventive measures more effectively, among others.

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