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THE HISTORICAL DEVELOPMENT OF CRIMINAL OMISSION: FROM PAST TO PRESENT

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Abstract

To deeply understand the essence of crimes committed by omission from the objective perspective in criminal law theory, it is essential to comprehensively study the developmental trends of such acts in the criminal-legal history of Azerbaijan. The present research primarily aims to investigate how criminal omissions have been described and classified across various legal-historical stages. The main objective of this article is to examine how omission has been regarded as socially dangerous conduct throughout the key periods of Azerbaijan's legal history starting from ancient customary law norms and religious-legal traditions, continuing through the codified acts of the imperial, Soviet, and post-independence periods. Within this context, particular attention will be given to the characteristics of legal norms that either criminalized omissions or did not regulate such acts, alongside an analysis of the features of omissions within different socio-political formations. This study will be conducted with reference to primary legal sources and historical documents, including ancient customary law norms, Sharia-based rules, the legislation of the Russian Empire, Soviet criminal laws, and contemporary criminal legislation of the Republic of Azerbaijan. The comparative and historical-legal analysis presented herein aims to explore the historical development of criminal omissions and contribute to a deeper theoretical and practical understanding of liability based on omission.

Keywords: *criminal-legal history, publicly dangerous act, objective aspect, passive behavior, omissive conduct, criminal omission, criminalisation, decriminalisation.*

I. Introduction

The study of the developmental stages of criminal omission within the history of Azerbaijan's criminal law represents a longstanding and significant area of legal research. It serves as a lens through which the evolution of society and the nature of legally protected social relations can be understood. Over the years, this issue has reflected changes in legal thought, state policy, and societal values, thereby shedding light on how omission has been conceptualized and addressed as a form of criminal behavior.

In order to objectively examine the criminal-legal development of socially dangerous acts committed by omission, the history of criminal law in Azerbaijan may be conditionally divided into several periods: the Ancient Period (pre-7th century BCE); the Islamic Period (8th–18th centuries); the Russian Empire Period (19th century–1918); the National Independence Period (1918–1920); the Soviet Period (1920–1991); and the Modern Period following the restoration of independence (1991–present).

II. The historical development of criminal omission

In the Ancient Period, the primary sources of law in Azerbaijan were customary law, with Avesta and its parts (sections) serving as written sources. From the perspective of criminal law, the most significant part of the Avesta, known as the "Vendidad", was dedicated to criminal liability and punishment institutions. During this period, the criminal categorization of acts was primarily determined in terms of their harm to social relations, particularly moral and religious relations. Specifically, the outward aspect of the act in criminal law was defined as omission, which was characterized by the failure to follow prescribed rules or the refusal to act. It should be noted that the canonical norms established in the Vendidad stemmed from the requirements of the Zoroastrian religion at the state level. This meant that the prohibited act was considered both a religious and a state crime. According to the Avesta, violations of specific religious rituals and rules of the Zoroastrian faith, and the failure to carry them out (omission), were regarded as crimes, for which

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corresponding punishments, particularly physical punishments, were prescribed. For example, according to Zoroastrianism, the corpses of deceased individuals were to be taken to remote places away from inhabited areas for scavengers like birds and animals to consume. If someone violated this instruction or failed to carry it out (showed omission), they were to be punished with 200 lashes. The Avesta also considers violations of religious rules regarding animals as criminal acts, subject to punishment [8, p. 23].

For example, in terms of the form of crimes committed by omission, the Vendidad considered it a criminal act to deprive animals, particularly dogs of any breed, from food or to fail to provide them with food. Not providing food to a sheepdog was even equated to the act of depriving the head of the family of food. The criminalization of this act can be attributed to the irreplaceable role of dogs in the development of livestock at that time. Another intriguing act that found its place in the Vendidad was the failure to provide services to women on certain days [6, p. 38].

At the beginning of the Middle Ages (early Middle Ages), with the development of feudal relations in the ancient Albanian state within the boundaries of modern Azerbaijan, there arose a necessity for the adoption of new legal regulations to govern social relations. Eventually, the "Code of Laws" (canons), consisting of 21 articles, was adopted by the Aquen (Aluen) church council in 488, which incorporated rules regulating various legal relations [7, p. 38]. The canons, which contained numerous provisions related to criminal law, primarily criminalized acts committed by action from an objective aspect. However, within the sphere of crimes against religious (state) and public order, the act of "not working on Sundays and not going to church" could serve as an example of a crime committed by omission from an objective aspect.

In the mid-early Middle Ages, during the Arab invasions, the formation of new social relations in Azerbaijan had a significant impact on law, especially criminal law. The emergence of Islam in the 7th century in Arabia led to the formation of the Muslim legal system.

Muslim criminal law regulates the actions that must or must not be performed in order to ensure social order and stability, the means and measures that can prevent these acts, the rules that must be formulated and applied concerning offenders, and the methods, procedures, and forms of application required by the competent authorities and courts. Muslim law, undoubtedly, in accordance with the teachings of Islam, did not only affect governance but also had a profound influence on social life [14, p. 27]. It should be noted that Muslim law maintained its influence in Azerbaijan for a long period, with its application being limited during the era of the Russian Empire's occupation and afterward. The sources of Islam were also considered the sources of Muslim criminal law. These primarily included: the Quran (Meccan and Medinan surahs); Sunnah (Hadith) (the actions or omissions of Prophet Muhammad in relation to events, whether through his words, deeds, or omission) and other sources such as consensus (Ijma) and analogy (Qiyas).

In Muslim criminal law, some scholars note that criminal acts, in terms of their outward manifestation, are committed either by active or passive actions [5, p. 317-318]. However, in line with criminal law theory, many authors argue that, in Muslim criminal law, a socially dangerous act can be committed in two forms: by action, that is, the commission of forbidden acts, or by omission, that is, the failure to perform obligatory actions (or the refusal to do so) [6, p. 76]. Thus, some Islamic scholars do not consider omission as a "lack" but regard the failure to perform what is required by the religion as creating responsibility and a basis for punishment. Modern scholars of Muslim law categorize crimes committed by omission as including: failure to provide public assistance, evading testimony, shirking from jihad (holy war), and so on [12, p. 294].

After the adoption of Islam, statehood traditions in Azerbaijan were revived, leading to the formation of local Muslim feudal states. During this period, with the Seljuk influx, the Turks became the dominant ethnic group in the Caucasus. In the 11th century, the famous Seljuk statesman and vizier Nizam al-Mulk (1018-1192) wrote the Siyasatnama, also known as Siyer al-Muluk, which served as a legal source. This work was a didactic and political book that encompassed theories on state administration, political, and social matters. In the section of the book dedicated to "State officials and administrators", the duties of specific subjects were clearly outlined, and the scope of acts considered criminal was defined [10, p. 318]. Here, acts committed by omission, such as failing to execute orders, not collecting taxes on time and delivering them to the treasury, and similar actions, were considered serious crimes committed by specific subjects. Beginning in the early 13th century, the expansion of

the invasions by the nomadic Mongol tribes led to the creation of the Mongol Empire, stretching from Asia to Europe. By the mid-century, this culminated in the formation of the Ilkhanate state in Azerbaijan. The Great Yasa a legal code compiled during the reign of Genghis Khan, was considered the primary legal source of the time. This code, adapted to the conditions of the period, was a refined form of Mongol customs. Known for its harsh punishments, the Great Yasa prescribed the death penalty for acts of omission such as failing to assist a comrade in battle or fleeing from combat [6, p. 129].

In the Ilkhanate state, the reforms implemented by Mahmud Ghazan Khan, who came to power in 1295, had significant legal importance. His reforms, which covered various aspects of the state's social, economic, and legal life, were reflected in nearly 40 decrees he issued. These decrees imposed severe punishments for failure to comply with the regulations (omission), including the execution of emirs and judges. According to Ghazan Khan's tax reform, individuals who failed to pay taxes on time were fined, while those who did not pay any taxes at all faced corporal punishment of 70 lashes and were subjected to enslavement [5, p. 30]. In the 14th-15th centuries, during the period of feudal fragmentation in Azerbaijan (including the Chobanids, Bayanduris, Baharlus, Darbandis, Safavids, and others), the lack of a centralized state negatively affected state administration, particularly the country's legal system. However, in the 15th century, an important legal source was the Qanunnama, compiled between 1470–1477 under the order of Sultan Hasan Bayanduri. This legal code played a significant role in regulating various issues [9, p. 420]. The provisions reflected in this "Ganunnama", particularly those concerning the legal status of peasants and taxes, remained in legal force until 1557, when a new Qanunnama titled Dastur-ul-Amal Shah Tahmasp was adopted by Shah Tahmasp I.

In the mid-16th to 18th centuries, with the establishment of centralized state power (Qizilbash state), other rulers: Shah Tahmasp I, Shah Abbas I, Sultan Hussein, and Nader Shah − adopted financial and administrative regulations, as well as public order laws. These laws often targeted issues such as bureaucratic greed, abuse of office, failure to pay taxes, and the production of poor-quality goods. Such acts, typically accompanied by omission, were classified as state crimes.

From the mid-18th century, the increasing feudal fragmentation and the wars between Russia and Iran in the early 19th century transformed Azerbaijan into a battlefield between the two empires. This division of the country between the two empires resulted in a significant transformation of the legal system in Northern Azerbaijan after its annexation by the Russian Empire.

In the "Regulations on Court and Enforcement of Court Judgments, Concerning the Crimes and Offenses of the Inhabitants of the Former Tatar Districts, the Yelizavetpol Province, the Muslim Provinces, and the Mountain Peoples", issued by the Russian Empire in 1831, it was stated that the punishment for a crime must always be proportional to the degree of the participant's guilt. According to these regulations, a person who conceals a crime committed by omission and fails to report it was subjected to a whipping or rod punishment, not exceeding 100 lashes [6, p. 148]. On August 15, 1845, the Russian Empire adopted the first codified act in criminal law, the "Code of Crimes and Penal Sanctions" ("Ugolovnyy Ustav"). The code consisted of 12 sections and 2,224 articles, organized into chapters and sections, and was intended to be applied to all subjects of the Russian Empire [13, p. 4.]. The first section of the Code of Crimes and Penal Sanctions included general legal principles. It defined criminal actions as not only actions that directly violate the law but also as the failure to comply with legal directives (omission) under the threat of punishment. An example of omission in this context is the crime of disobedience to authority, where failure to act in accordance with governance rules was considered a criminal act.

At the end of the century, the development of the philosophy of enlightenment in Azerbaijan brought to the forefront issues such as independence and the ideas of freedom, as well as the resolution of national destiny. In the modern era – at the beginning of the 20th century, following crises in the Russian Empire and its collapse, the political situation that emerged in the region further strengthened the idea of establishing an independent and free state. As a result of the Azerbaijani people's national liberation struggle against Tsarist Russia, the independent state they established in North Azerbaijan – the Azerbaijan Democratic Republic (ADR) was the first secular democratic republic and parliamentary republic in the Turkic and Muslim worlds [11, p. 4]. During the period of the Republic, many laws and draft laws were developed in various fields, particularly in state and legal

administration. During the Azerbaijan Democratic Republic (ADR), principles such as legality and the necessity of punishment were considered essential factors when determining criminal responsibility.

In March 1920, a draft law titled "Responsibility of Relatives for Hiding Deserters" was prepared. Although it passed the initial discussions, it was not possible to present it for parliamentary debate due to the developments of the events at the time. This draft law, which was of significant importance for the security of the state, regularly subjected to attacks, included provisions that held relatives living in the same settlement as deserters, as well as local administrative officials, responsible for failing to report military draftees who did not report to their military recruitment centers. This responsibility extended up to the fourth degree of kinship [8, p. 349]. After the collapse of the Azerbaijan Democratic Republic, which preserved its independence for only 23 months and etched its name in history, the process of Sovietization transformed all spheres of law, which, in essence, became politically and ideologically driven. These characteristics did not bypass criminal law as well.

In Azerbaijan, the initial provisions of Soviet criminal law were determined by the "Decree on People's Courts" dated May 12, 1920. The decree prohibited the application of the laws of the Azerbaijan Democratic Republic, but since the decree did not fully define criminal acts, the identification of criminal actions and the imposition of penalties were entirely left to the discretion of courts serving the regime, which justified the political-ideological legal thinking behind justice. Although the concept of a crime was not explicitly defined in the decrees, the general instructions established there categorized a crime as a socially dangerous act or omission. The 1922 Criminal Code of the Azerbaijan SSR included a definition of crime with a completely political content. Article 6 of the Code stated: "Any publicly dangerous act or omission that threatens the principles of Soviet rule and the legal norms established by the peasant-worker government during the transition to communism is considered a crime" [4, p. 24].

In a certain sense, the 1960 Criminal Code of the Azerbaijan SSR, which stood out for its credibility among the legal codes adopted during the Soviet period (1922, 1927, 1960), criminalized actions that were inconsistent with the public-political formation of that time. Based on this, the chapter on "State Crimes" specifically highlighted the particularly dangerous state crimes, among which the crime of "treason" defined in Article 57 of that Code holds particular interest. In this regard, this act, which objectively has an alternative criminal composition, is expressed through an omission: (fleeing abroad or) refusing to return to the USSR from abroad, i.e., not returning to the homeland (not coming back), which was considered a crime [3, p. 21].

In the late 20th century, the crises within the USSR and the crimes committed against our people led to the restoration of independence. On October 18, 1991, during a session of the Supreme Soviet of the Republic of Azerbaijan, the "Constitutional Act on the State Independence of the Republic of Azerbaijan" was unanimously adopted, and Azerbaijan regained its independence. The Constitution of the Republic of Azerbaijan, adopted on November 12, 1995, through a nationwide referendum, laid the foundation for the creation of democratic, legal, and secular legislation across all legal spheres [1, p. 5].

The Criminal Code of the independent Republic of Azerbaijan, adopted on December 30, 1999, provided the most comprehensive definition of "crime". According to Article 14 of this Code, the commission of a socially dangerous act (whether through action or omission) in a culpable manner, under the threat of punishment, is considered a crime [2, p. 53]. In the currently effective Criminal Code, while there is no specific definition for omission, various sections and chapters of the Special Part of the Code address certain social relations and define them both in terms of the form of the act committed (action/omission) and solely as a form of commission (omission only).

III. Conclusion

This article further clarifies that throughout different historical periods, depending on the political and social context, the scope of criminal actions in Azerbaijan and their constituent characteristics have varied. In particular, the issue of responsibility for crimes committed through inaction has been criminalized in accordance with the demands of the specific time.

Considering the legal-historical essence of inaction, as well as the criminological indicators of crimes committed through inaction and the analysis above, it is important to emphasize that inaction, as a necessary feature of the objective aspect of a criminal composition, must be deeply studied as a

necessary category in criminal law with its own distinctive characteristics. Moreover, the types and classification of criminal actions that fall within this category should be analyzed accordingly.

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CİNAYƏTKAR HƏRƏKƏTSİZLİYİN İNKİŞAF TARİXİ: KEÇMİŞDƏN BU GÜNƏ

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Annotasiya

Cinayət hüquq nəzəriyyəsində obyektiv cəhətdən hərəkətsizliklə törədilən cinayətlərin mahiyyətini dərindən anlamaq üçün bu əməllərin Azərbaycanın cinayət-hüquq tarixindəki inkişaf meyillərini əhatəli öyrənilməsi olduqca zəruridir. Cari araşdırmada başlıca olaraq cinayətkar

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hərəkətsizliyin müxtəlif hüquqi-tarixi mərhələlərdə necə tövsif edildiyi, təsnifləşdirildiyi tədqiq ediləcəkdir. Azərbaycan hüquq tarixinin əsas dövrləri ərzində, yəni qədim adət hüququ qaydalarından və dini-hüquqi ənənələrdən başlamış imperiya, sovet və müstəqillik dövrünün məcəlləşdirilmiş aktlarında hərəkətsizliyin ictimai-təhlükəli davranış kimi necə qəbul edildiyini araşdırmaq məqalənin əsas məqsədini təşkil edir. Qeyd edilən kontekstdə diqqət əsasən hərəkətsizliklə törədilən əməlləri cinayət hesab edən və bu cür əməlləri tənzimləməyən hüquqi normaların xüsusiyyətlərinə yönəldiləcək və müxtəlif ictimai-siyasi formasiyalarda hərəkətsizliklə törədilən əməllərin xüsusiyyətləri təhlil ediləcəkdir. Bu araşdırma ilkin hüquqi mənbələrə və tarixi sənədlərə qədim adət hüququ normalarına, şəriət əsaslı qaydalara, Rusiya imperiyasının qanunvericiliyinə, sovet dövrü cinayət qanunvericiliyinə və müasir Azərbaycan Respublikasının cinayət qanunvericiliyinə istinadən aparılacaqdır. Qeyd edilən müqayisəli və tarixi-hüquqi təhlil cinayətkar hərəkətsizliyin tarixi inkişafını təhlil etməklə ona görə məsuliyyətin nəzəri və praktik əsaslarının öyrənilməsinə töhfə verəcəkdir.

Açar sözlər: *cinayət-hüquq tarixi, ictimai-təhlükəli əməl, obyektiv cəhət, passiv davranış, hərəkətsiz davranış, cinayətkar hərəkətsizlik, kriminallaşdırma, dekriminallaşdırma.*

ИСТОРИЯ РАЗВИТИЯ ПРЕСТУПНОГО БЕЗДЕЙСТВИЯ: ОТ ПРОШЛОГО ДО НАСТОЯЩЕГО

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Резюме

Для глубокого понимания сущности преступлений, совершённых путём бездействия с объективной стороны в теории уголовного права, необходимо всесторонне изучить тенденции развития таких деяний в уголовно-правовой истории Азербайджана. Настоящее исследование в первую очередь направлено на анализ того, как преступное бездействие описывалось и классифицировалось на различных правово-исторических этапах. Основная цель данной статьи — исследовать, как бездействие рассматривалось как общественно опасное поведение в ключевые периоды правовой истории Азербайджана, начиная с норм древнего обычного права и религиозно-правовых традиций, продолжая через кодифицированные акты имперского, советского и постсоветского периодов. В данном контексте особое внимание будет уделено характеристикам правовых норм, которые либо криминализировали бездействие, либо не регулировали такие деяния, а также анализу особенностей бездействия в различных социально-политических формациях. Исследование будет проводиться с опорой на первоисточники и исторические документы, включая нормы древнего обычного права, правила, основанные на шариате, законодательство Российской империи, советское уголовное законодательство и современное уголовное законодательство Азербайджанской Республики. Представленный сравнительный и историко-правовой анализ направлен на изучение исторического развития преступного бездействия и внесение вклада в более глубокое теоретическое и практическое понимание ответственности, основанной на бездействии.

Ключевые слова: *уголовно-правовая история, общественно опасное деяние, пассивное поведение, бездеятельное поведение, преступное бездействие, криминализация, декриминализация.*

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