

# REPUBLIC OF AZERBAIJAN

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## ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

## OMISSION AS A CRIMINAL-LEGAL CATEGORY

Specialty: 5611.01 – “Criminal law and criminology;  
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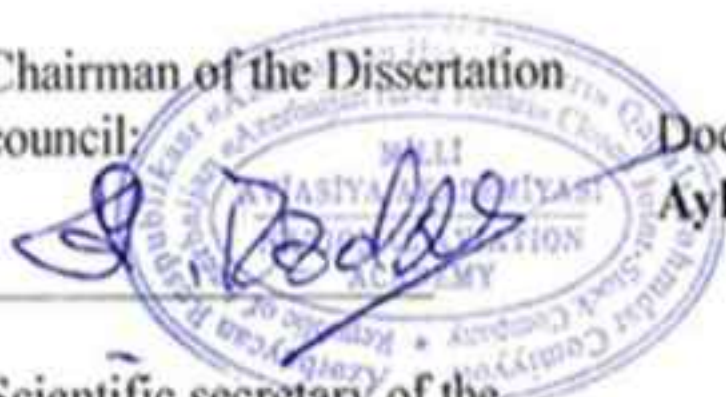
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## GENERAL OVERVIEW OF THE DISSERTATION

**Relevance of the topic and degree of its development.** After restoring its independence, in the Constitution of the Republic of Azerbaijan, prepared under the leadership of the National Leader Heydar Aliyev and adopted on 12 November 1995, the inviolable, inalienable and indivisible rights and freedoms of everyone from the moment of birth were enshrined as a fundamental provision. In this regard, the continuous improvement of criminal-legal norms ensuring the protection of the individual, society and the state from socially dangerous acts in accordance with the requirements of the modern era is of essential importance.

The Criminal Code of the Republic of Azerbaijan, adopted on 30 December 1999, differs significantly from previous codes, and it may be assessed as an indicator of systemic reforms carried out in the judicial-legal system in different periods, particularly in the field of penal policy as a whole, in accordance with the Decree of the President of the Republic of Azerbaijan dated 10 February 2017 "On improving activities in the penitentiary sphere, humanization of penal policy and expansion of the application of alternative punishments and procedural coercive measures not related to isolation from society".

Against the background of complex political and social processes occurring in the world in the 21st century, an increase is being observed in the number of socially dangerous acts committed under various categories of crimes, as well as in the number of persons who have committed crimes. It is precisely this situation that makes it necessary for states to pay special attention to the field of combating crime. It is no coincidence that the protection of public security and public order from criminal encroachments, as well as the prevention of crimes, have been defined as the main duties of the state.

However, the positive trends emerging in the current penal policy can be attributed to the strengthening of law enforcement

activities, socio-economic factors, legal awareness within society, and other related circumstances. The continuity of this dynamic will depend on the legal and institutional measures to be implemented in the future. We assume that the downward trend in the number of recorded crimes in the country in 2024 (approximately 9.32%<sup>1</sup>) will continue in the coming years as well.

Changes occurring in public life make it necessary to adapt the state's legal system to modern requirements. It should be noted that one of the areas where this process is most clearly observed is precisely the field of criminal law. Thus, alongside the increasing complexity of life activities, new obligations arise that individuals are required to fulfill. As a result, their conduct in violation of such obligations also brings to the forefront the issue of liability for socially dangerous acts committed by omission. In this regard, the non-performance of obligations established by law or other legal grounds sometimes leads to the emergence of serious legal liability for certain individuals. The existence of socially dangerous acts committed by omission in the Criminal Code (hereinafter referred to as the "CC") gives rise both to theoretical disagreements and to qualification difficulties in law enforcement practice. This, in turn, necessitates the correct criminal-legal assessment of omission and its types within national criminal law, as well as the conduct of comprehensive scientific research.

Considering the historical development process, it can be concluded that the increasing complexity of social relations necessitates the parallel development of legal systems as well. As a result, concepts such as act, omission, voluntary refusal to commit a crime, and other legal notions have been formed and distinguished from one another. In criminal law theory, the beginning of discussions on the category of omission dates back to the early 19th century. Over time, these discussions have become more intensive

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<sup>1</sup> State Statistical Committee of the Republic of Azerbaijan / Crime and offences  
URL: <https://www.stat.gov.az/source/crimes/>

and continue to this day. Although theoretical approaches to crimes committed by omission have mainly developed over the last two centuries, such acts can be found in the legal history of both Azerbaijan and other countries since ancient times. In this regard, although theoretical discussions on the concepts of “criminal omission” and “crimes committed by omission” are relatively recent, legal liability arising from criminal omission and the criminalization of such acts within criminal law have a rather long historical background<sup>2</sup>. Therefore, depending on the historical and political conditions of different periods, the scope of acts considered as crimes in the territory of Azerbaijan and the elements of their composition have varied, and in particular, the issue of liability for crimes committed by omission has been criminalized in accordance with the requirements of each specific period.

The socially dangerous acts criminalized in the Special Part of the Criminal Code (CC) may, in terms of the objective side of the *corpus delicti*, be committed either through active conduct in the form of an act, or through passive conduct in the form of omission (or both). Therefore, omission is considered one of the important categories of criminal law science. At the same time, there are significant criminal-legal differences between crimes committed by action and crimes committed by omission.

From a legal perspective, omission is understood as the failure of a person to perform a specific act defined as an obligation (or duty), i.e., non-performance. Although the majority of socially dangerous acts criminalized in the CC are committed through action in terms of the objective side of the *corpus delicti*, the overall increase in all indicators of modern crime necessitates a comprehensive criminal-legal and criminological analysis of socially dangerous acts committed by omission.

On the other hand, socially dangerous acts committed by omission are enshrined in a number of important sections of the

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<sup>2</sup> Yurtlu, F. *Crimes of Omission*. Ankara: Seçkin Publishing, 2022, p. 90.

Criminal Code (CC), such as: “Crimes against public safety and public order”, “Crimes against state authority”, and “Crimes against military service”. Considering the nature and degree of public danger of the crimes provided for in these sections, as well as the interrelation of acts committed by omission with the fundamental institutions of criminal law, their comprehensive study is regarded as significant both from a theoretical and practical perspective.

It should be noted that, from a legal standpoint, the concept of omission is not limited solely to criminal-legal and criminological aspects; it also carries legal meaning and significance in constitutional law, penal enforcement law, civil law, and other branches of law. These considerations, in turn, necessitate a comparative study of criminal omission across different branches of law.

Although crimes committed by omission have been addressed in separate scholarly works of Azerbaijani legal scholars, omission as a criminal-legal category has not become the direct subject of their research. In the dissertation, the scientific works of Azerbaijani scholars such as F. Samandarov, I. Rahimov, H. Qurbanov, Sh. Samadova, I. Valiyev, S. Rzayeva, M. Bayramova, and others, as well as foreign scholars such as N. Kunter, H. Hakeri, R. Erbaş, M. Urubzhurov, A. Boyko, J.M. Sanchez, P. Robinson, and others, were analyzed and referenced. However, despite this, the lack of systematic examination of omission as a necessary element of the objective side of the corpus delicti as an independent criminal-legal category in the scientific works of the aforementioned authors, particularly at the level of the object and subject of scientific research, has necessitated a separate study of this topic.

**Object and subject of the research.** The object of the dissertation consists of omission as a necessary element of the objective side of the corpus delicti, the criminal-legal and criminological problems arising in the framework of combating these

acts and the proposals aimed at solving these problems, as well as the system of social relations targeted by crimes committed by omission.

The subject of the dissertation includes the provisions of the General Part of the Criminal Code (CC) concerning criminal omission, the system of socially dangerous acts committed by omission in the Special Part of the Code, as well as scientific-theoretical studies dedicated to issues of legal liability and qualification regarding criminal omission in transnational criminal law and in the positive experience of the criminal legislation of certain foreign countries.

**Purpose and objectives of the research.** The purpose of the dissertation is to study omission as an independent criminal-legal category and, by analyzing the existing theoretical and practical problems of liability for crimes committed by omission, to improve national criminal legislation in this area and to provide certain recommendations aimed at the prevention of crimes committed by omission.

The inclusion of provisions on omission in the relevant norms of both the General and Special Parts of the Criminal Code (CC), as well as the fact that crimes committed by omission possess specific characteristics both in theory and in practice, determine the following tasks of studying omission as a criminal-legal category:

- analysis of the concept and essence of omission as a criminal-legal and philosophical category, as well as the formation of liability norms for crimes committed by omission and the historical development of legislation regulating the criminalization of such acts;

- to examine the types and classification of crimes committed by omission;

- to describe the social dangerousness of acts committed by omission and the preconditions for their criminalization under criminal law;

- to analyze the system of crimes committed by omission in the Special Part of the Criminal Code, as well as their objective and subjective elements;

- to investigate the specific features of certain crimes committed by omission within the system of transnational crimes and in the criminal legislation of a number of foreign countries;

- to substantiate theoretical and practical recommendations concerning criminal acts defined through omission in criminal legislation and to propose improvements to such legislation;

- to analyze the criminological characteristics of crimes committed by omission and to develop proposals aimed at their prevention.

**Research methods.** The methodology of the research is based on general and specific scientific methods of cognition, including the movement from the abstract to the concrete, as well as logical, historical, inductive, deductive, analytical, synthetic, and comparative analysis methods. The study also employs specific methods such as comparative legal analysis, the comparative examination of national and foreign legislation, and the analysis of both contemporary and historical normative frameworks.

Within the methodological framework, particular scientific methods including systemic-structural, formal-logical, linguistic, and historical-legal approaches, among others have been extensively applied. The findings and propositions set forth in the dissertation are grounded in the Constitution of the Republic of Azerbaijan, the Criminal Code of the Republic of Azerbaijan, the Code on the Execution of Sentences of the Republic of Azerbaijan, the Civil Code of the Republic of Azerbaijan, the Plenum decisions of the Supreme Court and the Constitutional Court, national and foreign judicial practice, as well as foreign criminal legislation and scholarly works in the fields of criminal law, criminology, philosophy, and psychology.

### **Key propositions submitted for defense:**

1. It is considered necessary to clearly define in the Criminal Code the grounds of liability for crimes committed by omission as an independent criminal law category. In this regard, it is proposed to introduce Article 14-1 entitled "Criminal Omission" into the Criminal Code. This proposal is based on the positive experience of the criminal legislation of a number of foreign states (for example, Article 11 of the Criminal Code of the Spain, Article 13 of the Criminal Code of the Germany, Article 2 of the Criminal Code of the Poland, etc.):

- "Article 14-1.1. An act committed by omission shall give rise to criminal liability only where a person fails to fulfill an obligation imposed upon him or her by law or other legal grounds, that is, evades, refuses, or improperly performs such obligation, and/or where such omission results in socially dangerous consequences."

Furthermore, it is submitted that, under Article 14-1.2, the legislator should explicitly determine in the Special Part of the Criminal Code which socially dangerous acts may be committed by omission.

2. One of the issues considered controversial in criminal law theory with respect to crimes committed solely by omission is whether such crimes may be perpetrated by co-perpetrators. It is submitted that co-perpetrators may indeed commit crimes by omission. However, this requires that two or more persons be bound by the same obligation arising from law or other legal grounds, and that these persons fail to fulfill such obligations.

In this regard, it is proposed to supplement Article 33 of the Criminal Code with the following provision:

"Article 33.2-1. In crimes committed solely by omission, two or more persons shall incur criminal liability as co-perpetrators only where they are bound by the same obligation on the basis of law or other legal grounds, and, by prior agreement, fail to fulfill such obligations, that is, evade, refuse, or improperly perform them,

and/or where such omission results in socially dangerous consequences.”

For example, reference may be made to failure to execute an order under Article 328 of the Criminal Code, committed by a group of persons or by a group acting in prior collusion.

3. Although the application of the institute of voluntary abandonment of crime is recognized in the Criminal Code with respect to crimes committed by omission, the legislator has not clearly defined the limits of definitive abandonment that exclude criminal liability. Therefore, the following amendment to the Criminal Code is proposed:

“Article 30.2-1. In crimes committed by omission, a person shall be deemed to have voluntarily and definitively abandoned the completion of the crime only where, being aware that he or she has the ability to prevent the socially dangerous consequences that may arise from the failure to fulfill an imposed obligation, he or she voluntarily undertakes the necessary and possible measures to prevent such consequences.”

4. In many crimes committed by omission from an objective standpoint, the specific nature of the subject of the crime arising from the existence of corresponding legal duties often necessitates the application, to such subjects, of the penalty of deprivation of the right to hold certain positions or to engage in certain activities. Compared to imprisonment, the establishment of this type of punishment as a principal penalty in relation to certain crimes committed by omission may contribute to expanding its scope of application and enhancing its effectiveness.

It is therefore proposed that, within the framework of alternative sanctions, the penalty of deprivation of the right to hold certain positions or to engage in certain activities be introduced as a principal punishment for the acts provided for in Articles 143 (abandonment in danger), 162.1 (violation of occupational safety rules), 190.1 (obstruction of lawful entrepreneurial activity), and 269

(failure of a ship captain to render assistance to persons in distress) of the Criminal Code.

5. Based on the approaches existing in criminal law theory and the positive experience of the criminal legislation of certain foreign countries, it is submitted that liability and punishment for certain crimes committed both by action and by omission should be differentiated. In particular, Article 13(2) of the Criminal Code of the Federal Republic of Germany provides that, where a crime is committed by omission, the punishment to be imposed on the offender may be mitigated. Similarly, pursuant to Article 83 of the Turkish Criminal Code, where a person causes death by failing to fulfill a specific obligation, a term of imprisonment may be imposed instead of life imprisonment as the principal penalty. At the same time, no mitigation may be applied. A comparable approach is also recognized by scholars of the Hanafi school of Islamic criminal law.

It should be taken into account that, whereas a criminal act consists in the commission of prohibited conduct, criminal omission consists in the failure to perform an obligation imposed upon a person by law or other legal grounds.

On this basis, it is proposed to supplement the General Part of the Criminal Code of the Republic of Azerbaijan with Article 62-1 as follows:

“Article 62-1. For crimes committed by omission that do not result in grave consequences, the punishment imposed shall not exceed three-quarters of the upper limit of the more severe type of punishment provided for in the sanction of the relevant article.”

6. From an objective standpoint, crimes committed by omission are provided for in various sections and chapters of the Special Part of the Criminal Code; therefore, their generic, specific, and direct objects differ from one another. Accordingly, taking into account the specific features of the protected social relations and the structure of the objective element of the offence, it is submitted that the name and placement of certain crimes committed by omission within the system of the Special Part of the Criminal Code should be revised:

- It is proposed that Article 196 of the Criminal Code (intentional evasion of payment of creditors' debts) be relocated and included in Chapter 32 (Crimes against the administration of justice). Under this provision, criminal liability arises where a manager of an organization or a citizen, on the basis of a relevant final and binding court decision, intentionally evades payment of creditors' debts or securities, thereby causing substantial harm.

Although this norm functions as a special provision in relation to Article 306 of the Criminal Code (failure to execute a court judgment, decision, or other act), the social relations it protects are directly related to the effective enforcement of final judicial acts.

- Taking into account that the Special Part of the Criminal Code is structured according to the generic and specific objects of crimes, it should be noted that under Article 269, the failure of a ship captain to render assistance to persons in distress at sea or on other waterways, where such assistance could be provided without creating serious danger to the captain's own vessel, crew, or passengers, stems from the captain's legal duty to render assistance to any person in distress at sea.

Therefore, the primary direct object protected under this provision is not traffic safety or the rules governing the operation of vehicles, but rather the social relations concerning the life and health of persons in distress to whom the ship captain is obliged to render assistance.

On this basis, it is considered appropriate that this provision be relocated to the "Crimes against the person" section of the CC, specifically within the chapter "Crimes against life and health."

7. With a view to improving the Special Part of the Criminal Code in relation to crimes committed by omission, we propose the following:

- In Article 103-1 of the Criminal Code, it is considered appropriate to replace the phrase "other acts" in the disposition with "other acts or omissions." This is justified by the fact that some of

the alternative acts listed in the provision, such as “pollution of the atmosphere, soil, or water resources,” may also be committed by omission. As an example, reference may be made to the criminal acts directed against natural resources during the Karabakh conflict, including the failure to prevent the pollution of the Hakari and Bargushad rivers.

- The title of Article 303 of the Criminal Code, “Unlawful acts in respect of property subject to inventory, seizure, or confiscation,” is imprecise. Specifically, the term “unlawful acts” does not correspond to the content of Article 303.2, which covers concealment or misappropriation of property subject to confiscation by a court judgment, as well as any other form of evasion of the enforcement of a final and binding court decision on confiscation.

- It is considered necessary to amend the disposition of Article 307.1 of the CC (failure to report a crime) by including crimes of medium gravity in its scope, as well as introducing the commission of the offence by an official as an aggravating circumstance. Such an approach would more effectively safeguard the interests of the state in the administration of justice. Furthermore, the wording “other close relatives,” as defined in the explanatory note to Article 307.1 as determined by legislation, is considered defective. It is proposed that this group be defined through the evaluative term “close persons” and other relevant persons.

- Given the diversity of social relations protected by crimes committed by omission, it is considered necessary to introduce special conditions for exemption from criminal liability as an incentivizing criminal law norm in certain offences where omission plays a key role. In this regard, it is proposed to supplement the note to Article 321 of the Criminal Code with the following provision:

“A person who, under conditions of necessity, commits for the first time during the current period the act provided for in Article 321.1 of this Code may be exempted from criminal liability.”

- The title of Article 346 of the Criminal Code, “Criminal acts of a prisoner of war,” may also be considered imprecise. From the

analysis of this provision, it is evident that the offence may be committed both by action and by omission (for example, violence against other prisoners of war or cruel treatment of them). On this basis, it is proposed that the title of the article be clarified and amended to "Criminal acts of a prisoner of war."

8. It is essential to ensure the statistical registration of crimes committed by omission as an independent category. It should be noted that the current statistical indicators predominantly cover crimes committed through active conduct, as a result of which crimes committed by omission remain largely invisible within the overall criminological picture. This, in turn, leads to a distortion of the actual structure of crime in legal assessment. The introduction of separate statistical registration for such crimes would make it possible to assess the real scale of latent crime in this area, to deepen criminological research, and to enable more effective planning of preventive activities by law enforcement authorities.

**Scientific novelty of the research.** Based on the theoretical and practical materials formed within the legal-scientific environment of the Republic of Azerbaijan, as well as those of foreign countries, concerning crimes committed by omission from an objective standpoint:

- the problems related to the incorporation of the category of omission into the criminal law norms of the General and Special Parts of the CC of the Republic of Azerbaijan have been analyzed;

- theoretical approaches developed in criminal law doctrine regarding the emergence of criminal liability for socially dangerous acts committed by omission from an objective standpoint have been summarized and systematized;

- the specific features of the establishment of crimes committed by omission in the positive practice of foreign criminal legislation have been examined;

- based on the criminological analysis of crimes committed by omission, the causes and conditions of criminal omission, as well as issues of its prevention, have been investigated.

Within the framework of the research, the concept and essence of omission as an element of the objective aspect of the corpus delicti have been comprehensively examined from both legal and criminological perspectives. In this context, a classification of crimes committed by omission into various groups has been carried out, and their legal nature and the grounds of liability have been determined. Furthermore, the criminalization features of such offences have been studied in detail, and an analytical approach has been presented regarding their degree of social dangerousness, legal justification, and place within the current legislation.

The analyses conducted and the scientific results obtained within the framework of the research have created a basis for proposing concrete recommendations for the improvement of national criminal legislation. These recommendations aim both to enhance the effectiveness of law enforcement practice and to ensure the development of the normative framework in line with international experience.

**Theoretical and practical significance of the research.** The theoretical significance of the research is directed toward the mutual improvement of general provisions related to omission in national criminal legislation. In this context, the grounds of liability for crimes committed by omission and their qualification features have been examined, and a comparative analysis of the criminal legislation of a number of foreign countries in this field has been conducted. This approach aims to contribute to the creation of legal opportunities for the further development of national criminal law based on scientific reasoning and the results obtained.

Within the dissertation, the objective elements of crimes committed by omission, in particular the objective aspect, as well as their differentiation from crimes committed by action, have been analyzed in detail. In this framework, the concept and essence of

omission, the conditions of criminal liability for omission, its legal characteristics and classification have been studied, existing problems in criminal legislation and ways of their solution have been identified, and statistical indicators have been determined for main corpus delicti in the Special Part of the Criminal Code, distinguishing offences committed solely by action, solely by omission, or by both action and omission.

The practical significance of the research lies in the fact that the scientific propositions, conclusions, and findings presented in the dissertation may be used in the improvement of legislation, in judicial and investigative practice concerning the qualification of crimes, as well as in addressing issues related to the prevention of criminal omission.

**Approval and application of the research.** The content and results of the research have been published in various academic journals, including 11 scientific works (8 scholarly articles and 3 conference proceedings), of which 3 were published abroad and 2 are indexed in international abstracting and indexing systems. Furthermore, the scientific propositions advanced in the dissertation have been presented at international conferences, as well as at scientific seminars and preliminary discussions held at the Faculty of Law of Baku State University.

**Name of the institution where the dissertation was carried out.** The dissertation submitted for the degree of Doctor of Philosophy was carried out at the Department of Criminal Law and Criminology, Faculty of Law, Baku State University.

**Volume of the structural sections of the dissertation and the total volume.** Considering exceptions in the text (spaces, bibliography, etc.), the dissertation comprises a total of 256.719 characters: "Introduction" 23.323 characters, "Chapter I" 57.551 characters, "Chapter II" 84.155 characters, "Chapter III" 56.922 characters, "Chapter IV" 22.582 characters, and "Conclusion" 10.996 characters.

## MAIN CONTENT OF THE DISSERTATION

In the introduction, the relevance and significance of the dissertation topic are substantiated, its degree of scientific investigation is analyzed, and the object, subject, aims, and tasks of the research are defined, as well as its methods. In addition, the scientific novelty, theoretical, and practical significance of the study are highlighted.

The first chapter of the dissertation, entitled **“Omission as an Element of the Objective Aspect of the Corpus Delicti and Its Main Characteristic Features,”** consists of two sections.

In the first section, **“The Concept, Essence, and Social Dangerousness of Omission,”** the category of omission is comprehensively analyzed, with attention paid to its philosophical understanding, followed by an examination of its general legal nature and the development of doctrinal approaches to omission in national criminal law. In this regard, the following key observations may be noted:

A general review of the history of philosophical thought reveals that omission (stillness) is not considered as a separate category, but rather within the concept of action itself. In other words, stillness (omission) is essentially regarded as a form of action and has a relative character of stability<sup>3</sup>.

In contrast to the philosophical approach, in the general legal context action and omission are evaluated as two distinct and independent categories. In criminal law theory, it is widely accepted that while action has an ontological character, omission lacks such a feature. From this perspective, every instance of omission requires normative evaluation, since omission is not merely the absence of action, but rather the failure to perform a specific act required by

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<sup>3</sup> Gadimov V.A. Omission as a necessary element of the objective side and its essence. *Baku, Qanun*, No. 8 (358), 2024, p. 71

law. In other words, omission is manifested as non-compliance with a behavioral requirement established by a prescriptive legal norm.

Unlike action, which is considered real conduct, there are various doctrinal approaches among scholars seeking to explain omission from different perspectives.

Among them, the late Professor F.Y. Samandarov noted that *“omission, in itself, does not express anything independently and can only perform its function within the system of social relations when assessed from legal and sociological perspectives.”*<sup>4</sup> Similarly, the late Professor N. Kunter, distinguishing between action and omission, stated that *“criminal action consists in the violation of prohibitions, whereas criminal omission consists in non-compliance with prescriptions.”*<sup>5</sup>

Taking into account the nature and degree of social dangerousness of crimes committed by omission, as well as their specific characteristics, the establishment of a legal definition of liability for criminal omission is of particular importance. In this regard, the proposal to introduce Article 14-1 into the Criminal Code is substantiated.

In order to analyze the social dangerousness of crimes committed by omission, it is also necessary to examine the historical development of liability for such acts in criminal law. In the dissertation, crimes committed by omission in Azerbaijani criminal law are analyzed within several historical stages: the Ancient period (BC–7th century); the Islamic law period (8th–18th centuries); the Colonial period (19th century–1918); the Azerbaijan Democratic Republic period (1918–1920); the Soviet period (1920–1991); and the Independence period (1991–present).

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<sup>4</sup> Samandarov, F.Y. Criminal Law. General Part. Textbook. Baku: Law Publishing, 2023, p. 161

<sup>5</sup> Kunter, N. Theory of the Material Elements of Crime. 2nd edition, Istanbul: Derr Publishing, 2024, p. 53

In the study of Islamic law, it has been established that from its earliest stages, omission was not regarded as “non-existence,” but rather as the failure to perform a religiously obligatory act and as a basis for liability. Modern scholars of Islamic law classify crimes of omission as including failure to render public assistance, refusal to testify, and avoidance of holy war, among others.

In the punishment of crimes committed by omission, scholars of the Hanafi school have expressed an interesting position. According to them, since there is a substantive difference between action and omission, even if the same legal consequence occurs, the same punishment should not be applied<sup>6</sup>. In other words, where a criminal result is caused by omission, a more lenient punishment should be imposed compared to cases where the result is caused by active conduct (action).

In the second section of the first chapter, entitled “**Features, Forms, and Classification of Criminal Omission,**” the characteristic features of criminal omission have been analyzed, and the following propositions have been identified as necessary:

Although the criminal legislation does not provide a general definition of a socially dangerous act, its two main forms socially dangerous action and socially dangerous omission are clearly established. However, the specific features of omission are not explicitly defined by the legislator.

The category of omission is recognized in most institutions and provisions of the General Part of the Criminal Code as a form of criminal conduct (act). Thus, in Articles 13, 14, 15, 17, 21, 24, 25, 26, 27, 29, and 39 of the General Part of the Criminal Code, omission is defined as an external manifestation of a socially dangerous act.

Since the General Part of the Criminal Code does not provide a precise definition of liability for criminal conduct in the form of action or omission, the determination by the legislator in the Special

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<sup>6</sup> Avcı, M. Ottoman Criminal Law (General Provisions). Ankara: Adalet, 2018, p. 57

Part of which acts are committed by action, omission, or both, raises practical questions. This issue, in itself, constitutes a factor inconsistent with the principle of legal certainty.

In criminal law, the number of crimes committed by omission is significantly lower than those committed by action. Nevertheless, socially dangerous acts from an external perspective may be classified into three main groups:

- socially dangerous acts prohibited by criminal law committed only by action;
- socially dangerous acts prohibited by criminal law committed only by omission;
- socially dangerous acts prohibited by criminal law committed both by action and by omission<sup>7</sup>.

Accordingly, criminal conduct in criminal law theory may also be classified into two groups:

- socially dangerous acts committed solely by action or solely by omission (simple criminal conduct);
- socially dangerous acts committed both by action and by omission (complex criminal conduct).

In simple criminal conduct, omission itself may further be classified into two groups:

- omission manifested in a passive form;
- omission manifested in an active form.

Furthermore, crimes committed by omission have been classified on various grounds. One such classification is based on the structure of the corpus delicti into “pure” and “mixed” omission: pure omission gives rise to liability in formal offences, whereas mixed omission leads to liability in material offences.

The second chapter, entitled **“The Grounds of Liability for Crimes Committed by Omission,”** consists of two sections.

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<sup>7</sup> Gadimov V.A. Omission as a necessary element of the objective side and its essence. Baku: Qanun No. 8 (358), 2024, p. 70

The first section, "General Provisions on Omission in Criminal Law," examines the general provisions on omission within the frameworks of criminal liability and the concept of *corpus delicti*.

Omission gives rise to criminal liability (or coercive measures) only where the person has the ability to perform the required act in the given circumstances. The mere fact of omission is not sufficient. If, due to objective reasons, the person is unable to perform the required act, such omission does not reflect the person's will but rather the influence of irresistible forces. In such cases, criminal liability is excluded, since the *corpus delicti* is absent.

The qualification of acts committed by criminal omission is a complex process, as it requires the examination not only of the material consequence but also of legal obligations and their breach in order to establish the existence of the *corpus delicti*.

Accordingly, in criminal law theory, a number of legal grounds giving rise to liability for omission have been classified. Among them, Associate Professor S.N. Rzayeva includes the following: *"direct obligations arising from the Constitution and other normative legal acts; obligations arising from contracts; obligations arising from official duties or professional activity; obligations arising from the person's prior conduct (so-called "duty of creation of risk")<sup>8</sup>"*.

In this part of the research, theoretical approaches concerning the existence of the category of omission in Chapters 6 (Incomplete Crime) and 7 (Participation in Crime) of the General Part of the Criminal Code have been analyzed and summarized.

It has been established that, under Article 28 of the Criminal Code concerning preparation for a crime, criminal preparation appears to be applicable only to crimes committed by action. In this provision, when defining preparation for a crime, the sentence ends

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<sup>8</sup> Rzayeva, S.N. Socially dangerous act // Baku: Scientific Legal Journal of the Police Academy No. 3, 2019, p. 7

with the expression “such acts are considered preparation for a crime.” Although the legislator generally uses the term “act” accompanied by the clarification “action or omission” in parentheses, such clarification is absent in this provision.

It is submitted that preparation for a crime, as a stage of an unfinished offence, is also possible in crimes committed by omission. As an example, Article 321 of the Criminal Code may be referred to: if a person prepares forged documents in order to evade military service, this may be considered preparation for a crime. However, whether such conduct gives rise to criminal liability depends on the conditions of liability for preparation as an inchoate offence.

The issue of whether crimes committed by omission may give rise to co-perpetration is also not uniformly accepted in doctrine. Theoretically, co-perpetration in crimes committed by omission is possible; however, this requires that two or more persons bear the relevant legal duty and fail to perform it, i.e., engage in omission. If there is no prior agreement or unity of intent aimed at joint commission of the offence, co-perpetration cannot be established; instead, the situation should be classified as parallel (independent) perpetration, where each person independently commits the same offence without mutual coordination.

Accordingly, the necessity of introducing Article 33.2-1 into the Criminal Code has been substantiated.

In the second section of the second chapter, entitled “**The System of Crimes Committed by Omission in Criminal Law**,” it is noted that crimes committed by omission are dispersed across various sections and chapters of the Special Part of the Criminal Code in accordance with their generic and specific objects.

During the collection of empirical materials for the research, it was established from an official response to our inquiry that statistical indicators on crimes committed by omission are not included among the monitored statistical data on offences in the country.

Within the system of the Special Part of the Criminal Code, a problematic issue concerning crimes committed by omission arises in relation to simple and incomplete descriptive dispositions. It is considered that this situation may be regarded as unacceptable from the perspective of the principle of legal certainty in criminal law. In our view, the legislator should differentiate in separate provisions criminal liability for violent offences against life and health such as intentional homicide and bodily injury (serious, less serious, and minor) depending on whether they are committed by action or omission. In such a case, the aggressive conduct of the perpetrator in intentional offences against life and health committed by action would serve as a criterion for the differentiation of criminal liability.

With regard to offences constituting crimes committed by omission and enshrined in various sections and chapters of the Special Part of the Criminal Code, we consider it necessary to introduce legislative amendments and additions to a number of articles, including Articles 142, 196, 213-1, 213-2, 264, 269, 303, and 307, among others.

Furthermore, it is proposed to criminalize as independent offences, in the form of material crimes committed through negligence, the failure to perform the obligation to provide care or supervision over a person with physical or mental impairments, as well as the failure to exercise control over dangerous animals.

The third chapter of the dissertation, entitled **“Transnational Criminal Law and Crimes Committed by Omission in the Criminal Legislation of Foreign States,”** is reflected in two sections.

The first section of this chapter, **“Problems of Liability for Transnational Crimes Committed by Omission,”** examines transnational crimes in accordance with their classification into “international crimes” and “crimes of an international character.”

To date, the statutes of international criminal justice bodies have not established a clear and systematic legal classification regarding the commission of international crimes by omission and its forms. Likewise, in the literature on transnational criminal law, there is no unified approach to crimes committed by omission. Although the Rome Statute of the International Criminal Court does not contain a direct provision regulating criminal omission, the term “conduct” used therein indicates the possibility that the defined acts may be committed both by action and by omission. Nevertheless, it is submitted that there is a need to establish general principles that would ensure a unified legal framework for transnational crimes committed by omission<sup>9</sup>.

By the Law of the Republic of Azerbaijan dated 22 October 2024, ecocide was criminalized through the introduction of Article 104-1 in the system of international crimes provided for in Section VII of the Criminal Code. However, had the term “other acts” in the disposition of this article been replaced with “other acts or omissions,” it would have encompassed the commission of ecocide by omission as well, thereby eliminating the need for broad interpretative extensions in the future.

Given that crimes of an international character are generally criminalized and give rise to liability under domestic legislation, it is considered that the concept of omission as an essential element of the objective aspect of many offences should be defined in the criminal legislation of the Republic of Azerbaijan. This would clarify which offences may be committed both by action and omission, or exclusively by omission.

The second section of the third chapter, entitled **“Criminalization Features of Certain Crimes Committed by**

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<sup>9</sup> Gadimov V.A. Grounds for inaction (omission) and its responsibility in the system of transnational crime, Ukraine, Juridical Scientific and Electronic Journal, № 1, 2025, p.528

**Omission in the Criminal Legislation of Foreign States,”** primarily conducts a comparative analysis of the specific features of crimes committed by omission in the criminal legislation of certain countries belonging to the Organization of Turkic States (OTS), the Commonwealth of Independent States (CIS), the Eastern Partnership of the European Union (EaP), and the European Union (EU), in comparison with the criminal legislation of the Republic of Azerbaijan.

Based on the positive experience of foreign criminal legislation, the following observations are considered necessary:

Article 83 of the 2004 CC of the Turkey criminalizes “intentional homicide committed by omission” as an independent offence. According to this provision, a person is held liable for causing death by failing to perform an act which he or she is legally obliged to perform. Such omission gives rise to liability where the obligation to act stems from legislation or contract, or where the person’s prior conduct has created a dangerous situation for the life of others.

In such cases, the principal penalty may range from 20 to 25 years of imprisonment instead of aggravated life imprisonment, 15 to 20 years instead of life imprisonment, and 10 to 15 years in other cases. In legal literature, it is also noted that the judge may, at his or her discretion, refrain from mitigation and impose a sentence within the range prescribed for intentional homicide committed by action<sup>10</sup>.

The Turkish CC also adopts a distinct approach in Article 94 regarding the crime of torture, expressly providing that no mitigation shall apply where the offence is committed by omission. This regulation demonstrates that in Turkish criminal law, the

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<sup>10</sup> Samadova Sh.T. Gadimov V.A. Features of the criminalization of certain offenses committed by omission: a comparative analysis of the criminal legislation of Azerbaijan and foreign countries, Moldova, *Studia Universitatis Moldaviae, Seria-Stiinte Sociale*, № 3 (183), 2025, p.125

commission of the same act by action or omission leads to differentiation in criminal liability and sentencing.

Article 10 of the CC of Spain (1995) provides that punishable acts under this Code are intentional or negligent actions or omissions. Furthermore, a positive development is observed in Article 11, which provides a legal definition of criminal omission and clearly sets out the grounds for criminal liability. This provision establishes that result-based (material) offences are considered to be committed by omission only where a person, in breach of a specific legal duty, fails to prevent a socially dangerous result, and where such result is equivalent to that caused by an act committed by action.

In relation to formal offences, where a person who is under a legal or contractual duty to act fails to perform such duty and thereby creates a danger to protected social relations, such omission also gives rise to criminal liability.

Furthermore, the criminal legislation of the Spain contains noteworthy provisions concerning liability for certain omissions. Article 195 provides that any person who, when required, fails to assist another person in need or fails to seek assistance, provided that such assistance does not endanger the helper, shall be liable under criminal law. Similarly, Article 229 establishes criminal liability for parents or other persons under a duty of care who fail to fulfil their obligations towards dependent persons.

The CC of Moldova (2002) also criminalizes numerous acts committed by omission in its Special Part. However, a particularly noteworthy aspect for the purposes of this research is the existence of an important provision in the General Part concerning criminal omission in relation to legal persons. Article 21(3), entitled "Subject of the offence," establishes the grounds for criminal liability of legal persons. It provides that a legal person shall be considered a subject of criminal liability for failure to

comply with, or improper fulfilment of, direct legal provisions imposing obligations or prohibitions in relation to the performance of certain activities.

In Chapter Four of the dissertation entitled “**Criminological Features of Criminal Omission**”, it is stated that criminal omission, as a distinct form of conduct, is assessed differently across various legal systems. In particular, its regulation in criminal law is, in many cases, shaped on the basis of different legal customs, theoretical approaches, and the material conditions of social life.

In criminology, preventive measures against crimes committed by omission are of significant importance. This is due to the fact that the specific features of acts of omission and their high latency often result in such offences remaining outside the attention of law enforcement authorities. Thus, the failure of law enforcement bodies to timely detect the criminal act, as well as the loss of evidentiary possibilities regarding the committed offence, and the difficulty in establishing the causal link between the socially dangerous consequences and the omission that caused them, further increase the latency of these crimes. This, in turn, may lead to inefficiency in criminal prosecution. Therefore, the person’s awareness of his obligation in crimes committed by omission is of crucial importance. In this regard, Prof. I.M. Rahimov notes that “*in many cases, persons who commit crimes are unable to consider the consequences of their actions at the time of committing these acts.*”<sup>11</sup>

Another important aspect of omission is that, in the criminological classification of latent crime, such offences may predominantly be attributed to the category of natural latency (i.e. crimes that remain unknown to law enforcement authorities for one reason or another): failure to report a committed crime in a timely manner; failure to report due to fear of the offender(s), etc.

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<sup>11</sup> Rahimov, I.M. *The Philosophy of Crime and Punishment*. Baku: East-West Publishing House, 2014, p. 207

The criminological specificity of crimes committed by omission lies in the fact that these offences primarily arise from a negligent and indifferent attitude towards legally established duties. When analyzing the criminological characteristics of persons who commit crimes by omission, it becomes evident that, in many cases, such individuals are not fully capable of considering the consequences of their behavior at the time of commission.

It should be noted that, among the statistical indicators of crime, the analysis of criminal omission is accompanied by certain methodological difficulties. During the collection and systematization of statistical data, it is not always possible to distinguish crimes committed by omission as a separate category. This, in turn, affects the accuracy of criminological research and creates certain gaps in the development of preventive measures.

Thus, criminal omission is not only an object of criminal law but also a complex and multifaceted object of criminological research. Its in-depth and systematic study may significantly contribute to a better understanding of the causes of crime, the development of effective preventive mechanisms, and the improvement of legal regulation.

In the "Conclusion" of the dissertation, the author presents a systematic and consistent summary of the scientific-theoretical generalizations derived from the conducted research on individual concepts, chapters, and sections, as well as practically significant recommendations and concrete proposals for improving the current criminal legislation of the Azerbaijan.

The appendices contain statistical indicators on the number of crimes under the Criminal Code, analyzed in terms of basic corpus delicti, committed objectively through action only, omission only, or both action and omission.

**The main provisions of the dissertation are reflected in the following scientific works of the applicant:**

1. Gadimov V.A. Analysis of the compositions on “failure to assist” in the Special Part of the Criminal Code // International Scientific Conference “Modern Development Trends of Legal Science and Education” // Publishing and Printing Center, 2023, p. 174-178.

2. Gadimov V.A. Qualifying features of crimes against military service in the system of crimes committed by omission. Proceedings of Baku University: Journal of Social and Political Sciences, No. 2, Baku, 2024, p. 76-92.

3. Gadimov V.A. Criminal omission covered by “evasion” in criminal legislation as criminal behavior. Scientific Journal “Scientific News of the Police Academy” № 2, Baku, 2024, p. 24-30.

4. Gadimov V.A. Failure to provide assistance in criminal legislation as a manifestation of passive behavior. Baku, Qanun, № 3 (353), 2024, p. 114-119.

5. Gadimov V.A. Omission as a necessary element of the objective side and its essence. Baku, Qanun, № 8 (358), 2024, p. 69-74.

6. Gadimov V.A. The historical development of criminal omission: from past to present // Azerbaijani Lawyer, №2 (26), Baku, 2025, p. 53-58

7. Gadimov V.A. Grounds for inaction (omission) and its responsibility in the system of transnational crime, Juridical Scientific and Electronic Journal, № 1, Ukraine, 2025, p.526-531

8. Gadimov V.A. Samadova Sh.T. Features of the criminalization of certain offenses committed by omission: a comparative analysis of the criminal legislation of Azerbaijan and foreign countries, Moldova, Studia Universitatis Moldaviae, Seria-Stiinte Sociale, № 3

(183), 2025, p.121-127

9. Gadimov V.A. Criminological characteristics of criminal omission. Baku, Journal of International Law and Integration Issues, № 1, 2025, p.70-76

10. Gadimov V.A. Criminal omission within the framework of the legal institutions: preparation for a crime, criminal attempt, and voluntary abandonment of criminal intent, Baku, Qanun № 6 (368), 2025, p.82-89

11. Gadimov V.A. The issue of failure to report a crime in the context of criminal-legal responsibility for inaction // The proceedings of 7<sup>th</sup> International scientific and practical conference "Scientific achievements of contemporary society", Cognum Publishing House, London, 2025, p.515-523

12. Gadimov V.A. The legal basis of liability for criminal omission // The proceedings of 11<sup>th</sup> International scientific and practical conference "Scientific achievements of contemporary society", Cognum Publishing House, London, 2025, p.797-804

13. Gadimov. V.A. The history of criminal-legal development of publicly dangerous acts committed by omission from an objective aspect // Republican Scientific-Practical Conference "The Formation History of the Democratic Republic Model in Azerbaijan: The Path from the Establishment of State Symbols to the Full Achievement of State Sovereignty", Baku, 2025, p. 122-126.



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