

COMMITMENT OF CRIME BY OMISSION

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ABSTRACT

This article deals with the particular aspects regarding the situations in which crimes are committed, committed by omission or inaction. Any human act is done by the externalization of a person's conduct, which can take the form of an action or an inaction. In a narrow sense it represents the act committed and represents the central part of the crime because it is the actual criminal activity. The ways of achieving the material element of the crime are action and inaction. Inaction implies refraining from what the law orders to be done by persons who, according to the law, had a legal obligation to act. In order for the inaction or omission to constitute the material element of the objective side of the crime, it is necessary that this abstention "be an external and undoubted manifestation of the will, be unjust and be causal".

KEYWORDS: *crime, omission, norm of incrimination, material element*

1. Criminalization of omissions

When the legislator, within the scope of the incrimination rule, requires a certain conduct to be carried out, the violation of this obligation by the perpetrator occurs through inaction.

When elaborating the legal model of incrimination, the legislator must decide (Antoniou, 1982, p. 11) on what the norm of incrimination must include, that is, express what constitutes the objective side of the crime.

Thus, the deed will be described, showing the ways in which it could be committed.

One of the ways of committing an act is inaction.

The legislature criminalizes acts of omission, acts that can be committed through inaction.

They are the legal expression of the obligation to act in a certain way, under the threat of a criminal sanction, if the legal subject to whom the norm is addressed remains in a state of passivity.

Through the norms of criminal law, the legislator establishes facts that are to be prohibited, thus showing themselves to the members of society, in a specific form of expression, which must be their conduct towards certain social values.

At the same time, through the norms of the criminal law, the members of society are shown what actions are prohibited or, they are ordered, when social values are in danger of being damaged.

The criminal law describes prohibited or ordered conduct, "this legislative technique being considered as the most explicit and suggestive form of criminal legal regulation of the conduct of members of society" (Bulai, 1997, p. 173).

When the conduct prohibited by the incriminating norm is nevertheless carried out by the perpetrator, the crime arises, which is an act contrary to the rule of conduct, generating social conflict, which attracts the application of the sanction provided for its commission.

In today's society, we hope and expect that the efforts to impose the law will become so strong, that those favorable to breaking the law will be overwhelmed (Boşca Rath, 2008, p. 52).

2. Criminal conduct manifested by omission/inaction

One of the essential coordinates that establishes the conditions of existence of the crime is the act of conduct of a person.

The criminal conduct, called in the criminal doctrine the material element of the crime, is the expression of the objective side of the crime. A crime cannot be conceived and cannot exist apart from an outward manifestation of the person.

Crime is seen as an expression of the person's guilt reflected in the act of conduct through which conscience and will are manifested.

The act of conduct represents the material element of the crime through which the activity of a natural or legal person is materialized that produces dangerous consequences, that harms or endangers certain social relationships protected by the rules of criminal law (Pitulescu, Medeanu, 2006, p. 78).

Or in the opposite direction, analyzing the situation, we can state that the production of dangerous consequences takes place only through an act that materially constitutes the crime, being the external objective element of the crime.

The role of the material element of the crime in its content is essential because it marks the distinctions between crimes, or between crimes and acts that are not criminal acts.

Therefore, the specificity of the content of any crime is described by the legislator, first of all, with the help of the elements that characterize the objective side of the crime. (Avrigeanu, 2001, p. 10).

The criminal law clearly establishes the possibility of realizing the material element of the objective side of the crime either through an action or through an inaction.

What distinguishes the two ways of the material element is the attitude of the person who:

- In the case of the action modality, the person has the obligation to refrain from doing something bad, to undertake an action that damages social values and the legal relations that arise around these values. By performing that action he violates a prohibitive norm, a norm that commands not to do something.

- In the case of the inaction modality, this time the person has precisely the legal obligation to do something, because by not executing the command of the law, social values are harmed. By remaining passive and not doing what the law requires, the person violates an operative norm, a norm that commands you to do something.

We notice that inaction is the opposite of action, so an attitude, a negative behavior.

When the perpetrator was obliged to act in a certain way and does not do it, he remains in passivity.

In order for the inaction to be criminally relevant, there must therefore be a legal duty for the perpetrator to act in a certain way. (Dongoroz and collective, 2003, p. 108).

"Omission is not analyzed as simple passivity, but it is always highlighted by reference to a certain determined action, which is required of the subject" (Streteanu, Nițu, 2014, p. 14).

There are cases in which the criminal law imposes a certain conduct on its recipients.

Remaining inaction determines a conduct contrary to the commandment of the law, which leads to the damage of social values.

By remaining inaction, the natural or legal person manifests a static attitude, although the criminal, legally established obligation was to do something specific, an obligation that the criminal does not culpably fulfill. (Mărculescu-Michinici, Dunea, 2017, p. 541).

Inaction was defined as the failure to perform a possible action that the subject had a legal obligation to perform (Pop, 1923, p.).

This obligation is provided normatively in the text of the law.

The incriminating criminal norm specifies what is the prohibited criminal action and inaction, and in the event that it occurs, the act will be considered a crime (Tănăsescu et al., 2002, p. 179).

3. Special aspects regarding offenses committed by omission

"The crime of omission consists in the failure to perform an action that is required to be carried out by the incriminating norm, in order to avoid a socially dangerous result" (Tănăsescu et al., 2002, p. 180).

The commission of the crime by the inaction modality raises some special problems.

Inaction is the opposite of action, it implies the negative attitude of the perpetrator who, having the legal obligation to act, does not do it.

In order for the inaction to have criminal relevance, there must therefore be a legal duty for the perpetrator to act in a certain way (Dongoroz et al., 2003, p. 108).

Inaction is the second way of performing an illegal conduct which is manifested by the attitude of the perpetrator to refrain from performing an action in the manner required or established by law (Boroi, 2010, p. 165).

However, inaction does not represent any form of passive behavior. It involves the non-performance of a certain action, prescribed by law, such as non-payment of the maintenance pension, non-return of an entrusted property.

The dominant opinion in the doctrine is that the omission acquires criminal relevance only in relation to the existence of a legal obligation, by which a certain conduct is imposed on the subject that can be fulfilled for them, no one is obliged to do the impossible.

So, the source of the obligation to act can be found either in criminal or extra-penal norms, even in moral norms or in obligations that are contractual.

Inaction does not do what should be done.

Therefore, omission refers to what the perpetrator is required to do and does not do, i.e. to some determined action.

Thus, we can specify that in order to have criminal relevance, the omission must not be related to any attitude of a person not to do something, it being identified by a reference to an obligation established by law to do something specific.

This obligation to act the active subject does not culpably fulfill (Mărculescu-Michinici, Dunea, 2017, p. 541).

The omission is not accidental, unconscious, but has a voluntary and conscious character, it represents a conduct directed towards the achievement of proposed goals, just like the action.

The legal liability and the realization of the content of the crime occur even if the subject did not remain in total passivity, in the sense that he performed other actions, when, legally, he had the obligation to perform another action from which he refrained.

The subject knew that the danger to the social value protected by the law is pre-existing, unlike the situation of committing a crime by action, when the danger is not pre-existing, the subject's action creating it.

In order to be a material element of the objective side, the inaction must meet some conditions:

a. "The inaction must be voluntary, that is, it must emanate from the conscious will of the omission, the involuntary omission, caused by a physiological process (the fainting or epileptic fit of the mite that intervened at the moment when he had to change the bed) or nature (blizzard, breaking of clouds) cannot belong to the constitutive act of a crime" (Dima, 2004, p. 282).

b. The inaction must exist, the active subject must have remained in a state of passivity when he had to act, which produced the socially dangerous consequence.

c. Inaction to be unjust

From the point of view of the active subject who can commit a crime by omission, it can be any natural or legal person who meets the legal conditions to be criminally liable and of course who had the obligation to act.

He must act culpably.

His attitude of not acting must produce socially dangerous consequences.

Various social values can be violated by omission.

In the incrimination norm, inaction is sometimes provided for, along with action or alone. Regarding inaction, it has been constantly argued that this does not mean doing nothing, but not doing what the law orders.

There are, for example, crimes committed by omission: failure to report (art. 266 Penal Code), which appears as an instant crime, leaving without help a person in difficulty (art. 203 Penal Code), family abandonment criminalized in the non-payment variant credit for 3 months of the maintenance pension established by court (art. 378 paragraph 1 letter c Criminal Code), which appears in the form of a continuous crime, showing an extension in time, failure to take legal measures for health and safety at work (art. 349 Criminal Code), thwarting the fight against diseases (art. 352 Criminal Code).

An important aspect of the crime committed by omission is that of the state of passivity presented by the active subject who does not act in the direction established by the law.

This state of passivity is not to be understood according to the law as a state of total passivity, as a total inaction of the active subject remaining in a state of total inertia, doing nothing.

Thus, the crime is committed by omission even when the active subject undertakes activities other than those required by law and thus commits the crime.

From a legal point of view, there is no difference between total passivity and performing another action (Streteanu, Nițu, 2014, p. 283).

For example: the fact that a person found another person and left him unable to save himself, nor did he notify the authorities about it, becomes alive to the commission of the crime even if he did not remain in total passivity, performing other work or activities during this time.

CONCLUSIONS

A crime can be committed either by action or by omission, i.e. by inaction.

In the attempt to define inaction, it was shown that it represents a state of passivity of the person to whom the law imposes a certain activity.

From a criminal point of view, omission does not mean doing nothing, but not doing what the law orders.

By committing a crime by omission, an operative norm is violated.

The omission has criminal relevance when the active subject had to adopt a certain conduct, to do something, but he remains in a state of passivity. This state of passivity should not be seen as a state of total passivity, but only the failure to fulfill what the law says to do, the active subject being criminally liable even if he undertakes other activities.

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