



## OBJECTIVE CASUAL RELATIONSHIP OF CRIMINAL LIABILITY IN CRIMINAL LAW BY OMISSION RELATED TO THE SEA

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**Abstract:** *The aim of the article is to present objective casual relationship of criminal liability in criminal law by omission related to the sea. It is presented in three stages. First is qualifying the person as the guarantor of the non-replacement of the effect. Second is updating the perpetrator's obligation as guarantor. Third is failure to perform the perpetrator's obligation as guarantor. All analysis will be illustrated with examples from the practice of these cases.*

**Key words:** *objective casual relationship, criminal liability, omission, criminal law, and offence with criminal consequences*

There are sea-related situations that are linked to the interest of criminal law. Due to the specificity, when we analyze the criminal liability of crimes, the commission of which ended as a result, it is necessary to apply the institution of objective casual relationship. The construction of objective attribution of the effect is applicable in the case of material crimes, i.e. those types of prohibited acts whose punishability depends on the occurrence of a criminal result related to the behavior of the subject of the act. The analysis of the fulfillment of the characteristics of the objective side of a prohibited act of material crimes requires three elements of this description: causative behavior, criminal effect and the causative relationship between the causative behavior and the criminal effect. In most of the consequential offenses, their statutory description does not contain a more detailed description of the causative behavior by clearly defining the range of behaviors which, if undertaken or omitted, may give rise to criminal liability if they result in a criminal effect. In the process of examining criminal liability, it should be determined each time whether the conduct undertaken by the subject of criminal liability was lawful or unlawful in the light of the rules of conduct required from him in the given circumstances. A criminal effect is a certain change in the reality that surrounds us, which is a consequence of causative behavior, being a hallmark of the type of a prohibited act with a consequential nature. Establishing the link between the causative behavior and the criminal effect is conditioned by a statement from the ex ante perspective that the causative behavior in the given factual circumstances was a breach of the norm ordering the prevention of a criminal effect constituting failure to fulfill the obligation of the guarantor. Behavior characterized by a breach of the rules for dealing with a legal interest by failure to undertake the behavior required in the given circumstances, which, in the light of causal knowledge, would prevent a criminal result, will be unlawful. In criminal law, in the case of crimes, which ended as a result, we can analyze the objective casual relationship of the effect to crimes committed by action and crimes committed by failure to act. It should be emphasized that omission is not a simple negation of an action, but a lack of specific movements in the direction expected by law, when it is possible to take the prescribed action. The concept of omission is defined

by two elements: the sphere of the possibility of acting and the sphere of the duty to act. Material crimes of omission are individual crimes [1,2,3].

The aim of the article is to present objective casual relationship of criminal liability in criminal law by omission related to the sea. That analysis concentrated in normative premises of additionality. It is presented in three stages. First is qualifying the person as the guarantor of the non-replacement of the effect. Second is updating the perpetrator's obligation as guarantor. Third is failure to perform the perpetrator's obligation as guarantor. All analysis will be illustrated with examples from the practice of cases related to the sea.

The title issue requires the presentation of a model of objective attribution of the effect to offenses committed by omission. In objective casual relationship by action we have ontological and normative level. In objective casual relationship by omission we have only normative level. Knowledge about the causal courses occurring in the world around us is equally important for determining liability for a material crime by action as well as a material crime by omission. The basis of liability in material offenses due to omission will be hypothetical causal courses aimed at determining whether the guarantor's failure to effect the behavior required of him in a given situation was a suitable measure to prevent the emergence of a criminal effect. In the case of negligent material offenses, only the normative relationship between the causative behavior and the criminal effect should be shown. Normative links should be established to allow the circle of criminal behavior to be defined in accordance with the criminal and political needs. The attribution of the effect in the case of material crimes committed by omission takes place at the level of criminal law evaluation with the use of knowledge about causal processes [1,2,3].

When analyzing the title issues of the normative premises of liability, three premises should be shown each time. First of all, the perpetrator must be the guarantor of non-replacement of the effect. Secondly, there must be an update of the perpetrator's obligation as a guarantor. Thirdly, there must be a failure to perform the perpetrator's obligation as guarantor [1,2,3].

Moving on to the analysis of the first premise, it should be noted that the guarantor is an entity on which a legal obligation is imposed to prevent all or some of the dangers threatening the legal interest. The guarantor is the person with a special legal obligation to prevent the effect (article 2 of the Polish Penal Code) [4]. The special nature of the prevention of the effect is the determination of the relationship between the addressee of the norm ordering the prevention of a criminal effect and the protected legal good. The existence of a specific obligation of the subject to protect a given legal good results from certain cultural patterns of behavior. These patterns are related to who the individual is in relation to the legal good, what the individual has previously done in relation to the good, or what the individual is obliged to do in the event of a threat to the good. The legal nature of the obligation to prevent an effect boils down to the requirement to indicate in the legal system the grounds for recognizing that an entity is specifically obliged to protect a given legal interest or to protect against a specific source of threat. The source of such an obligation should be indicated (Article 2 of the Polish Penal Code) [1,2,3,4].

There are three groups of guarantors of non-replacement of the effect. The first group includes people who are obliged to protect a specific good against any threats, for example parents towards their child. The second group includes persons a person is obliged to protect all legal goods against a specific threat, e.g. the owner of a dog against a threat posed by an animal. The third group includes entities obliged to protect a specific category of goods against specific threats, e.g. occupational health and safety inspectors. The

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guarantor's obligation results from the provisions of law. It is not enough that this is a purely moral obligation. The special obligation of the guarantor is characterized by the fact that these persons must have features that distinguish them due to their relationship to the good protected by the legal norm [3].

There are three groups of formal sources of the guarantor's obligation. First, the obligation to prevent the effect may result directly from the generally applicable sources of law. The obligation may result primarily from the act or from decisions of judicial or administrative authorities acting on the basis of and in accordance with applicable law. In practice, the statutory obligation to prevent an effect is rarely explicitly expressed in legal provisions, but legal provisions may constitute the basis for interpreting the scope and content of such an obligation. Examples of the statutory obligation of the guarantor are the obligation of parents to their children, the mutual obligation of spouses. The second group includes the source of the guarantor's obligation in the form of a general norm consisting in assuming an obligation and voluntarily assuming the function of a guarantor by means of a declaration of will or *per facta concludenda*, also taking the function of a guarantor on an *ad hoc* basis (e.g. taking care of a lost child). Voluntary assumption of the guarantor's obligation is usually equated with the conclusion by the guarantor of a contractual obligation, appointment to the post by an act of appointment, appointment to the service or the performance of someone else's affairs without commission (*negotiorum gestio*). It is noted that voluntary assumption of the obligations of the guarantor should not be treated in terms of the validity of a civil law contract, but rather the actual taking up of the obligations of the guarantor by a given person by specific behavior should be examined. The third group is represented by the perpetrator's prior action, creating a source of danger to the protected legal good. It is assumed that the behavior of an entity that brings about a risk to the legal good obliges to take steps to remove such a threat. It may result from Art. 439 of the Polish Civil Code [5], from an earlier breach of the precautionary principles or from the general principles of law. Bringing a danger makes a given person a guarantor of the elimination of this threat, and in the event that the danger is brought about, it gives rise to liability for a material crime committed by omission [1,2,3].

The second premise is to update the perpetrator's obligation as a guarantor. The occurrence of a situation in which a threat to the legal good arises, which the perpetrator is to prevent or other conditions (premises) for the perpetrator to take obligatory actions related to the lifting of this danger for the good. The obligation to act does not arise in those factual situations in which the possibility of a causal course leading to a criminal result is not objectively foreseeable [1,2,3].

The third condition is a failure to perform the perpetrator's obligation as guarantor. This premise should be analyzed from two points of view: *ex ante* and *ex post*. From the *ex ante* standpoint, it is necessary to assess the objective possibility of the entity foreseeing the occurrence of a criminal effect on the path in which it occurred in the event of not taking the action required by the law or the possibility of taking actions that significantly reduce the risk of the effect which the guarantor was supposed to prevent. The assessment in question is made according to the normative model of an exemplary good citizen. A good citizen is someone we put in our imagination. This citizen has seen the whole event and has professional knowledge and skills what to do and how to behave in such a situation. The use of this pattern enables an objective assessment of the event and the perpetrator's behavior. There is no order to take action to prevent the emergence of a criminal result, when a person characterized by the features of a model citizen, who is in the place of the guarantor and who has such a range of knowledge about the facts as was objectively

available in a given actual situation, would not be able to recognize the danger of a criminal result. In a given factual situation, it must be possible to undertake behavior which would allow, in the light of knowledge about causal processes, to prevent the formation of a criminal result. If, in a given factual situation, the guarantor has no objective possibility to take any action preventing the effect, then an order to act does not arise. From the ex post standpoint, the given event should be analyzed from the perspective of establishing that if the perpetrator had taken the ordered behavior, the effect would have occurred anyway. To this end, it is necessary to examine the hypothetical course of the event in the event of the obligatory action taken by the perpetrator. If it turns out that even taking the behavior required from the guarantor in the given circumstances with a probability of bordering on certainty would not prevent a specific effect, it is impossible to assign such an effect. A criminal effect may be assigned if it is possible to impose an objection that, despite the obligation to foresee the possibility of an effect, he did not take steps to ensure himself the possibility of fulfilling the obligation incumbent on him as a guarantee (the question of culpability at the forefront of the act) [1,2,3].

At this point, it is necessary to present the concept of negative premises for the objective attribution of an effect. This concept covers the category of cases in which the exclusion of criminal liability for a criminal result seems necessary for criminal and political reasons, despite prejudging the possibility of assigning it. The negative premises for attributing the effect can be justified by the following two criminal and political considerations. The first relates to the principle of incurring criminal liability only for the consequences of one's own actions. Meanwhile, in many cases, the emergence of a criminal effect depends on the cumulative risk of unlawful behavior of more than one person. The effect would not arise at all or would have a different form if it were not for the sum of the risks resulting from these unlawful behavior. The second of the considerations in question concerns the autonomous nature of an individual's decisions as to the possible infringement of his individual legal interests. This occurs especially if, in the light of the legal order, an individual can dispose of them, for example, the possibility of consenting to behavior that may result in damage to health or destruction of their belongings [1,2,3].

The negative premises for assigning the effect may include self-exposure of the injured party and inclusion in someone else's scope of responsibility. The victim's self-exposure is a category of factual situations in which the static danger created by the unlawful behavior of the potential perpetrator also becomes reality due to the victim's autonomous behavior. Without the objective autonomous behavior of the victim, the danger posed by the potential perpetrator would not materialize, or it would have materialized in a different form. It is important to say that the aggrieved party, despite the objectively recognizable situation of an updated and specific danger to his legal goods, undertakes behavior that increases the danger for this good or undertakes behavior that determines that the danger caused by the potential perpetrator will materialize as a result. Inclusion into someone else's scope of responsibility is a category of factual situations based on the postulate of taking into account the attribution of the effect to a potential perpetrator of cases of assuming responsibility for a criminal result by an objectively incorrectly behaving third party. The scope of liability, above all, of the professional liability of a third party was to remove the danger to the legal good. This premise concerns the exclusion of the criminal effect of a potential perpetrator, the behavior of which constitutes a source of danger to the legal good and ultimately becomes effective. The exclusion of the criminal effect of a potential perpetrator should be excluded in all cases where, in accordance with the required rules of

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conduct, the behavior of a third party, whose duties include evading such threats, would certainly allow avoiding the criminal effect [1,2,3].

After presenting the model of objective casual relationship of criminal liability in criminal law by omission, examples of the use of this institution in offenses related to the sea should be presented. The first one concerns the behavior of the rescuer. The lifeguard on duty on the beach guarantees that the loss of life or serious damage to health of people resting on the beach or swimming in the sea will not occur. If the lifeguard comes to this duty in a state of drunkenness, intoxication or insufficient sleep, his ability to react to the threats of sunbathers is limited or does not occur. If someone starts drowning at sea, the lifeguard's duty as a guarantor of non-occurrence to take and carry out rescue operations will be updated. Being in the condition described above (intoxication, intoxication, drowsiness), the rescuer did not fulfill his obligation and one of the swimmers drowned. Thus, a rescuer can be modeled as a result of the death of a drowned person. The court conducts the proceedings, determines the circumstances of the case, assesses the evidence collected in the case and the behavior of the rescuer, and then issues a judgment.

The second example is marine accidents, which are one of the main threats at sea. An example of the subject matter in this regard is the service technician's failure to check the technical condition of the ship before a cruise. The service technician is the guarantor of the non-occurrence of the loss of life or serious damage to the health of both the passengers of the ship and the crew of the ship being serviced. At the time of issuing the order to prepare the ship for the voyage, the obligation of the guarantor, who in this case is a service technician, to undertake the activities of checking the technical condition of the vessel, repair the vessel and admit it to the voyage, is updated. Failure to fulfill this obligation, e.g. due to intoxication, intoxication or drowsiness, the ship had an accident and the people on board died as a result of injuries or suffered serious health impairment. As a model, the service technician can be assigned these effects (death, serious damage to health) and, as in the predecessor example, the judgment is issued by a court after a detailed conduct of the procedure.

In conclusion, the model of objective casual relationship of criminal liability committed by omission also applies to the analysis of sea-related offenses. The use of this model in the daily work of law enforcement and judicial authorities will increase the effectiveness of criminal proceedings for criminal offenses at every stage of their conduct.

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