

Differentiating Criminal Responsibility in Offenses Against Life and Health: Problems of Qualification and Complicity

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<https://doi.org/10.69760/aghel.026001008>

Keywords	Abstract
Criminal liability differentiation Crimes against life and health Complicity and co- perpetration Special subject of crime	Crimes against life and health represent the most socially dangerous category of offenses in criminal law, as they directly affect the fundamental and irreplaceable value of human existence. Despite the priority accorded to the protection of life, practical and doctrinal difficulties continue to arise in the differentiation of criminal liability for such crimes, particularly in cases involving complicity and special subjects. This article examines the problems of differentiating liability for crimes against life and health through the analysis of the objective element of the offense, the forms of perpetration, and the legal status of participants involved in criminal activity. Special attention is paid to issues of co-perpetration, instigation, and aiding, as well as to crimes committed by special subjects, including the intentional killing of a newborn by the mother. The study also addresses contemporary challenges related to surrogate motherhood and the determination of criminal liability in the context of modern medical technologies. Based on an analysis of criminal legislation, legal doctrine, and judicial practice, the article identifies gaps and inconsistencies in the qualification of participants' actions. The findings emphasize the importance of a differentiated approach to criminal liability as a means of ensuring justice, legal certainty, and the correct application of criminal law norms.

1. Introduction

Human life and health constitute the highest social values protected by criminal law. The right to life is universally recognized as fundamental, absolute, and non-derogable, forming the cornerstone of both national legal systems and international human rights law. Despite this

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elevated status, statistical data demonstrate that a considerable number of individuals worldwide continue to suffer violent death or serious bodily harm as a result of criminal acts.

Crimes against life and health occupy a special place within the system of criminal offenses due to the severity and irreversibility of their consequences. Unlike other categories of crimes, the harm caused by such offenses is often permanent and cannot be fully compensated or remedied. This circumstance explains the heightened social danger attributed to these acts and the strict legal regulation of liability for their commission.

At the same time, judicial and investigative practice reveals persistent difficulties in the differentiation of criminal liability for crimes against life and health, particularly in cases involving multiple participants, special subjects, and various forms of complicity. An incorrect qualification of participants' actions may lead to unjust outcomes and undermine the principle of legality. The purpose of this study is to analyze the problems of differentiating criminal liability for crimes against life and health and to identify approaches that ensure fair and consistent application of criminal law norms.

2. Objective Element of Crimes Against Life and Health

2.1. Concept of the Objective Element

The objective element of a crime reflects the external manifestation of criminal behavior and includes a socially dangerous act, its harmful consequences, and the causal link between them. In crimes against life and health, the objective element plays a decisive role, as liability arises only when a person's conduct results in death or bodily harm or creates a real threat of such consequences.

A necessary condition for criminal liability is the existence of a causal relationship between the act committed and the socially dangerous result. The absence of such a link excludes criminal responsibility for the completed offense. In this category of crimes, the objective element is often characterized by the systematic or continuous nature of criminal behavior, which forms the mechanism through which the harm is inflicted.

2.2. Objective Element in Intentional Homicide

An analysis of Article 120.1 of the Criminal Code of the Republic of Azerbaijan demonstrates that intentional homicide is expressed in the unlawful deprivation of another person's life. The decisive feature of the objective element in this offense is the act itself, which directly leads to death.

The motives for committing intentional homicide may vary and include personal hostility, jealousy, revenge, or material interest. However, motive does not affect the existence of the objective element and, as a rule, does not influence the legal qualification of the act unless



expressly provided by law. The key criterion remains the causal connection between the perpetrator's conduct and the resulting death.

2.3. Distinction Between Perpetration and Aiding

A correct distinction between perpetration and aiding is essential for the proper differentiation of criminal liability. Perpetration presupposes the direct execution of actions that form the objective element of the crime and cause the socially dangerous result. In contrast, auxiliary actions that facilitate the commission of the offense but do not directly result in death should be qualified as aiding.

For example, acts such as restraining a victim's hands or feet, providing assistance at the scene without directly causing death, or leaving the scene after facilitating the crime do not constitute perpetration. Such conduct should be assessed as aiding participation rather than direct execution of the offense.

3. Forms of Perpetration and Co-Perpetration

3.1. Legal Definition of Perpetrators

Article 32.2 of the Criminal Code of the Republic of Azerbaijan recognizes three categories of perpetrators: persons who directly commit the criminal act, persons who jointly participate in its execution as co-perpetrators, and persons who act as indirect perpetrators. Each of these forms reflects a different degree and manner of participation in the commission of the offense.

Direct perpetrators personally perform the actions that constitute the objective element of the crime. Indirect perpetrators realize the criminal intent through other persons, while co-perpetrators jointly execute the act based on a shared intent.

3.2. Co-Perpetration in Crimes Against Life and Health

Co-perpetration in crimes against life and health is characterized by the joint execution of objective elements by two or more persons acting in coordination. In such cases, the participation of organizers, instigators, or accomplices may accompany the actions of co-perpetrators, forming a complex structure of complicity.

The recognition of joint actions as co-perpetration has a significant impact on the legal qualification of the offense and the determination of individual criminal liability. Failure to properly distinguish between co-perpetration and other forms of participation may lead to incorrect sentencing and violations of the principle of justice.

4. Complicity in Crimes with a Special Subject

4.1. General and Special Subjects of Crime



Criminal liability presupposes the existence of a subject of crime who possesses the legal characteristics required by criminal law. Alongside the general subject of crime, legislation also recognizes offenses that may be committed only by a special subject, that is, a person endowed with additional legal, social, or biological characteristics specified in the disposition of a criminal law norm.

Crimes against life and health frequently involve special subjects, which creates certain difficulties in the qualification of acts committed with the participation of several persons. In such cases, the determination of criminal liability depends not only on the objective element of the offense but also on whether the participant possesses the characteristics required of the special subject. Failure to correctly identify the subject of the crime may result in incorrect legal qualification and unjust outcomes.

4.2. Application of Article 33.4 of the Criminal Code

Article 33.4 of the Criminal Code of the Republic of Azerbaijan regulates cases of mixed participation, where a crime involving a special subject is committed jointly by persons who possess special subject characteristics and by those who qualify only as general subjects. According to this provision, persons who do not meet the criteria of the special subject may bear criminal liability under general rules of complicity.

However, judicial and investigative practice demonstrates that the application of Article 33.4 often leads to difficulties in the differentiation of liability. In particular, it becomes problematic to correctly qualify the actions of persons who directly participate in the commission of the act but formally lack the characteristics of the special subject. For this reason, some scholars have criticized this provision and proposed its exclusion or revision, arguing that it creates artificial barriers to fair qualification and undermines the principle of individual responsibility.

5. Intentional Killing of a Newborn by the Mother

5.1. Legal Characteristics of the Offense

The intentional killing of a newborn child by the mother constitutes a specific crime against life characterized by a special subject. Under Article 121 of the Criminal Code of the Republic of Azerbaijan, only the mother of the newborn child may be recognized as the perpetrator of this offense. The special legal status of the mother is justified by her physiological and psychological condition during childbirth and the immediate postnatal period.

This offense differs from general forms of intentional homicide both in its subject and in the legal assessment of the act, which necessitates a differentiated approach to criminal liability.

5.2. Variants of Complicity



In practice, the intentional killing of a newborn by the mother may involve various forms of complicity. Three principal variants may be identified. First, the mother may commit the act jointly with other persons who directly participate in depriving the newborn of life. Second, other persons may participate as instigators, organizers, or accomplices, while the mother acts as the direct perpetrator. Third, the mother may not act as the perpetrator but instead assume the role of organizer, instigator, or accomplice, while other persons carry out the act.

Each of these variants requires an individualized assessment of the participants' actions and their legal qualification.

5.3. Qualification According to Legal Doctrine

Legal doctrine supports a differentiated approach to the qualification of complicity in cases of intentional killing of a newborn by the mother. If the mother commits the act jointly with others, her actions are qualified under Article 121, while the actions of other participants are qualified under the relevant aggravated provisions of Article 120 in conjunction with Article 32 of the Criminal Code. Where persons who are not subjects of the offense participate as instigators or accomplices, their liability arises under Articles 32 and 120, while the mother's actions remain qualified under Article 121. If the mother does not directly commit the act, her liability is determined under Article 32 in conjunction with Article 120.

6. Surrogate Motherhood and Criminal Liability

6.1. Impact of Modern Medical Technologies

The development of modern medical technologies, particularly extracorporeal fertilization, has significantly influenced traditional legal concepts of motherhood and parenthood. Surrogate motherhood enables women who are unable to carry a pregnancy to become biological parents through the participation of another woman who carries and gives birth to the child.

Despite the biological connection between the genetic parents and the child, the surrogate mother experiences the physiological and psychological processes associated with pregnancy and childbirth, which is of crucial importance for criminal law qualification.

6.2. Determination of the Subject of the Crime

From the perspective of criminal law, the surrogate mother who carries and gives birth to the child is recognized as the subject of the offense under Article 121 of the Criminal Code. The biological mother, who did not carry the pregnancy and did not undergo childbirth-related suffering, does not possess the characteristics required of the special subject and therefore cannot be held criminally liable under this provision.

The determination of criminal liability in such cases must be based on physiological and psychological criteria rather than purely biological parenthood. This approach ensures legal



certainty and corresponds to the protective purpose of criminal law in crimes against life and health.

7. Organizer and Instigator in Crimes Against Life and Health

7.1. Organizer of the Crime

Article 32.3 of the Criminal Code of the Republic of Azerbaijan identifies four alternative forms of organization: organizing the commission of a crime, directing its execution, establishing an organized group or criminal association, and leading such a group. In crimes against life and health, the organizer often plays a decisive role by coordinating participants and ensuring the realization of criminal intent.

Organizational activity may occur at both the preparation and execution stages of the crime and is always characterized by direct intent. In some cases, the organizer may simultaneously act as a direct perpetrator, which further complicates the differentiation of criminal liability.

7.2. Instigation as a Form of Complicity

Instigation constitutes an intellectual form of complicity and is regulated by Article 32.4 of the Criminal Code. It involves inducing another person to commit a crime through persuasion, threats, transactions, deception, or other similar methods.

Depending on their nature, methods of instigation may be classified into persuasion and coercion. Regardless of the method used, instigation presupposes direct intent, while the motives of the instigator and the perpetrator may differ without affecting legal qualification.

8. Aiding in Crimes Against Life and Health

8.1. Intellectual Aiding

Intellectual aiding includes providing advice, instructions, or information that facilitates the commission of a crime, as well as concealing the perpetrator, instruments, or traces of the offense, or promising such concealment in advance.

8.2. Physical Aiding

Physical aiding may take the form of providing instruments or means for committing the crime, removing obstacles, or concealing the offender or crime-related objects. Concealment may occur both with and without prior agreement, which affects the legal assessment of the act.

8.3. Subjective Element of Aiding

Aiding may be committed with either direct or indirect intent. The motives of the accomplice are legally independent from those of the perpetrator, while criminal liability depends on the outcome of the criminal act and the extent of participation.



9. Special Issues: Suicide and Euthanasia

Incitement to suicide or assistance in its commission is regarded as intentional homicide under criminal law. Where death does not occur, criminal liability arises for attempted intentional homicide. Legal doctrine also considers inducing a person to euthanasia as a form of intentional homicide. In such cases, the motives of the instigator and the perpetrator may differ, but this divergence does not affect the legal qualification of the act.

10. Conclusion

Differentiation of criminal liability for crimes against life and health is essential for ensuring justice and the correct application of criminal law. Incorrect qualification of participants' actions poses a significant risk to legal certainty and individual responsibility. A consistent doctrinal approach and uniform judicial practice are necessary to address these challenges. Differentiated liability serves as an effective legal mechanism for restoring justice and maintaining the protective function of criminal law.

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Received: 01.10.2025

Revised: 01.18.2025

Accepted: 01.25.2026

Published: 02.09.2026



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Acta Globalis Humanitatis et Linguarum
ISSN 3030-1718