National Criminal Law in a Comparative Legal Context

Volume 3.1

Defining criminal conduct

- Concept and systematization of the criminal offense
- Objective aspects of the offense
- Subjective aspects of the offense

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Ulrich Sieber • Susanne Forster • Konstanze Jarvers

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Anna Petrig

Objective aspects of the offense in Switzerland

1. Definition and elements of the objective aspects of the offense

Under Swiss criminal law, every offense description *(Tatbestand; énoncé de fait légal)* is composed of objective and subjective definitional elements *(objektive und subjektive Tatbestandselemente; éléments objectifs et subjectifs de l'énoncé de fait légal)*, which are closely intertwined.[1] While subjective elements relate to the offender's inner world, the objective elements are those aspects of an offense that display or manifest themselves externally, that is, discernable conditions, factors and changes in the outside world.[2]

Among the objective definitional elements of the offense there is always a description of who can commit the offense, that is, the designation of an offender.[3] Depending on the specific offense, one or more of the following elements are additionally present: a description of the conduct threatened with punishment,[4] the object on which the criminal act is performed,[5] the result of the conduct,[6] and the causality[7] between conduct and result.[8]

2. Offender

– *Natural and legal persons*

Under Swiss criminal law, every natural person *(natürliche Person; personne physique)* can be an offender. However, only persons possessing criminal majority

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[1] II.C.2.c. and II.E.2.a.

[2] *Hurtado Pozo*, Droit pénal, pp. 155–156, §§ 455–456; *Riklin*, Verbrechenslehre, p. 160, § 7 and p. 161, § 13; *Trechsel/Noll*, Strafrecht AT, p. 76.

[3] See below 2.

[4] See below 3. and 4.a.

[5] See below 5.

[6] See below 6.

[7] See below 7.

[8] *Hurtado Pozo*, Droit pénal, p. 156, § 456; *Riklin*, Verbrechenslehre, p. 161, § 13; *Trechsel/Noll*, Strafrecht AT, p. 76.

(Strafmündigkeit; majorité pénale) can be subject to the criminal law and its sanctions. According to art. 3 para. 1 of the Federal Law on the Criminal Law Applicable to Minors *(Jugendstrafgesetz/JStG; Droit pénal des mineurs)*, children not having reached the age of ten do not possess criminal majority. Persons having committed an offense between the age of 10 and 18 are subject to the special sanctions foreseen in the JStG (art. 3 para. 1 JStG); after the age of 18, the Swiss Criminal Code *(Schweizerisches Strafgesetzbuch/StGB; Code pénal Suisse)* applies (art. 9 para. 2 StGB).[9]

Until recently, the principle of *societas delinquere non potest* prevailed under Swiss criminal law and hence legal persons could not be held criminally liable. However, a paradigm shift took place in 2003 when general provisions on corporate criminal liability *(strafrechtliche Verantwortlichkeit des Unternehmens; résponsabilité pénale de l'entreprise)*[10] were introduced with arts. 102 and 102a StGB.[11]

– *Common and special offenses*

The vast majority of offenses can be committed by any natural person. Accordingly, most provisions defining specific crimes begin with the words "whoever […]" followed by a description of the act threatened with punishment. Given that these crimes can be committed by any natural person, they are referred to as common offenses *(gemeine Delikte; infractions communes)*.[12]

While common offenses can be perpetrated by every natural person, so-called special offenses *(Sonderdelikte; délit propre)* can only be committed by a statutorily designated group of persons featuring specific characteristics, such as public officials, physicians, debtors, or witnesses. The doctrine distinguishes between genuine and non-genuine special offenses.[13]

Genuine special offenses *(echte Sonderdelikte; délit propre pur)* are crimes that can only be committed by persons on whom a special duty is incumbent. It is the very violation of this duty that establishes punishability. Thus, for instance, only members of an authority or public officials can commit crimes against public duties such as an abuse of authority (art. 312 StGB); or only a witness in a judicial pro-

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[9] *Dupuis* et al., Art. 3 JStG, §§ 1–11; *Hurtado Pozo*, Droit pénal, p. 157, § 460.

[10] II.H.2.

[11] *Killias* et al., Droit pénal général, pp. 89–93, §§ 609–612; Niggli/Wiprächtiger-*Niggli/Gfeller*, Art. 102 StGB, pp. 1696–1697, §§ 9–12; *Riklin*, Verbrechenslehre, pp. 151–157, §§ 14–28.

[12] *Donatsch/Tag*, Strafrecht I, p. 95; *Killias* et al., Droit pénal général, p. 37, § 224; *Riklin*, Verbrechenslehre, p. 132, § 19.

[13] *Donatsch/Tag*, Strafrecht I, p. 96; *Killias* et al., Droit pénal général, p. 37, § 224.

ceeding, who is under a duty to tell the truth, can be held criminally liable for false testimony (art. 307 StGB).[14]

Non-genuine special offenses *(unechte Sonderdelikte; délit propre mixte)* are crimes that can be committed by a broader circle of persons than those on whom a specific duty is incumbent. However, if the offender is duty-bound, the threatened punishment is aggravated compared to the common crime penalizing the same act. Thus, if a debtor, who owes special duties towards his creditors, commits the crime of fraudulent bankruptcy and pledge fraud (art. 163 para. 1 StGB) the threatened punishment is imprisonment or monetary penalty, while third parties only risk a monetary penalty (art. 163 para. 2 StGB).[15]

With regard to genuine or non-genuine special offenses, specific rules on participation and sentencing apply.[16]

3. Act

– *Theories of acting and their concept of acting*

It is generally accepted that criminal liability can only be established for conduct, and not for mere thoughts, attitudes, or character traits without external manifestation. However, the doctrinal debate on what constitutes conduct in criminal law, that is, the criminal law concept of acting *(strafrechtlicher Handlungsbegriff; notion d'action)*, is long-standing and vivid. Each theory of acting *(Handlungslehre; théorie de l'action)* proposes its own concept of acting, which has essentially two functions: First, it yields a mode of analysis of the various requirements of criminal liability.[17] Second, it provides a basis for distinguishing between criminal conduct and conduct which is irrelevant for criminal law purposes.

Under the causal theory of acting *(kausale Handlungslehre; théorie de l'action causale naturelle)* the notion of act is defined as the causation of a change in the outside world through volitional human behavior.[18] This approach is criticized by proponents of the goal-directed theory of acting *(finale Handlungslehre; théorie finaliste de l'action)*, who argue that human conduct cannot be understood in a mechanical way as bodily movements triggered by human will. A person would rather pursue a specific goal when acting, that is, human conduct would be goal-directed

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[14] *Donatsch/Tag*, Strafrecht I, p. 96; *Hurtado Pozo*, Droit pénal, p. 163, § 481; *Killias* et al., Droit pénal général, p. 37, § 225; *Riklin*, Verbrechenslehre, pp. 132–133, § 21.

[15] *Donatsch/Tag*, Strafrecht I, p. 96; *Killias* et al., Droit pénal général, p. 37, § 226; *Riklin*, Verbrechenslehre, p. 133, § 22.

[16] II.G.5.a.

[17] II.C.2.b. and c.

[18] *Hurtado Pozo*, Droit pénal, pp. 138–140, §§ 406–409; *Trechsel/Noll*, Strafrecht AT, p. 83; *Stratenwerth*, Die Straftat, pp. 120–121, §§ 4–5.

and purpose driven.[19] The social theory of acting *(soziale Handlungslehre; théorie de l'action sociale)*, which was developed as a response to the shortcomings of the causal and goal-directed theories of acting, defines conduct as socially relevant human action *(sozialerhebliches menschliches Verhalten; caractére socialement relevant du comportement humain)*. Given the vagueness and abstract nature of the concept of social relevance, the theory had virtually no practical implications for Swiss criminal law.[20]

The various concepts of acting discussed in criminal law theory over time are proof of the fact that they are the product of normative considerations rather than independent concepts providing generally valid criteria to determine what constitutes conduct. The assessment of what constitutes conduct can arguably only be made in a deductive manner and with regard to a specific legal order by looking at what the criminal law threatens with punishment, that is, what the legislature considers to be conduct.[21]

– *Definitional elements of conduct*

The first general requirement of criminal liability[22] is the existence of a volitional human conduct, which manifests itself externally. Thereby, the generic term conduct encompasses both, acts and omissions, either committed intentionally or negligently.[23] The conduct in question has to feature three characteristics:

First, only human conduct is relevant for criminal law purposes.[24] Thus, conduct of animals or natural phenomena do not qualify as conduct when seen through the lens of the criminal law. However, in situations where harm is caused by animals or through natural phenomena, prior human conduct could still constitute conduct in the sense of criminal law (e.g., damage is caused by an avalanche that only reached the village because the avalanche barrier was not correctly constructed).[25]

Second, conduct has to be volitional. Thus, bodily movements not being a product of the will, such as reflex movements or acts performed under hypnosis, while sleep-walking or under a seizure (e.g., a sudden attack of epilepsy) are not considered conduct. However, in these situations prior acts could constitute relevant conduct (e.g., a mother deeply sleeping is laying on her baby, who is thereby asphyxi-

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[19] *Trechsel/Noll*, Strafrecht AT, p. 77; *Stratenwerth*, Die Straftat, pp. 121–122, §§ 6–7. II.C.2.b.

[20] *Riklin*, Verbrechenslehre, p. 149, § 5.

[21] *Hurtado Pozo*, Droit pénal, pp. 145–146, §§ 429–430; *Riklin*, Verbrechenslehre, p. 149, § 6.

[22] II.C.2.c.

[23] *Riklin*, Verbrechenslehre, p. 150, § 8.

[24] *Hurtado Pozo*, Droit pénal, p. 138, § 404.

[25] *Riklin*, Verbrechenslehre, p. 150, § 10.

ated; the mother's conduct is not volitional, however, she could potentially be liable for the previous acts of placing herself too close to the child). Further, acts or omissions, which are the product of irresistible force *(vis absoluta)* do not qualify as conduct (e.g., person A is thrown through a window; the demolition of the window pane by A is not volitional).[26]

Third, human conduct has to manifest itself in the outside world, that is, it must be discernable to third persons. Hence, criminal liability can never attach to mere ideas not quitting the realm of thoughts.[27]

4. Crimes of omission

a) Difference between acts and omission

– *Crimes of commission and crimes of omission*

The vast majority of offense descriptions prohibit specific active conduct or actions (e.g., inflicting bodily harm or taking away moveable property). They are called crimes of commission *(Begehungsdelikte; délits de comission)*. Exceptionally, it is not the active violation of a prohibition which is threatened with punishment, but the fact that someone remains passive, that is, fails to act despite a duty to act. These offenses are referred to as crimes of omission *(Unterlassungsdelikte; délits d'omission)*.[28]

– *Distinction between act and omission*

The qualification of specific conduct as act or omission can be difficult since it is not always obvious whether the offender acted in a prohibited way or whether he failed to act as prescribed. This difficulty is illustrated by the following case: A advised B, who was seriously ill, to undergo a "cosmic diet," that is, not to eat at all; the state of health of B deteriorated and she finally died. Was A acting in a prohibited way by suggesting the diet or did he fail to act in that he did not take rescuing measures?[29] The Swiss Federal Supreme Court *(Schweizerisches Bundesgericht; Tribunal fédéral suisse)* and the prevailing doctrine suggest that in case of doubt the distinction between act and omission has to be made according to the subsidiarity principle *(Subsidiaritätsprinzip; principe de subsidiarité)*: The first step is to

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[26] *Hurtado Pozo*, Droit pénal, pp. 147–148, §§ 435–438; *Riklin*, Verbrechenslehre, p. 150, § 11.

[27] *Riklin*, Verbrechenslehre, p. 150, § 13.

[28] *Killias* et al., Droit pénal général, pp. 35–36, § 222; *Riklin*, Verbrechenslehre, p. 129, §§ 5–7.

[29] BGE 108 IV 3.

determine whether the conduct in question can be qualified as active conduct, that is, whether a crime of commission took place. This requires a determination as to whether the conduct fulfills the definitional elements of the offense, is unlawful and culpable. Only if this is negated, an inquiry into the requirements of crimes of omission should take place.[30]

– *Categories of crimes of omission*

Doctrine and case law distinguish between genuine and non-genuine crimes of omission. Genuine crimes of omission *(echte Unterlassungsdelikte; délits d'omission proprement dits)* are those offenses where the omission is explicitly mentioned in the offense description, such as, for instance, the provision on omission to render assistance (art. 128 StGB).

By contrast, non-genuine crimes of omission *(unechte Unterlassungsdelikte; délits d'omission improprement dits)* are characterized by the fact that the omission is not explicitly mentioned in the offense description. The term is used to refer to crimes, which are defined as active conduct in the respective legal provisions, but that can also be committed by omission. Thus, for instance, art. 111 StGB prohibiting the intentional killing of a human being is usually committed by active conduct (e.g., by shooting a person), but could also be fulfilled by omission (e.g., parents letting their child starve to death).[31] Given that commission by omission is not explicitly mentioned in the offense description, it was necessary to enact a general provision incriminating commission by omission:

Art. 11 StGB [commission by omission][32]

1 A felony or misdemeanor can also be committed through the failure to comply with a duty to act.

2 Failure to comply with a duty to act comprises whoever does not prevent the endangerment or harm of a legal interest protected by criminal law, even though the person is required to do so because of his legal status arising particularly from:

a. a law;

b. a contract;

c. a community of shared risks voluntarily entered into or;

d. the creating of a danger.

3 Whoever fails to comply with a duty to act is only punishable for the respective offense if, according to the circumstances of the criminal act, he would have been equally blameworthy for it if he had committed the offense through active conduct.

4 The court can mitigate the sentence.

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[30] BGE 115 IV 199, 203-204, E. 2a; BGE 129 IV 119, 122, E. 2.2; *Hurtado Pozo*, Droit pénal, p. 412, § 1291; Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, pp. 256–259, §§ 16–25; *Trechsel/Noll*, Strafrecht AT, p. 247.

[31] *Killias* et al., Droit pénal général, p. 36, § 223; *Riklin*, Verbrechenslehre, p. 247, § 4.

[32] All translations of provisions of the Swiss Criminal Code (StGB) are the author's own.

Art. 11 StGB only entered into force in 2007 with the revised General Part of the Swiss Criminal Code.[33] Until then, commission by omission was solely based on customary law and case law, which was problematic with regard to the principle of legality.[34]

The provision on commission by omission (art. 11 StGB) not only applies to felonies *(Verbrechen; crimes)* and misdemeanors *(Vergehen; délits)*, but *qua* art. 104 StGB also to contraventions *(Übertretungen; contraventions)*.

b) Specific duties to act, duties of care

While for genuine crimes of omission the offense description explicitly mentions the omitted act (e.g., the failure to render assistance, art. 128 StGB) and the addressee of the duty to act, this does not hold true for non-genuine crimes of omission. For the latter type of crimes what has to be analyzed is whether – in addition to the elements of the specific crime of the special part of criminal law – the following requirements of art. 11 StGB are fulfilled:

– *Position of guarantor*

The first requirement for establishing criminal liability for non-genuine crimes of omission is that the person failed to comply with a duty to act (art. 11 para. 1 StGB). However, not every person is under a duty to act in order to prevent the endangerment or violation of a third person's legally protected interests *(Rechtsgüter; biens juridiques protégés)*, but rather only so-called guarantors *(Garanten; garants)* (art. 11 para. 2 StGB). A person holds a position of guarantor *(Garantenstellung; position de garant)* if he has a legal (and not a mere moral) duty to take action in order to prevent an impairment of the third person's legally protected interests.[35]

Two types of guarantor are distinguished under Swiss criminal law: First, those having a duty to avert any kind of danger or harm for specific legally protected interests of a defined group of persons being under their custody (*Obhutsgarant* or *Schutzgarant; garant de protection d'autrui*); such as a physician towards his patient with regard to the legally protected interest of health and life. Second, those who have the responsibility to keep a specific source of danger under control in order to avoid the impairment of any possible legally protected interest of any possible person (*Sicherungarant* or *Überwachungsgarant; garant de surveillance*); such as the owner of a dangerous animal or the engineer carrying out a blasting.[36]

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[33] I.F.2.a. and I.G.2.

[34] II.A.; Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, p. 253, § 4.

[35] *Hurtado Pozo*, Droit pénal, p. 420, §§ 1317–1319.

[36] *Donatsch/Tag*, Strafrecht I, p. 300; *Hurtado Pozo*, Droit pénal, p. 421, § 1321.

Art. 11 para. 2 StGB provides a non-exhaustive list of grounds from which a duty to act can arise: First, a position of guarantor can follow from certain duties to act stated in the law (art. 11 para. 2 lit. a StGB); such as the obligation of parents to provide assistance to their children as foreseen in art. 272 Swiss Civil Code *(Schweizerisches Zivilgesetzbuch; Code civil suisse)*.[37] Second, contractual clauses by which persons are obliged to control or minimize risks, such as contracts entered into with mountain guides or physicians, can give rise to a position of guarantor (art. 11 para. 2 lit. b StGB).[38] Third, someone who voluntarily enters into a community of shared risks, such as a group of divers or mountaineers, can become a guarantor because, or insofar as, the community was constituted in order to better manage or minimize latent risks (art. 11 para. 2 lit. c StGB).[39] Fourth, a person who created or aggravated a danger for another's legally protected interests has to guarantee that it does not materialize (art. 11 para. 2 lit. d StGB). It is in contention whether only risks resulting from culpable conduct can establish a position of guarantor, or whether it may also include the taking of permissible risks.[40]

– *Equivalence of omission and active conduct*

Art. 11 para. 3 StGB limits punishability to cases in which the reproach made to the alleged offender for his omission is equal to the one that could be made to him for the commission of the same offense through active conduct. This equivalence requirement should serve as a corrective measure in cases of omission where attaching criminal liability could hardly be justified in the light of the principle of culpability *(Schuldgrundsatz; principe de culpabilité)* despite the general idea that both, commission by omission *and* active conduct, are punishable.[41]

c) Special issues with regard to criminal liability in the context of crimes of omission

– *Faculty, reasonableness, and necessity to act*

A guarantor can only be held liable if he had the faculty to act, that is, if he was in a position enabling and allowing him to act. Further, it must have been reason-

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[37] *Hurtado Pozo*, Droit pénal, pp. 422–423, §§ 1324–1327; Donatsch-*Donatsch*, Art. 11 para. 2 StGB, pp. 47–48.

[38] *Hurtado Pozo*, Droit pénal, pp. 423–424, §§ 1328–1329; Donatsch-*Donatsch*, Art. 11 para. 2 StGB, p. 48.

[39] *Hurtado Pozo*, Droit pénal, pp. 425–426, § 1332; Donatsch-*Donatsch*, Art. 11 para. 2 StGB, p. 48.

[40] Donatsch-*Donatsch*, Art. 11 para. 2 StGB, pp. 48–49; *Hurtado Pozo*, Droit pénal, pp. 424–425, §§ 1332–1333.

[41] Roth/Moreillon-*Cassani*, Art. 11 StGB, pp. 114–115, § 4; Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, p. 274, §§ 82–83.

able to require from the person that he acted according to the prescriptions of law. It is generally accepted that a guarantor cannot be held criminally liable if his action would have led to a concrete endangerment of his own life or even his death.[42] It is disputed among scholars whether the negation of the reasonableness to act implies that the offense description is not fulfilled, or is rather to be understood as legal justification *(Rechtfertigungsgrund; fait justificatif)* or excuse *(Entschuldigungsgrund; circonstance de non-culpabilité)*.[43]

– *Intent and actor's misapprehensions, mistakes*

With regard to crimes of omission both, mistake of fact[44] (*Sachverhaltsirrtum; erreur sur les éléments constitutifs*; art. 13 StGB) and mistake on a legal command[45] (*Gebotsirrtum; erreur sur un commandement légal;* art. 21 StGB) are conceivable.

With regard to non-genuine crimes of omission, the intent of the offender has to relate to every objective definitional element of the offense, that is, the factual circumstances giving rise to the position of guarantor, the danger for the legally protected interest, the objective possibility to comply with the duty to act, and – with regard to result offenses – the result and hypothetical causality. If the offender is mistaken about one of these factual elements, the situation is one of mistake of fact. In contrast, if the offender knows about the factual circumstances giving rise to the position of guarantor, but believes that he is not obliged to act, he is mistaken about the unlawfulness of his omission; hence, the situation is one of mistake on a legal command.[46]

– *Justification*

The justifications *(Rechtfertigungsgründe; faits justificatifs)* for crimes of omission are identical to those for crimes of commission. However, from a practical point of view, the justifications of self-defense *(Notwehr; légitime défense)*, necessity *(Notstand; état de nécessité)*, and collision of duties *(Pflichtenkollision; collision des devoirs)*[47] are the most important justifications.

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[42] *Riklin*, Verbrechenslehre, p. 280, §§ 23–26; Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, p. 268, § 58.

[43] Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, p. 268, § 57; *Stratenwerth*, Die Straftat, p. 434, § 32 and pp. 436–437, § 38. II.C.2.c. and II.J.

[44] II.E.5.a.

[45] II.E.5.b.

[46] Niggli/Wiprächtiger-*Seelmann*, Art. 11 StGB, p. 270, §§ 64–65.

[47] II.J.2.b.

– *Attempt*

An attempt[48] is only conceivable with regard to crimes of omission committed intentionally, but not negligently. However, drawing a line between preparatory acts *(Vorbereitungshandlung; acte préparatoire)* generally not giving rise to criminal liability, and attempted crimes, is especially challenging with regard to omissions. The prevailing doctrine holds that as long as the omission does not lead to a deterioration of the condition of the threatened legally protected interest, it cannot be qualified as an attempt. An attempt only begins at the moment where the delay of the rescuing intervention creates a danger for the legally protected interest (e.g., the parents do not send for the doctor even though the state of health of their child is getting worse). An attempt is completed if the person under a duty to act misses the last opportunity to intervene in a rescuing manner, but the result does not in fact eventuate (e.g., the father removes himself so far from his child playing close to a dangerous cliff, that he could no longer rescue the child; however a third person catches the child who is about to fall down the overhang).[49] Finally, impossible attempts[50] are also conceivable with regard to crimes of omission (e.g., a mother does not organize medical care for her seriously ill daughter although she considers, and is aware, that she could die as a result of the illness; however, after she passed away it transpires that a doctor could not have prevented the daughter's death).[51]

– *Forms of participation*

All forms of participation in a crime *(Teilnahme im weiten Sinne; participation au sense large)* are possible with regard to crimes of omission.[52] Thus, a crime of omission can be committed by co-perpetration *(Mittäterschaft; coauteur)* (e.g., parents deciding together not to organize medical care for their seriously ill child).[53] Further, while instigation *(Anstiftung; instigation)* to commit a crime of omission is possible (e.g., a sect leader convinces the parents of a seriously ill child not to send for a doctor), instigation by omission is not conceivable under Swiss criminal law. Aiding and abetting *(Gehilfenschaft; complicité)* a third person in his commission of a non-genuine crime of omission is conceivable (e.g., a sect leader backing up parents in their decision not to organize medical care for their child). Aiding and abetting by omission is only possible if the aider and abettor is a guarantor (e.g., a security guard, without having a view to gain, leaves the door open in order to

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[48] On attempts, see II.F.2.

[49] On completed attempts, see II.F.2.b.

[50] On impossible attempts, see II.F.3.a.

[51] *Riklin*, Verbrechenslehre, p. 283, § 36 citing BGE 73 IV 164; see II.F.3.d.

[52] II.G.5.b.

[53] *Riklin*, Verbrechenslehre, pp. 283–284, § 37; *Stratenwerth*, Die Straftat, p. 445, §§ 9–11.

facilitate a theft; given the lack of view to gain, he cannot be a co-perpetrator, but is potentially liable as aider and abettor).[54]

d) Special issues in the sentencing of crimes of omission

With regard to non-genuine crimes of omission, art. 11 para. 4 StGB states that the court can mitigate sentence, which is done according to the following provision:

Art. 48a StGB [mitigation of the penalty; effect]

1 If the court mitigates the penalty, it is not bound by the statutory minimum penalty.

2 The court can also impose another type of penalty than the threatened one, but it is bound by the statutory maximum or minimum of the respective type of penalty.

Despite critiques during the consultation procedure,[55] art. 11 para. 4 StGB was introduced with the argument that the "criminal driving force" behind an omission could be lower compared to commission of crimes by active conduct. However, against the background that remaining passive can in some circumstances be at least as reprehensible as active conduct (e.g., parents letting their child starve to death), the mitigation of the penalty was left optional.[56] Some authors suggest that mitigation should be reserved to those cases where the observance of the duty to act would be at the limits of what can reasonably be required from someone.[57]

For genuine crimes of omission no specific sentencing rule exists and thus the general rules on sentencing (arts. 47–51 StGB) apply.

5. The concept of "object of the act"

Many, but not all offense descriptions designate an object of the act *(Tat-, Handlungs-, Angriffsobjekt; objet du délit*), which is the person or the item on which the criminal act is performed; such as the "human being" for homicide (art. 111 StGB), the "moveable object belonging to another" for theft (art. 139 StGB) or the "document" with regard to forgery of documents (art. 251 StGB).[58]

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[54] *Riklin*, Verbrechenslehre, pp. 283–284, § 37; *Stratenwerth*, Die Straftat, pp. 446–447, §§ 12–16.

[55] On the consultation procedure, see I.A.4.

[56] Botschaft StGB, p. 2002/Message StGB, p. 1808.

[57] *Donatsch/Tag*, Strafrecht I, p. 317.

[58] *Hurtado Pozo*, Droit pénal, pp. 157–158, § 462; *Stratenwerth*, Die Straftat, p. 150, § 12.

The object of the act has to be distinguished from the legally protected interest.[59] First, many legally protected interests are – compared with the object of the act – not physically tangible, such as "public health" protected by the prohibition of spreading human diseases (art. 213 StGB). Second, even though there are cases where the victim is both the object of the act as well as the holder of the legally protected interest (e.g., the object of the act of art. 111 StGB incriminating homicide is a "human being," who is at the same time the holder of the legally protected interest "life"), there are many offenses without such convergence. Thus, for instance, the object of the act of the offense of bribery of Swiss public officials (art. 322ter StGB) is the official; however, many more persons are holders of the legally protected interest, namely the "objectivity and impartiality in the performance of public duties."[60]

6. The concept of "consequences of the offense"

– *Conduct offenses and result offenses*

Conduct offenses *(Tätigkeitsdelikte; délits formels)* are characterized by the fact that specific conduct is threatened with punishment. The offense description is already fulfilled with the carrying out of the conduct threatened with punishment, no further or specific consequences resulting from the conduct in question are required. The offense of false testimony (art. 307 StGB), for instance, is already committed by giving false testimony; hence, it is not required that the false testimony yield any consequences, for example, that the court is actually induced into error.[61]

With regard to result offenses *(Erfolgsdelikte; délits matériels)*, the offense description not only threatens specific conduct with punishment, but requires in addition that the conduct in question yield a definite result. This result of the offense *(Taterfolg; résultat)* must be separable from the conduct of the offender, either in terms of time and location or at least notionally. Thus, for instance, with regard to the offense of extortion (art. 156 no. 1 StGB), the prohibited conduct – which consists in the offender's use of force against a person – does not yet fulfill the objective definitional elements of the offense; the conduct must, in addition, induce the victim to behave in such a way that he or another sustains financial loss, for example, by depositing a certain amount of money in a specific place. It is only with the producing of this result that the objective definitional elements of the offense are fulfilled and the offense is completed.[62]

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[59] On legally protected interests, see II.C.1.a. and I.D.1.

[60] *Donatsch/Tag*, Strafrecht I, p. 102; *Hurtado Pozo*, Droit pénal, pp. 157–158, § 462; *Riklin*, Verbrechenslehre, p. 161, § 13; *Stratenwerth*, Die Straftat, p. 150, § 13.

[61] *Trechsel/Noll*, Strafrecht AT, p. 78.

[62] *Donatsch/Tag*, Strafrecht I, p. 98; *Hurtado Pozo*, Droit pénal, pp. 159–160, § 468.

The distinction between conduct and result offenses has the following implications: A completed attempt[63] is only possible for result offenses given that the very definition of a completed attempt is that the offender carried out the conduct threatened with punishment but the result did not eventuate.[64] Further, the question of attribution of a result to the offender's conduct only arises with regard to result offenses.[65] Finally, the distinction is relevant regarding the principle of territoriality defining the geographical scope of application of the StGB (art. 8 StGB)[66] as well as the determination of the competent court *ratione loci* (art. 340 StGB) within Switzerland.[67]

– *Harm offenses and endangerment offenses*

A further distinction is drawn between harm offenses *(Verletzungsdelikte; infraction de lésion)* and endangerment offenses *(Gefährdungsdelikte; infraction de mise en danger)*. The criterion to distinguish between these two categories is whether, through the commission of the crime, a legally protected interest was impaired or not.[68]

Harm offenses are characterized by the fact that the fulfillment of the objective definitional elements of the offense requires that a legally protected interest be impaired. This holds often true for result offenses; thus, in the case of homicide (art. 111 StGB), the legally protected interest "life" is harmed with the eventuating of the *result* of the offense, that is, the death of a human being. However, also conduct offenses can lead to an impairment of legally protected interests and can thus qualify as harm offenses. The offense of intercepting a private, non-public conversation (art. 179bis para. 1 StGB), for instance, threatens *conduct* that violates the legally protected interest of privacy, with punishment.[69]

While harm offenses require an impairment of a legally protected interest, it is sufficient for the completion *(Vollendung; consommation)*[70] of endangerment offenses that a legally protected interest is endangered. The doctrine distinguishes between concrete and abstract endangerment offenses.

With regard to concrete endangerment offenses *(konkrete Gefährdungsdelikte; infraction de mise en danger concréte)* the causing of a danger for the legally protected interest is a definitional element of the offense, that is, the offense is only

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63 On the difference between completed and incomplete attempts, see II.F.2.b.

64 *Riklin*, Verbrechenslehre, pp. 237–238, §§ 10–11.

65 *Riklin*, Verbrechenslehre, p. 161, § 14; see below 7.

66 *Riklin*, Verbrechenslehre, p. 118, § 25; on the principle of territoriality, see II.B.2.

67 *Riklin*, Verbrechenslehre, p. 130, § 12; *Trechsel/Noll*, Strafrecht AT, p. 78.

68 *Trechsel/Noll*, Strafrecht AT, p. 79.

69 *Donatsch/Tag*, Strafrecht I, pp. 101–102; *Trechsel/Noll*, Strafrecht AT, p. 79.

70 II.F.2.b.

fulfilled if the danger materializes. All those offense descriptions explicitly mentioning a danger qualify as concrete endangerment offenses,[71] such as the following provision:

> **Art. 129 StGB [endangering life]**
> Whoever unscrupulously places another human being in immediate danger of life shall be punished with imprisonment up to five years or with a monetary penalty.

Hence, criminal liability attaches earlier, that is, not only when a legally protected interest is impaired, but already with exposing it to a concrete danger. The Swiss Federal Supreme Court defines the term of concrete danger as a situation in which, according to the ordinary course of things, the probability or near possibility of a violation of the legally protected interest existed.[72]

Abstract endangerment offenses *(abstrakte Gefährdungsdelikte; infraction de mise en danger abstraite)* are characterized by the fact that specific conduct is threatened with punishment, without requiring that the legally protected interest is actually impaired or even endangered by that conduct. The acts are threatened with punishment in that they usually increase the possibility of endangerment of a legally protected interest. Typically, abstract endangerment offenses are conduct crimes. Thus, for instance, a witness' false testimony (art. 307 StGB) comprises the risk that the legally protected interest of finding the truth in a court proceeding is endangered or impaired; however, even if the court's findings are not influenced by the false testimony, that is, the legally protected interest was not even endangered, the offense is fulfilled because false witness statements generally have the potential to imperil a court's finding of the truth.

7. Causation requirement and related rules governing attribution of criminal liability

Swiss criminal law doctrine distinguishes between causality and attribution. In a first step, it has to be determined whether the offender caused the result at hand, that is, whether causality *(Kausalität; causalité)* between conduct and result exists.[73] In Swiss criminal law doctrine, various theories of causation are discussed. Since the causality requirement relates to the objective definitional elements "conduct" and "result," it is considered to be an unwritten objective definitional element of result offenses.[74]

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[71] *Donatsch/Tag*, Strafrecht I, p. 102.

[72] BGE 123 IV 128, 130, E. 2a.

[73] *Donatsch/Tag*, Strafrecht I, p. 99; *Hurtado Pozo*, Droit pénal, p. 166, § 491.

[74] *Riklin*, Verbrechenslehre, p. 163, § 22.

The term attribution *(Zurechnung; imputation)* stands for the requirements that have to be fulfilled in order to hold a person criminally liable for having caused a specific result. Hence, it addresses the question of liability after causation, as a first step, has been established. The various rules of attribution thus limit criminal liability based on specific normative considerations.[75]

– *Theories of causation*

To crimes committed intentionally, the Swiss Federal Supreme Court applies the so-called theory of conditions *(Bedingungstheorie; théorie de la causalité naturelle)*, which is also known as theory of the equivalence of conditions *(Äquivalenztheorie; théorie de l'équivalence des conditions)*.[76] With regard to crimes committed negligently, however, it applies the adequacy theory *(Adäquanztheorie; théorie de la causalité adéquate)*.[77] For crimes of omission, so-called hypothetical causality *(hypothetische Kausalität; causalité hyphothétique)* has to be established.

• *Theory of conditions or theory of the equivalence of conditions*

According to the theory of conditions, causality is established if the offender's conduct was causal in the natural scientific sense, that is, if natural causality *(natürliche Kausalität; rapport de causalité naturelle)* can be affirmed. Thus, the offender's conduct is a condition, that is, causal, if it cannot be excluded from the chain of events because without it the result would not have occurred. Hence, *but for* the offender's contribution the specific result came about – it was a *conditio sine qua non* for the result.[78] As the term "theory of the equivalence of conditions" indicates, various conditions contributing in various degrees to a specific result, are considered to be equivalent for establishing whether conduct was causal. Therefore, the offender's conduct is causal even if it did not contribute in an exclusive or major way to the result displayed; hence, it is, for instance, sufficient that the conduct favored, advanced or accelerated the eventuation of the result.[79]

• *Hypothetical causality*

Result offenses require that the conduct of the offender be causal for the result.[80] However, an omission can never cause a result *(ex nihil nihil fit)*. The result is thus rather caused through a causal chain of events that the alleged offender failed to

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[75] *Donatsch/Tag*, Strafrecht I, p. 101.

[76] *Riklin*, Verbrechenslehre, p. 163, § 24.

[77] See below 8.; *Seelmann*, Strafrecht AT, p. 37 citing BGE 126 IV 13, 16-17, E. 7; BGE 127 IV 62, 64-65, E. 2d; BGE 130 IV 7, 10, E. 3.2.

[78] BGE 125 IV 195, 197, E.2b.

[79] *Donatsch/Tag*, Strafrecht I, pp. 99–100; *Hurtado Pozo*, Droit pénal, pp. 167–168, §§ 495–498; *Riklin*, Verbrechenslehre, p. 163, § 23; *Seelmann*, Strafrecht AT, pp. 34–35.

[80] See below 6.

interrupt. Given that the judgment on whether the offender's compliance with his duty to act would have interrupted the causal chain of events and would thus have averted the result, rests on a hypothetical basis, the term hypothetical causality *(hypothetische Kausalität; causalité hyphothétique)* is used.[81]

The Swiss Federal Supreme Court as well as the prevailing doctrine adhere to the so-called probability theory *(Wahrscheinlichkeitstheorie; théorie de la probabilité)*, according to which hypothetical causality is established if the offender's compliance with his duty to act would most probably have averted the result. A minority argues in favor of the so-called theory of increased risk *(Risikoerhöhungstheorie; théorie de l'augmentation du risque)*, according to which hypothetical causality is considered to be established if the offender's compliance with his duty to act would have decreased the risk of a violation of the legally protected interest, and thus the chance of averting the result.[82]

– *Rules of attribution limiting criminal liability*

Attaching criminal liability to every conduct which was in one way or the other naturally causal for the result would lead to virtually unlimited liability and would sometimes produce odd results, especially in cases where the offender's acts or omissions were of a negligible importance or took place very early in the chain of events. Therefore, various rules of attribution were developed under Swiss criminal law in order to limit the attribution of causal conduct to the offender:

- *Correction via intent requirement: subjective attribution*

The Swiss Federal Supreme Court as well as part of the doctrine suggest correcting unlimited criminal liability via the intent requirement. Based on this subjective attribution *(subjektive Zurechnung; attribution subjective)*, the offender can only be held criminally liable for foreseeable consequences, that is, if his intent not only relates to the conduct, but also covers result and causation. If the chain of events substantially deviates from what the offender thought it to be, criminal liability does not attach due to a lack of intent.[83]

Regarding intentional result offenses, the theory of conditions, in combination with the intent requirement as a limiting factor for criminal liability, leads to the following results in exceptional causality constellations:

A situation of cumulative causality *(kumulative Kausalität; causalité cumulative)* exists where several contributions cause a result but only through their concurrence

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[81] *Donatsch/Tag*, Strafrecht I, p. 313; *Stratenwerth*, Die Straftat, p. 435, §§ 34–35.

[82] BGE 116 IV 306, 309-310, E. 2a; *Donatsch/Tag*, Strafrecht I, pp. 313–314; *Hurtado Pozo*, Droit pénal, pp. 418–419, §§ 1310–1316; *Riklin*, Verbrechenslehre, pp. 281–282, §§ 29-31; *Stratenwerth*, Die Straftat, pp. 435–436, §§ 36–37.

[83] *Riklin*, Verbrechenslehre, pp. 163–164, § 25; *Seelmann*, Strafrecht AT, p. 37; II.E.2.a.

(e.g., A and B each mix a non-deadly dose of poison in a drink consumed by C without knowing of each other; the two doses together cause C's death). Everyone's contribution is naturally causal for the result (but for A's *and* B's contribution C died); however, an offender can only be held liable for the result, if the intent requirement is fulfilled, that is, if he knew about the other's contribution.[84]

The term alternative causality *(alternative Kausalität; causalité alternative)* stands for the case where several persons set a condition, each of which is sufficient to cause the result in question (e.g., A and B both mix poison in C's drink, and each dose is deadly). Each offender could argue that his contribution is not a *conditio sine qua non* for the result, given that it would also have eventuated without his contribution (B could argue that C would have died without his contribution solely due to A's dose). The doctrine nevertheless regards both contributions as causal. If both offenders acted with intent, they can both be held liable for the result.[85]

A so-called atypical chain of events *(atypischer Kausalverlauf; déroulement anormal des faits)* is given if completely unusual incidents produce a specific result (e.g., A beats B who breaks an arm and needs medical care in a hospital; the hospital burns down; B dies in the flames). The offender's contribution is causal for the result that eventuates; however, the intervening cause (the burning down of the hospital) was not foreseeable and the intent of the offender neither covers the result nor the causal chain leading thereto; hence, he cannot be held liable for the result.[86]

For the situation where the offender's contribution does not produce the intended result because another person's conduct provokes it, the term "overtaking causality" *(überholende Kausalität; causalité des faits passés)* is used. There are two separate causal chains, whereby only one leads to the intended result (e.g., A poisons B; before the poison displays its effects, B is shot dead by C). The offender causing the result is held liable for it, even though the same result would eventually have occurred due to the other person's conduct (B is held liable for killing C, even though C would have died shortly afterwards because of the poisoning). The offender not reaching his criminal goal is responsible for an attempt (A did not cause C's death, but is responsible for attempted killing).[87]

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[84] *Hurtado Pozo*, Droit pénal, p. 169, § 502; *Riklin*, Verbrechenslehre, p. 162, § 16 and p. 164, § 28; *Seelmann*, Strafrecht AT, pp. 34–35.

[85] *Donatsch/Tag*, Strafrecht I, pp. 100–101; *Riklin*, Verbrechenslehre, p. 162, § 17 and p. 164, § 29; *Seelmann*, Strafrecht AT, pp. 34 and 36.

[86] *Riklin*, Verbrechenslehre, p. 162, § 18 and p. 164, § 29.

[87] *Hurtado Pozo*, Droit pénal, p. 168, § 499; *Riklin*, Verbrechenslehre, p. 162, § 19 and p. 164, § 31.

- *Applying the adequacy theory to intentionally committed result offenses*

Rather than relying on the theory of conditions with the intent requirement as a corrective, some scholars propose applying the adequacy theory[88] to intentionally committed crimes in order to limit criminal liability. However, the Swiss Federal Supreme Court applies this theory exclusively to negligently, and not to intentionally, committed result offenses.[89]

- *Theory of objective attribution*

The so-called theory of objective attribution *(objektive Zurechnung; imputation objective)* is yet an additional means of limiting criminal liability when the theory of conditions (despite the intent requirement), or the adequacy theory, does not yield justifiable results.[90] Objective attribution is thus an independent corrective for those cases where the inquiry into causality yields unsatisfactory or unjustifiable results. It allows a refraining from the imputation of a specific result despite the offender's causal contribution to it.[91]

One reason justifying the non-attribution of a specific result to the offender is the so-called missing risk *(fehlendes Risiko)*. It covers those situations where the offender's conduct – despite formally fulfilling the objective definitional elements of the offense – neither created nor enhanced, or even reduced the risk of a violation of a legally protected interest (e.g., A shoots at B; C manages to push B aside and the bullet hits B's arm instead of his heart; C's act is causal for B's arm injury; however, it would be unjustifiable to hold him criminally liable given that his conduct avoided B's lethal injury).[92]

Another reason not to impute a result to the offender is known by the term of social adequacy *(Sozialadäquanz; justification du point de vue social)*.[93] Given that offense descriptions can also be fulfilled by conduct that is socially accepted or tolerated, there is a need to exclude these acts or omissions from criminal liability (e.g., a passenger of a public bus requests the driver to stop at a place where there is no bus stop; the driver, who continues his journey and only stops at the official bus stop, will not be held liable for false imprisonment).

A similar reason for not attributing a specific result to the offender is provided by the doctrine of the admissible risk *(Lehre vom erlaubten Risiko; théorie du risque admissible)*.[94] The theory relates to those situations where the offender's conduct

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88 See below 8.

89 *Seelmann*, Strafrecht AT, p. 37.

90 *Riklin*, Verbrechenslehre, pp. 163–164, §§ 25–26.

91 *Seelmann*, Strafrecht AT, p. 39.

92 *Ibid.*, pp. 38–39.

93 II.J.5.

94 II.J.5.

created a risk, but one that is legally not relevant because it either constitutes a socially normal minimal risk or – if not a minimal – at least a generally accepted risk within a society. Danger or harm resulting from these risks is not imputable to the offender despite the existing causal link between his conduct and the result (e.g., a firefighter throws a child out of a burning building into a safety net; thereby, the child is injured; the risks resulting from such rescuing operations are generally accepted within society, and the firefighter will not be held liable for taking this permissible risk).[95]

There is further the situation, where the offender creates an impermissible risk, but where the harmful events are not the result of it, that is, there is no connection between the taking of an impermissible risk and the result that occurs *(Risikozusammenhang; rapport de connexité)*. This is especially relevant with regard to an atypical causal chain of events (e.g., A lightly injures B; while in the hospital for treatment, B gets infected with a lethal disease and dies; A cannot be held liable for B's death because a risk other than the one created by A led to the result).[96]

Further, according to the principle of personal responsibility *(Prinzip der Eigenverantwortlichkeit)*, the offender, whose conduct is causal for the result, is potentially not liable for it, if it is achieved as a consequence of the victim's behavior (e.g., the operator of a ski-lift cannot be held liable for negligently killing a skier, who died in an avalanche because he did not respect the signs on the slope indicating this danger).[97]

The basic idea behind these various grounds for non-attribution of a specific result is that the offender's conduct does not fall within the protective scope of the relevant criminal provision *(Schutzzweck der Norm; but de protection de la norme violée)*. If the offender violates a prohibition, he is only to be held liable for those results that were meant to be prevented by the specific norm (e.g., speed limits exist in order to prevent dangers for other road users; however, their purpose is not to prevent persons to arriving earlier at a specific place).[98]

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[95] *Riklin*, Verbrechenslehre, p. 171, § 44 and p. 172, § 45; *Seelmann*, Strafrecht AT, pp. 39–40.

[96] *Riklin*, Verbrechenslehre, p. 170, § 43; Roth/Moreillon-*Corboz*, Art. 12 StGB, p. 160, § 163.

[97] *Riklin*, Verbrechenslehre, pp. 173–174, § 48.

[98] *Hurtado Pozo*, Droit pénal, pp. 182–183, § 545; *Riklin*, Verbrechenslehre, p. 170, § 43; *Seelmann*, Strafrecht AT, p. 40.

8. Objective aspects of offenses of negligence

– *Negligently committed result offenses*

• *Intertwinement of objective and subjective definitional elements*

In juxtaposition to intentional result offenses, the separation between objective and subjective definitional elements of the offense operates less strictly with regard to negligent result offenses. Rather, one global test is applied in order to determine whether an offender committed a negligent result offense. What is analyzed is whether the result occurred,[99] whether the offender naturally caused it,[100] and whether the offender did not act intentionally but through culpable carelessness, that is, whether according to the ordinary course of things he could have foreseen the result (adequate causality) and could have averted it according to his personal circumstances (negligence standard).[101]

A specific feature of negligently committed result offenses is thus that the objective element of adequate causality *(adäquate Kausalität; causalité adéquate)* and the subjective element of negligence as defined in art. 12 para. 3 StGB[102] are closely intertwined. Therefore, after having established adequate causality, that is, having approved the general suitability of the conduct to yield the result in question, an inquiry into the individual foreseeability has to be undertaken.

• *Adequacy theory*

The Swiss Federal Supreme Court applies the so-called adequacy theory *(Adäquanztheorie; théorie de la causalité adéquate)* to negligent result offenses.[103] According to the adequacy theory, specific conduct is considered causal for a result if it is, according to the ordinary course of things and the general experience of life, generally suitable to bring about the kind of result that occurred.[104] Hence, criminal liability shall only attach to foreseeable results; therefore, results at the end of an atypical causal chain of events which one does not reasonably have to take into account cannot be imputed to the offender (e.g., A negligently injures B, who needs medical treatment in a hospital; the hospital burns down and B dies in the flames).[105]

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[99] See above 6.

[100] See above 7.

[101] *Riklin*, Verbrechenslehre, pp. 167–168, § 40 and pp. 232–233, §§ 58–63; II.E.3.a.

[102] II.E.3.a.

[103] *Riklin*, Verbrechenslehre, p. 166, § 37; *Seelmann*, Strafrecht AT, p. 37 citing BGE 126 IV 13, 17; BGE 127 IV 62, 65; BGE 130 IV 10.

[104] BGE 121 IV 10, 14-15, E. 3.

[105] *Riklin*, Verbrechenslehre, p. 165, § 34; *Seelmann*, Strafrecht AT, pp. 37–38.

However, it is sufficient that the offender's conduct only partially contributed to the result. Hence, in situations of contributory negligence of the victim or intervening acts by third persons, adequate causality is generally assumed. Only if these acts or events are of an utmost extraordinary nature, that is, where according to the ordinary course of things and the general experience of life the conduct of the offender is not suitable to produce the result that occurred, it cannot be imputed to the offender (e.g., A gives B a loaded gun in a shooting gallery in order to shoot against a target; thereupon, B unexpectedly directs the gun at himself and kills himself).[106]

The application of the adequacy theory limits criminal liability in certain cases – despite the fact that the offender's conduct is naturally causal for the result – based on normative (legal) criteria taken from the general experience of life. Thus, strictly speaking, the adequacy theory is not a theory of causation but rather a theory of attribution.[107]

- *Theory of objective attribution*

Where the two-step inquiry into adequacy and negligence does not yield a justifiable result, the theory of objective attribution might provide grounds for not imputing a specific result to the offender.[108]

– *Negligently committed conduct offenses*

Negligent conduct offenses are characterized by the fact that the offender is carrying out specific "basic conduct" with knowledge and will (e.g., driving a car towards a crossing). Thereby, he unintentionally fulfills a further definitional element of the offense through culpable carelessness, which renders his conduct unlawful (e.g., not brining the car to a halt at the stop signal of the crossing).[109]

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[106] *Riklin*, Verbrechenslehre, p. 166, § 39.

[107] *Ibid.*, pp. 166–167, §§ 35–36.

[108] See above 7.

[109] *Flachsmann/Eckert/Isenring*, Tafeln AT, p. 99, chart 62; II.E.3.a.

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Adequacy theory: BGE 121 IV 10; BGE 126 IV 13; BGE 127 IV 62; BGE 130 IV 7

List of abbreviations

AT	Allgemeiner Teil des Strafrechts (General Part of the criminal law)
BBl	Bundesblatt der Schweizerischen Eidgenossenschaft (Official Federal Gazette)
BGE	Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts (official case reporter of the Swiss Federal Supreme Court; cases are cited by volume, chamber, starting page, page, paragraph)
E.	Erwägung (paragraph in cases of the Swiss Federal Supreme Court)
FF	Feuille fédérale (Official Federal Gazette)
JStG	Bundesgesetz vom 20. Juni 2003 über das Jugendstrafrecht (Jugendstrafgesetz, JStG)/Loi fédérale du 20 juin 2003 régissant la condition pénale des mineurs (Droit pénal des mineurs, DPMin), SR/RS 311.1 (Federal Law on the Criminal Law Applicable to Minors of 20 June 2008)
SR/RS	Systematische Sammlung des Bundesrechts/Recueil systématique du droit fédéral (Classified Compilation of Swiss Federal Legislation)
StGB	Schweizerisches Strafgesetzbuch vom 21. Dezember 1937/Code pénal suisse du 21 décembre 1937, SR/RS 311.0 (Swiss Criminal Code of 21 December 1937)