

CRIMINAL-LEGAL ANALYSIS AND QUALIFICATION OF ABDUCTION

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Abstract:The article briefly highlights the complex opinions of a number of legal scholars regarding the crimes of kidnapping against personal freedom, criminal legal analysis of a criminal act, signs of the subject and subjective side of the crime, punishment for committing a crime. The issues of appointing persons who committed crimes of kidnapping based on their actions, protecting human rights in our republic, including strengthening the criminal legal basis for individual freedom and kidnapping, and the emergence of complex criminal offenses were discussed. the result of the abduction and his qualifications were briefly explained.

Key words:Freedom, kidnapping, subject of the crime, corpus delicti, malicious intent, detention, motive and purpose, unlawful deprivation of liberty, personal freedom, sanity and mental retardation, personal freedom.

Today, in the conditions of the fundamental reforms implemented in our country, the most necessary task is to build a legal-democratic state by ensuring the stability of the life of the society by providing the unconditional observance of human rights and freedoms, further developing the country from the socio-economic point of view, and improving the well-being of the population. As the President of the Republic of Uzbekistan, Shavkat Mirziyoyev, emphasized, "We pay special attention to ensuring the rule of law, discipline, human rights and freedoms in our activities; we will not allow injustice to happen in the legal-democratic state being built in our country" [1] show that the forces and capabilities of our society will be mobilized in this way.

Illegal restriction of human freedom also violates the rule of law in a legal-democratic state. After all, Article 13 of our Basic Law states: Democracy in the Republic of Uzbekistan is based on universal principles, according to which an individual, his life, freedom, honor, dignity, and other inalienable rights are considered the highest value.[2] In international law, including Article 1 of the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948, it is stated: "All people are born free, equal in dignity and rights".[3] The concept of freedom is not applied to any individual, but to a morally mature person who feels responsible for his character, behavior, and activities.[4] When analyzing the composition of crimes related to the restriction of human freedom, as well as in the application of criminal law, it is important to determine the time when the crime was completed. When qualifying the actions of the culprit, it is necessary to think about attempted kidnapping and the completed crime. Punishment of the guilty person according to his act is determined by the correct qualification of these actions because if the act is qualified with reference to the second part of Article 25 of the Criminal Code of the Republic of Uzbekistan, the term of punishment cannot be more than three-fourths of the maximum term of imprisonment provided for in the relevant article of the special part of the Criminal Code.

It is recognized that the crime has ended when a person is deprived of his freedom. The length of time the abducted person has been held is irrelevant to the qualification of the act. A relative (for

example, a child) cannot be a victim of kidnapping, provided that the person has the right to own it. For example, if a father "steals" his child from his wife, his actions do not constitute a crime. If the victim agrees with the "thief" and voluntarily leaves his residence and asks for money together with the "thief" for his release, the act is not qualified by Article 137 of the Criminal Code. it contains the elements of the crimes of extortion (Article 165 of the Criminal Code) and fraud (Article 168 of the Criminal Code).[5]

B.A. Gadzhiemenov believed that the time when the child abduction was over was the time when the guilty child was captured and taken away with him or hidden. In his opinion, it is not important that the crime was revealed and the child was taken back from the perpetrator and handed over to his parents.[6]

Physical violence is expressed in the direct impact on human body parts, mental violence is expressed in putting pressure on him, suffering, or threatening the victim's closest person with a certain negative impact, violence can be used not only against the victim himself but also against his loved ones or by threatening to use violence.[7] If kidnapping is committed by deception or breach of trust, the act may be considered a completed crime from the moment the victim begins to be held captive in the place where he is brought, and from the moment he realizes that he has been injured. The fact that the guilty can impose his sentence on the victim, i.e. to possess, to restrict his actions, can be evidence that a crime has been committed. In the words of M. Kh. Rustambayev, "possession means possessing the victim, depriving him of his personal freedom in order to be able to determine his fate".[8]

It is known that the method of kidnapping based on the use of force is more dangerous than deception or abuse of trust. Because of this, we have to consider the forcible capture of a living person as an attempt to commit this crime, since he has not yet been moved to another place in space. Consequently, the term of punishment assigned to the guilty person cannot be more than three-fourths of the maximum term of imprisonment provided for in the relevant article of the special part of the Criminal Code of the Republic of Uzbekistan by Article 58 of the Criminal Code of the Republic of Uzbekistan. If a person was taken to a certain place by deception and began to keep him there, but has not yet moved to another place in place, these actions should be qualified as a completed crime, that is, the culprit should be deprived of his freedom, the maximum term can be assigned.

In practice, the crime can end as a result of the arrest of the perpetrators and the release of the victim, the killing of the criminal as a result of the operation, the escape of the kidnapped person, and the voluntary release of the perpetrators.

In criminal law, the assessment of the level of social danger of this crime of aggression and its qualification does not depend on the period of detention of the person. The object of the crime is important in the qualification of the crime, and according to M. Kh. Rustambayev, the direct object of kidnapping is social relations that guarantee the freedom of people to be wherever they want.[9] Nevertheless, there were attempts to objectify this important crime of the objective side of the crime. In particular, some experts indicate the time interval "even if it is a little time". In our opinion, this relative category is determined by the specific situation. For example, some authors believe that the restriction of the victim's freedom to move from one place to another using force lasted for a short time and may indicate that the act is not significant and therefore it is not considered a crime [10].

Based on this point of view, the low significance of the act implies not only objective but also subjective circumstances. In this case, the subjective situation is of primary importance in evaluating the actions of the guilty party. For example, the guilty person thought to deprive

another person of his freedom for a short time regardless of his will, and due to circumstances beyond his control, he could not achieve it, and because of this, the deprivation of liberty lasted for a short time. In this case, the actions of this person cannot be considered as a minor act.

After a person is separated from his environment, the act continues in the completed crime stage and involves the relocation and detention of the victim.

Moving a kidnapped person from one place to another place in space is always forced and is carried out regardless of his or her will. It is expected that a person will be transferred from one place to another in a variety of ways (guarding, transportation, etc.). How far the victim was moved from one place to another does not affect the qualification of the perpetrator's actions, but it has a certain influence on the level of social danger of the committed crime.

Detention of the victim in kidnapping is the act of forcing a living person to leave his/her place of residence as part of a socially dangerous act (physical or mental coercion), as well as forcefully resisting him/her to act according to his/her own will.

Detaining a person is defined as actions based on the use of force, aimed at preventing a person from leaving a certain limited space where he is placed. [11] These actions are in a room where the victim is unable to leave independently, on a water or air ship, in a bus. , may consist of holding in a different vehicle, etc.

In cases of kidnapping, the term of detention of a person does not have legal significance, but it can be taken into account by the court when assessing the level of social danger of the act.

The subject and the subjective side are subjective signs of the composition of the crime. In criminal law, special attention is usually paid to the problem of the subject of the crime.[12] This problem remains relevant even now.

The subject is an inevitable sign of any criminal composition. Criminal activity cannot be carried out without a subject. As confirmed in articles 17-19 of the second section of the General Part of the Criminal Code of the Republic of Uzbekistan, entitled "Persons to be held accountable", articles 17-19, the subject is a sane natural person who has reached the age of criminal responsibility.

An individual (in civil law) is a concept that represents a separate citizen (foreign citizens or stateless persons) who is a participant in a legal relationship[13]. The criminal law does not define the concept of a natural person, but does not need it either, since it refers to a person (a citizen of the Republic of Uzbekistan, a foreign citizen and a stateless person), regardless of the broad signs of this phrase. Unlike foreign countries (Great Britain, Germany, China, the United States, France, etc.), including countries belonging to the roman-german law system, the criminal law of the Republic of Uzbekistan does not contain criminal liability of legal entities. In some legal literature, one can face feedback on the possibility of establishing such legal liability.[14]

Article 18 of the Criminal Code defines the essential signs of the subject-the concepts of sanity and sanity. A person who realizes the socially dangerous nature of his act at the time of committing a crime and is able to control his actions is found to be sane. A person who is mentally unstable at the time of committing a socially dangerous act, that is, unable to realize the importance of his actions or control his actions due to chronic mental illness, temporary mental disorder, mental retardation or other forms of mental illness, is not liable. Medically induced coercion measures may be used against a person who has committed a socially dangerous act and is found by the court to be mentally ill.

In determining the age at which a person can be criminalized, the legislator takes into account the level of mental – physiological maturity of a person, that is, his ability to understand the importance of his actions (a thinking factor) and control them (a volitional factor). Such an

ability occurs in a person not immediately, but after he has reached a certain age.[15] this age is regulated by Article 17 of the Criminal Code, under which sane individuals who have reached the age of sixteen before committing a crime are held liable.

At present, the subject of the crime provided for by Article 137 of the Criminal Code of the Republic of Uzbekistan is a sane person who has reached the age of fourteen (part three of Article 17 of JK). At the same time, a person can be criminally charged from the age of sixteen for illegal imprisonment (Article 138) using a similar crime – rape. This phenomenon is a sign that the creators of the law recognize the level of social danger of the crime of kidnapping as higher.

Some experts objected to such a solution to the issue. For Example, N.E.Martinenko stated, "The objective aspect of the crime of kidnapping consists of three inevitable actions: capturing the victim, moving him elsewhere, and then holding him there. The guilty is required to have certain physical strength to capture and hold. However, such a force will not yet exist in minors of fourteen to fifteen years of age", [16] he believes. B.A.Gadjiemenov who especially studied the problem of kidnapping also reported that he did not face kidnapping cases by individuals under the age of twenty.[17]

The qualification of criminal acts is an important element of the imposition of punishment for any crime. When assessing the actions of a criminal, including a person who encroaches on the physical freedom of a person, it is required that the investigator, prosecutor and court decide the issue of which criminal legal norm should be applied, that is, correctly qualify the socially dangerous act committed. "The qualification of an act in accordance with the requirements of the law is an important condition for the exercise of Justice".[18] thus, the qualification of crimes in accordance with the criminal law of the Republic of Uzbekistan is the legal basis for the occurrence and implementation of criminal liability.[19] the qualification of crimes is usually understood to determine the conformity of the signs of the Committed Act with the signs of the content of the crime provided for by the criminal law norm. Proper qualification of a socially dangerous act ensures both the observance of the legal rights and interests of the perpetrators of this act and the observance of the legal rights and interests of their citizens affected by it.

In the qualification of the above criminal cases, special attention should be paid to cases aggravating and alleviating the crime. The presence of punishment aggravating circumstances reinforces the level of social danger of the content of the crime under consideration. In the second part of Article 137 of the Criminal Code of the Republic of Uzbekistan, such cases include:

- a) committing the crime of kidnapping against an underage;
- b) kidnapping in greed or other low intentions;
- c) to commit kidnapping by a group of individuals with prior attachment;
- d) kidnapping by a repeated or dangerous recidivist.

The fact that kidnapping, agreed in advance by a group of people, is included in the criminal law as an aggravating liability, is determined by the fact that crimes committed by two or more persons always increase their productivity, and, consequently, also increase the level of social danger of an act. In addition, when crimes are committed by a group of individuals, it occurs that one offender provides mental support to another offender. The serious consequences of the crime of kidnapping should also include the self-murder of the kidnapped person. Typically, the loss of hope for release, or the intolerable severity of the storage conditions, will bring the victim to the point of suicide. When a kidnapped person tries to get free, his carelessness can cause fatal injury to his back, such as falling off the roof of a house. In addition, the person being held in captivity

through the use of force can be shot and killed by people sitting with him in a single camera, cellar, ditch, dungeon, etc. It would also be appropriate to include the severe consequences of the crime of kidnapping as a result of miscarriage, mental breakdown, drug addiction, or venereal disease. In this case, these consequences can occur not only as a result of the direct physical actions of the offender, but also as a result of his direct actions, the sufferer: a sick person becomes blind as a result of prolonged storage in the dark, a strong violation of mental state, the onset of a chronic disease, hunger, cold, etc. Prior agreement (orally, in writing, etc.) are manifested in the fact that two or more persons make prior covenants about the commission of a crime, its place, time and method, the distribution of roles, as well as other circumstances of committing an act.[20] such an agreement can only be made at the stage of preparation for the crime. If it occurred at the stage of an attempt to commit the crime of kidnapping, the act of guilt cannot be characterized by this sign of aggravating responsibility. The fact that two or more persons commit the crime of kidnapping together means that each of the persons in question is considered an executor and that they have performed the objective side of their crime. It is possible that they both acted parallel to the commission of a crime, and acted at different time intervals. For example, one of the perpetrators of the crime initiates actions aimed at capturing a living person, another executor moves the victim from one place to another, and the rest of the executors, joined later, carry out the capture of the person. The actions of the organizer, witness or assistant are not part of the objective side of the crime being analyzed and cannot be qualified as an act committed by a group of individuals. They must be qualified by reference to Article 28 of the Criminal Code of the Republic of Uzbekistan. The crime of kidnapping is also an aggravating circumstance of responsibility when committed by a dangerous recidivist. In accordance with Article 34 of the CC, the fact that an individual intentionally commits a new crime after being tried for a previously intentional crime is found to be recidivism. In cases where a person has committed a crime similar to his previously convicted crime, and is separately listed in the CC, the intentional Commission of a new crime by a person who has also been convicted by other articles of the special part is found to be a dangerous recidivism.

The question of whether a person is considered a dangerous recidivist is not decided by the court, but on the grounds set out in the law itself, the person is considered a dangerous recidivist. The person should be recognized as a dangerous recidivist in the process of impeachment by the authorities of his investigation. The commission of a crime by a dangerous recidivist is considered a descriptive sign of a number of crimes, and this situation must be indicated when the person is involved in the participation by the preliminary investigative body as a defendant, and then this must also be justified in the descriptive part of the judicial sentence.

In summary, concluding the criminal legal analysis of crimes against human freedom, it is necessary to fill the aggravating circumstances provided for in the second part of Article 137 of the Criminal Law of the Republic of Uzbekistan with the following signs: using life and health-threatening violence or intimidating the use of such violence; using weapons or using other objects used as weapons; in the case of a person whose pregnancy is revealed to the culprit; in the case of an official representative of a foreign state or a person using international legal protection; holding in captivity for more than seven days; in order to hide another crime or alleviate its commission; committed by hire; committed using a service position. These circumstances make it easier to commit this act, promote its concealment and increase the level of social danger of the act. As we have seen, the aggravating signs of the crime of kidnapping have their own and special characteristics. Careful study and analysis of each of these signs is of

great practical importance in the qualification of the crime in question and sets the stage for the proper qualification of the crime.

In criminal law, lowering the age of responsibility of a legislator for the crime of kidnapping to fourteen does not have sufficient grounds. Because the possibility of fulfilling the objective side of this content, which is much more complex, testifies to the necessary level of social maturity of the individual. Even in the case of committing this criminal act, a fourteen-year-old teenager is more likely to carry out the crime under the influence or pressure of someone. The low occurrence of this crime by persons of the specified age is also the basis for our opinion on increasing the age of criminal liability. In this sense, it is advisable to exclude the word "modda" from Part 3 of Article 17 of the Criminal Law of the Republic of Uzbekistan. This can be further explained by the introduction of humanitarian principles into our criminal justice legislation.

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