

ASPECTS OF THE CRIME OF KIDNAPPING DIFFERENT FROM OTHER CRIMES OF SIMILAR COMPOSITION

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Abstract. *Crimes against the freedom of a person differ from each other mainly according to the signs of the objective side of the act. Unlawful deprivation of liberty by force is related to the composition of the crime of kidnapping as a competition of norms. Investigation and judicial practice show that in seven out of ten cases, there is a problem in classifying crimes related to illegal deprivation of liberty and kidnapping, and distinguishing them from each other.*

Keywords: *kidnapping, victim, unlawful deprivation of liberty, human trafficking, social danger, hostage, criminal code, extortion.*

ОСОБЕННОСТИ ПРЕСТУПЛЕНИЯ ПОХИЩЕНИЯ ЛЮДЕЙ, ОТЛИЧАЮЩИЕСЯ ОТ ДРУГИХ ПРЕСТУПЛЕНИЙ АНАЛОГИЧНОГО СОСТАВА

Аннотация. *Преступления против свободы личности отличаются друг от друга в основном по признакам объективной стороны деяния. Незаконное лишение свободы с применением насилия относится к составу преступления похищения человека как конкуренция норм. Следствие и судебная практика показывают, что в семи случаях из десяти существует проблема квалификации преступлений, связанных с незаконным лишением свободы и похищением человека, и их отграничения друг от друга.*

Ключевые слова: *похищение человека, потерпевший, незаконное лишение свободы, торговля людьми, общественная опасность, заложник, Уголовный кодекс, вымогательство.*

Kidnapping (Article 137 of the Criminal Code of Uzbekistan) is defined by the fact that there are no signs of taking a person as a hostage (that is, by a vague sign).

Kidnapping is always a complex act of capturing the victim, moving him from one place to another and keeping him there. Unlawful deprivation of liberty with the use of force consists only in detaining a person against his will and thus restricting his freedom of movement and choice of place of stay.

Kidnapping is always done by active means. Unlawful deprivation of liberty by force can also be carried out by inaction. Immobility can be expressed in not giving a person who is unable to move independently a wheelchair or keeping the victim in a room previously closed with his consent, as well as in refusing to perform efforts to free him.

Kidnapping is characterized by the secret nature of the place where he is later held. The "hiddenness" of this place has no significance in the illegal deprivation of liberty by force. Any space, room (in most cases, permanent or temporary residence of the victim or perpetrator, workplace, etc.) can be a place of detention of the victim. Therefore, in case of illegal deprivation of liberty by force, a person is deprived of liberty by force and the place of detention is not

revealed. His next-of-kin compensation claim, if it were to be filed, would be kept secret from other citizens, especially law enforcement.

The difference between the crimes of unlawful deprivation of liberty by force and kidnapping is determined by the age of the person who is considered their subject - 16 years and 14 years, respectively.

The difference between the norms of responsibility for illegal deprivation of liberty by force and kidnapping is also reflected in the punishments applied to the persons who committed them.

Kidnapping and human trafficking have some characteristics in common. These are taking a person captive and separating him from the microenvironment he is used to. However, in case of kidnapping, imposing certain requirements on the victim or his relatives, the fulfillment of which is considered an indispensable condition for the release of the kidnapped person, is a necessary stage of this crime.

In human trafficking, the victim essentially becomes the subject of a civil-legal contract, is handed over to the buyer without any conditions (except payment of fees) and for an indefinite period. Kidnapping and human trafficking are both done for profit.

As a general rule, this is a benefit for the kidnapper and trafficker, both tangible and intangible (for example, for use).

Thus, the crimes of kidnapping and human trafficking differ from each other according to the signs of the objective party, as well as according to the motives and goals that determine the actions of the subjects. These actions differ according to the consequences for the victim and the goals of the perpetrator. One of the participants in the transaction - the seller - takes the victim into custody, and disposes of the "object" of the transaction. The buyer only receives the "goods" and does not take the initial steps to take them into custody.

According to the level of social danger, taking a person as a hostage is equated to kidnapping. The main components of these crimes are included by the legislator in the range of serious crimes, and the components committed in cases of aggravating punishment (the second part of Article 137 and the second part of Article 245 of the Criminal Code) are included in the range of extremely serious criminal acts. But these crimes are not considered the same, despite some objective and subjective signs of similarity, and the law enforcer faces difficulties in differentiating these crimes in a number of cases. This situation is determined to a certain extent by the fact that taking a person as a hostage is considered by most scholars as a type of kidnapping and illegal deprivation of liberty.

According to many jurists, the main distinguishing feature between kidnapping and hostage-taking is the lack of intent in the first offense to coerce third parties into complying with certain requirements.

As mentioned above, the legislator placed the crime of kidnapping in Chapter VI entitled "Crimes against the freedom, honor and dignity of the person". In this case, the freedom of the person is the main object of aggression. The legislator appropriately placed the crime of taking a person as a hostage in the chapter of crimes against public security. Holding a person hostage is a crime against public safety, along with organized crime, smuggling, and public disorder.

Thus, when taking a person as a hostage, the criminal intent is directed not at the person of the victim (who is of secondary importance in taking a person as a hostage), but at third parties. In the case of kidnapping, the perpetrator is interested in the specific identity of the victim (for example, kidnapping a bride, eliminating or intimidating a rival, etc.). When a person is arrested as a hostage, there is no personal allegation of the criminal against the victim. He uses the hostage only as a means of putting pressure on the state, individuals and legal entities, and the future fate of the victim depends on the fulfillment of the demands placed on them or not.

The crime of kidnapping should be distinguished from extortion committed in connection with the use of force. Extortion is defined in the law as "demanding the transfer of property by threatening the victim or his relatives with violence, damage or destruction of property, or disclosure of information that should be kept secret for the victim".

Extortion committed in connection with the unlawful deprivation of liberty by force differs from malicious kidnapping in that it is a crime against property. Therefore, it cannot cover kidnapping, which is an invasion of the liberty of the person. In the case of extortion in connection with kidnapping, it is possible to conclude that the act should be classified as a set of crimes (Articles 165 and 137 of the Criminal Code of Uzbekistan).

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