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# FEATURES OF CRIMINAL LIABILITY FOR FORCED ILLEGAL DEPRIVATION OF LIBERTY

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## Abstract

In the article, the author, from a scientific and theoretical perspective, examines the features of criminal liability for violent unlawful deprivation of liberty. In particular, the composition of this crime was studied, its objective and subjective characteristics were examined, the results of scientific research carried out in this area, the views and approaches of scientists and researchers regarding the delimitation of the crime of forcible illegal imprisonment from some similar crimes were analyzed. Based on the results of the study, relevant scientific and theoretical conclusions are presented.

**Keywords** Imprisonment, use of violence, freedom, captivity, mental violence, detention, arrest.

## INTRODUCTION

Illegal deprivation of liberty by force (Article 138 of the Criminal Code of the Republic of Uzbekistan) is a crime similar to kidnapping, the law mentions illegal deprivation of liberty by force that is not related to kidnapping. As in the case of kidnapping, the direct object of the crime is a person's personal freedom, and in the qualified types of illegal deprivation of liberty by force, there may be additional objects - human life and health.

Unlawful deprivation of liberty by force should be understood as depriving a person of the opportunity to move freely in space and communicate with other people, to choose the place where he is.

For example, illegal deprivation of liberty by force means the illegal detention of a person who is in a certain place by force. In this case, the victim is deprived of the opportunity to leave this place as a result of the perpetrator holding him by force. In this case, two actions can be performed: capture and (or) detention, that is, in contrast to kidnapping, in the case of illegal deprivation of

liberty by force, the victim is not taken from the microenvironment he is used to and transferred to another place unknown to him, but to the place where he was or came voluntarily unlawfully held captive by force.

As an element of the objective aspect of unlawful deprivation of liberty by force, detention is expressed in active actions and the taking of a victim who is at his discretion in a certain place by force into a confined space at that place (for example, a separate room, basement, garage) and keeping him captive there is done for Both physical and mental violence may be used on the victim during detention. The forms and methods of coercion used by criminals are similar to the forms and methods of coercion used in kidnapping.

If the physical force used for illegal deprivation of liberty is not dangerous for the life and health of the victim, the actions of the perpetrator are qualified under Part 1 of Article 138 of the Criminal Code. The use of force, which is dangerous for the life and health of the victim, is a qualifying sign provided for in paragraph "b" of part 2 of this crime. When determining the nature of the use of force, it is

necessary to follow the explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan. According to Clause 8 of the Decision No. 12 of November 24, 2009 "On Judicial Practice in Cases Related to Human Trafficking", the use of force or the threat of use of force means tying, deprivation of liberty, beating, holding, and harming the victim's health. or moderate serious injury, as well as any coercion up to the point of violence, which did not harm the health of the victim, but created a real possibility of causing such harm at the time of use [1].

The use of violence that is dangerous to life or health should be understood as the use of violence that causes severe or moderately severe damage to the health of the victim, as well as light damage to health that causes a short-term impairment of health or an insignificant permanent loss of general work ability. Making the victim unconscious or sleeping with the help of narcotic drugs, psychotropic substances and powerful means should also be considered as physical violence, because in such cases the person is deprived of the ability to take aim in the surrounding environment, to express his will and to perform independent actions.

The use of mental violence is expressed in threatening the victim or his relatives with the use of physical violence. Such intimidation destroys the victim's will and ability to resist. In the case of intimidation with the use of physical force, the threat must be real and include the risk of physical or property damage to the victim or his relatives and friends. The threat can be expressed by words, gestures, facial expressions, or by pointing at any objects.

Unlike capture, captivity can be carried out not only by active actions, but also by inaction. For example, the perpetrator ensures the protection of the victim after depriving him of his freedom, leaves him tied up or does not remove the victim from the room where he is kept in captivity [2, P.72].

One of the signs of the objective side of this criminal offense is the illegality of actions to deprive a person of freedom. The criminal law gives a citizen the right to harm the interests of

another person protected by law only in connection with necessary defense (Article 37 of the Criminal Code), to catch a person who has committed a socially dangerous act (Article 39 of the Criminal Code) or in the case of last necessity (Article 38 of the Criminal Code).

In the specified cases, actions on deprivation of liberty are mandatory and are aimed at preventing harm that may be caused to other social relations protected by law, therefore, actions with signs of deprivation of liberty are not characterized by social danger and cannot be considered criminal. In addition, it can be noted that in connection with the necessary defense, during the apprehension of the person who committed the crime or in the case of the last necessity, the legislature is attacking the person who is being defended or has committed the crime, and the separation from the society of the said person or other persons and their rights and the society or deprives the citizen's personal freedom of legal protection, which allows to eliminate the danger that directly threatens the interests of the state protected by law. The conclusion is that the personal freedom of this person in this situation cannot be considered as an object of crime provided for in Article 138 of the Criminal Code of the Republic of Uzbekistan.

Detaining a person in any other way is unlawful deprivation of liberty.

The subject of unlawful deprivation of liberty by force is a natural person who has reached the age of 16. For unlawful deprivation of liberty by an official by using his official position, or Article 205 of the Criminal Code (Abuse of Power or Authority), Article 234 of the Criminal Code (Unlawful Detention or Arrest), or Article 230 of the Criminal Code (Prosecution of an innocent person) will be prosecuted.

However, as in the case of kidnapping, fathers and mothers (adoptors), close relatives, guardians or guardians of a minor or another person who does not have full legal capacity cannot be considered subjects of this crime.

In the legal literature, it is suggested that it would be appropriate to lower the age of criminal responsibility for unlawful deprivation of liberty

from 16 to 14 years [3, P.128]. In this case, this point of view is based on the fact that committing this crime does not cause any difficulties for a teenager. Such crimes are not rare among teenagers, but they are very latent and in most cases, the perpetrator is under 16 years of age and does not fall within the scope of Article 138 of the Criminal Code.

We agree with this proposal. In fact, both crimes - kidnapping and illegal deprivation of liberty by force attack the same object, and from the point of view of the objective side, they do not differ much from each other - the main case in both kidnapping and illegal deprivation of liberty by force keeping a person captive in a certain place using force. For this reason, we believe that unlawful deprivation of liberty by force (Article 138 of the Criminal Code) is included in the list of crimes for which liability arises from the age of 14, and part 2 of Article 17 of the Criminal Code is supplemented accordingly.

Subjectively, unlawful deprivation of liberty by force is committed with the right intention. The perpetrator realizes that he is illegally depriving the victim of his freedom by force, and he wants to do it.

In most cases, unlawful deprivation of liberty by force is carefully planned in advance, the intended victim is selected, and a convenient time and place for the person's capture is prepared. Sometimes, unlawful deprivation of liberty by force serves as a means of committing another crime, such as invasion (Article 164 of the Criminal Code), robbery (Article 166 of the Criminal Code), extortion (Article 165 of the Criminal Code). In such cases, judicial practice does not always provide a correct legal assessment of the actions of the guilty.

In order to solve the problem of distinguishing unlawful deprivation of liberty with the use of force from restriction of liberty as one of the types of use of force within the methods of committing other crimes, it was proposed to introduce a time criterion in the legal literature. For example, A.G. Blazhnev put forward the following opinion: "According to the explanations of the Plenum of the Supreme Court, it is illegal to commit a crime

for each type of crime (robbery, invasion, extortion, defamation, driving a vehicle, arbitrariness, etc.) a separate term sufficient to further qualify it as deprivation of liberty should be attached. For example, it can be (conditionally) two days for extortion, (conditionally) one day for touching honor, (conditionally) three days for arbitrariness" [2, P.78].

In our opinion, this approach to solving the above-mentioned difficult problem is formal and does not correspond with the provisions of the criminal law on illegal deprivation of liberty by force, nor with the practice of its application. How long the illegal deprivation of liberty by force lasted did not affect the qualification of the act under the relevant article of the Criminal Code [4, P.117; 5, P.259].

In judicial practice, it is also possible to encounter cases of sentencing for illegal deprivation of liberty with the use of force, the duration of which is measured in minutes, and the author himself draws attention to this [2, P.80]. Therefore, the time criterion cannot be taken as a basis for distinguishing illegal deprivation of liberty by force in the sense established in Article 138 of the Criminal Code from deprivation of liberty (restriction of liberty) as one of the aspects of the method of committing a different crime. In our opinion, in order to solve this problem, it is necessary to take into account a set of factors that describe one or another illegal act that caused a person to be deprived of liberty. Time is one such factor. In addition, it is necessary to assess what exactly the perpetrators' intention was, whether the deprivation of liberty continued only within the framework of the commission of another criminal act or deviated from this framework.

Qualifying features of unlawful deprivation of liberty by force;

- committing the crime as a group of persons who conspired in advance;
- committing using violence that is dangerous to life or health;
- committing a crime using a weapon or objects used as a weapon;
- knowingly committed against a minor;

- committed against a woman whose pregnancy is known to the perpetrator;
- committing against two or more persons.

Separate qualifying marks are that the act was committed by an organized criminal group, or caused the death of the victim due to negligence, or had other serious consequences.

Compared to kidnapping, the legislator does not consider the act committed with greedy motives as an aggravating circumstance of unlawful deprivation of liberty by force. At the same time, practice shows that the majority of such crimes are committed with greedy intentions - with the intention of getting some material wealth (money, securities) from the victim (signing an unprofitable contract, destroying a deal, etc.).

Our research showed that 88.2 percent of the crimes of unlawful deprivation of liberty by force were committed for greed. In this case, greedy intentions were related to the use of force that was safe for life and health, and dangerous for the person during his detention. In particular, in 66.7% of the crimes of unlawful deprivation of liberty with the use of violence not related to greedy motives, violence that was not dangerous to life or health was used, and in 93.3% of the crimes of illegal deprivation of liberty with the use of violence with greedy intentions, violence was used that was dangerous to life or health. used. This indicates that the considered crimes have a strong level of social danger and require the application of stricter measures of accountability. Therefore, we propose to supplement part 2 of Article 138 of the Criminal Code with the following item "z":

"z) with the intention of greed".

Distinction between unlawful deprivation of liberty by force and taking a person as a hostage is made primarily according to the purpose of the crime. Detention of a person as a hostage is characterized by the purpose of forcing a state, organization or citizen to perform some act or refrain from performing some act as a condition for the release of the detainee. In the case of illegal deprivation of liberty by force, the demands of criminals are directed not at third parties, but at

the victim himself. The following criteria can be used in addition to the purpose of the crime to distinguish between the specified elements of the crime:

- 1) whether or not there was a personal relationship between the perpetrator and the person who was illegally deprived of liberty by force before the crime was committed;
- 2) the person who was illegally deprived of liberty by force was a random person who happened to be in this place and at this time;
- 3) the arrest of a person was made demonstratively, openly, openly and was kept in captivity using force;
- 4) the crime was committed against several persons;
- 5) that the perpetrators seek to involve the mass media in the committed crime, etc. [6, P.131]

But these criteria serve only as additional features in distinguishing the illegal deprivation of liberty by force from the detention of a person as a hostage.

Deprivation of liberty by force is distinguished from the crimes provided for in Article 234 of the Criminal Code of the Republic of Uzbekistan - illegal detention or arrest, primarily based on the subject of the crime.

The subject of illegal detention or arrest is only a special subject - an official who has the right to detain or arrest according to the law, that is, an investigator, a prosecutor, a judge, and the head of a place of detention that does not release the detainee despite the existing warrant. possible However, if the actions of the relevant official regarding the illegal deprivation of liberty are not related to the performance of his official duties, they should be qualified according to Article 138 of the Criminal Code of the Republic of Uzbekistan.

In this case, the nature of the actions of the perpetrator of illegal deprivation of liberty is analyzed: were these actions carried out in the form of applying criminal-procedural coercive measures to the victim, using state institutions that provide the procedure for temporary detention, arrest or deprivation of liberty, or not?



A.G. As Blazhnov noted, "objectively, illegal deprivation of liberty is always expressed in coercion, which consists in keeping in captivity by means of physical or mental coercion. Unlawful detention or detention is the use of intellectual coercion, that is, it is expressed in the unlawful use of criminal-procedural coercive measures, in particular, in the unjustified admission of a person to a specialized institution or in keeping him there even after such grounds have disappeared" [2, P.140].

Therefore, illegal deprivation of liberty by force can be distinguished from similar crimes according to the following criteria:

1) from kidnapping - according to the signs of the objective side of the crime. In the case of kidnapping, the perpetrators take the victim captive, move him from one place to another against his will, and then keep the victim captive. The main feature of the objective aspect of this crime is to take the victim into captivity and then transfer him to another place for the purpose of keeping him in captivity. In the case of illegal deprivation of liberty by force, the victim is not transferred to another place, but is kept in captivity by force in the place where he came at his own discretion;

2) from illegal detention or arrest:

first, according to the composition of subjects. In the case of illegal deprivation of liberty by force, the subject of the crime is general, in the case of illegal detention, the subject of the crime is the investigator, investigator or prosecutor, in the case of illegal arrest - the judge, and in the case of illegal detention - the head of the institution where the victim is kept;

secondly, only a specialized institution can act as a place of illegal detention, arrest or detention, in particular: a temporary detention center of the internal affairs bodies or an investigative detention center of the criminal-executive system of the Ministry of Internal Affairs or security services;

thirdly, unlawful deprivation of liberty by force is committed by the use of physical or mental force, and unlawful detention, arrest or detention is

carried out by the unlawful application of criminal procedural coercive measures;

2) in some cases, unlawful deprivation of liberty by force may differ from taking a person as a hostage according to the purpose of the crime. In the case of illegal deprivation of liberty by force, the demands of criminals are placed before the victim or his relatives and close people. They do not have the purpose of forcing a state or organization to comply with any demand, such purpose is inherent only in the detention of a person as a hostage.

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