

Criminal Liability for Kidnapping

Akbaralieva Mukhayo Karamatullo kizi

*Lecturer at Tashkent State Law University, Department of Criminal Law,
Criminology and Anti-Corruption.*

Abstract: The article reveals criminal liability for kidnapping. All parts of Article 137 of the Criminal Code of the Republic of Uzbekistan are disclosed, namely: kidnapping of a minor; for selfish or other base motives; by prior conspiracy by a group of persons; repeatedly or a dangerous repeat offender. As well as kidnapping committed by a particularly dangerous repeat offender; causing serious consequences; committed for the purpose of removing human organs and (or) tissues.

Keywords: kidnapping, restriction of freedom, imprisonment, for mercenary or other base motives, qualifying feature, dangerous repeat offender, especially dangerous repeat offender, by prior conspiracy by a group of persons, serious crime, especially serious crime

Human freedom is one of the fundamental rights of every individual. This right is, first of all, enshrined in international acts, then in national legislation.

Article 9 of the International Covenant on Civil and Political Rights states that everyone has the right to liberty and security of person. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 25 of the Constitution of the Republic of Uzbekistan establishes the following provision: Everyone has the right to freedom and personal integrity.

Thus, a person's personal freedom is protected by law.

There is criminal liability for kidnapping, namely in Article 137 of the Criminal Code.

For the first part of Article 137 of the Criminal Code, that is, for kidnapping, the following sanctions are provided: restriction of freedom from three to five years or imprisonment from three to five years. Sanction in this case means the measure of punishment that is applied by the state for committing a crime. Article 137 consists of three parts. The second and third parts are qualified offenses, that is, this is the same act (kidnapping), but with aggravating circumstances.

The second part of Article 137 of the Criminal Code provides for liability for the same action committed: in relation to a minor; for selfish or other base motives; by prior conspiracy by a group of persons; repeatedly or a dangerous repeat offender.

In general, crimes against minors occupy a special place among socially dangerous acts against individuals, as they pose an increased danger to society. Therefore, this circumstance is a qualifying feature in almost all crimes against the person.

Selfish motives are those aimed at obtaining material benefits. Revenge, envy and other circumstances are considered base motives.

To determine such a circumstance as a preliminary conspiracy by a group of persons, two signs are needed: 1) participation of two or more in the commission of a crime; 2) conspiracy between the perpetrators knowingly or immediately before the start of the crime.

According to Article 32 of the Criminal Code of the Republic of Uzbekistan, repetition is recognized as the commission of two or more crimes at different times, provided for by the same part, article, and in cases specifically specified in the Criminal Code, and by different articles of the Special Part, none of which the person was convicted of convicted. Both completed crimes and punishable preparations or attempted crimes, as well as crimes committed in complicity, are recognized as repeated.

A dangerous recidivism is the commission by a person of a new intentional crime identical to the one for which he was previously convicted, and in cases specifically specified in the Criminal Code, under other articles of the Special Part.

The identity of crimes must be understood as the commission of a new crime, provided for:

the same article of the Special Part of the Criminal Code under which the person was previously convicted (if the article provides for liability for the same crimes);

the same part of the article of the Special Part of the Criminal Code under which the person was previously convicted (if the article provides for liability for different crimes).

The above circumstances are included in the second part of Article 137 of the Criminal Code. The second part is punishable by imprisonment from five to ten years.

Part three of Article 137 of the Criminal Code provides for liability for the same action: committed by a particularly dangerous repeat offender; causing serious consequences; committed for the purpose of removing human organs and (or) tissues.

A particularly dangerous recidivism is the commission of a new intentional crime by a person, for which he is sentenced to imprisonment for a term of at least five years:

a) for a particularly grave crime, if he was previously convicted of a particularly grave crime or twice for grave crimes and for each of them was sentenced to imprisonment for a term of at least five years;

b) for a serious crime, if he was previously convicted twice for serious crimes or in any sequence for a serious and especially serious crime and for each of them a sentence of imprisonment was imposed for a term of at least five years.

It should be noted that a person may be recognized as a particularly dangerous repeat offender by a court verdict.

Grave consequences should be understood as causing death by negligence, suicide or attempted suicide of the victim, causing significant harm to the health of the victim and other circumstances.

According to the Law of the Republic of Uzbekistan “On Transplantation of Human Organs and Tissues”, a human organ is a separate set of different types of cells and tissues that perform a specific function in the human body; human tissue is a collection of cells and intercellular substance, united by a common origin, structure and functions in the human body.

Also, according to this Law, it is prohibited to force a living donor to consent to the removal of an organ and (or) tissue from him.

Removal of organs and (or) tissues from a living donor is permitted only if his health at the time of removal, according to a medical report, does not cause harm, which may lead to loss of vision, speech, hearing, or partial or complete loss of the organ’s functions (except with the exception of a transplanted organ and (or) human tissue), mental disorder or other health disorder leading to permanent disability of more than thirty-three percent.

Removal of organs and (or) tissues from a living donor for transplantation to a recipient is permitted if the donor:

not less than thirty days in advance, in writing and recorded on video, warned of possible complications for his health in connection with the upcoming surgical operation or manipulation to remove organs and (or) tissues;

voluntarily, free of charge, in a notarized written form, expressed consent to the removal of his organ and (or) tissues;

has undergone a comprehensive medical examination and has a medical report from medical specialists on the possibility of removing an organ and (or) tissue from him for transplantation.

This issue has recently received special attention. In June 2022, amendments and additions were made to the Criminal Code regarding the issue of removal of human organs and (or) tissues.

The three above circumstances (committed by a particularly dangerous repeat offender; entailing grave consequences; committed for the purpose of removing human organs and (or) tissues) relate to the third part of Article 137 of the Criminal Code. And for this part, liability is provided in the form of imprisonment from ten to fifteen years.

Thus, the article reveals criminal liability for kidnapping, and also reveals all the circumstances listed in Article 137 of the Criminal Code.

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