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### **Illegal deprivation of freedom, objective evidences**

*Annotation.* The author considers some aspects of crimes against human freedom. Human freedom is divided into species depending on the degree of its implementation in various spheres of public and private life. The article examines illegal deprivation of freedom according to the most common definitions in the theory of criminal law "is expressed in the illegal deprivation of freedom of movement in space and time, in unlawful obstruction to choose his place of residence on his own will. Illegal deprivation of freedom consists of one act — of containment.

*Key words:* humans trafficking, human freedom, illegal deprivation of freedom, the Criminal Code of the Republic of Kazakhstan, violation of constitutional rights.

The protection of human freedom determined the legislative regulation of the corpus delicti, which establishes the responsibility for illegal deprivation of freedom in Art. 126 of the Criminal Code of the Republic of Kazakhstan dated on July 3, 2014 (hereinafter — CC RK).

The new stage of the criminal-legal regulation of relations in the field of personal freedom is associated with the adoption of the Criminal Code of the Republic of Kazakhstan on July 3, 2014 (enacted on January 1, 2015), in which the responsibility for illegal deprivation of freedom is regulated by Article 126 of the Criminal Code of the Republic of Kazakhstan (3rd part).

A characteristic feature of crimes against human freedom, criminologists call a high degree of public danger. Noting this property of the encroachment under consideration, the outstanding Russian scientist S. V. Poznyshchev wrote: «One of the necessary conditions for social progress and the development of the individual in society is possible rectification from the social life of the domination of brute physical force, the legal protection of everyone from the arbitrariness and violence of others. Therefore, the crime against freedom should take more or less prominent place in the Criminal Code. The subject of this crime is freedom of action, freedom to be determined for a particular activity or inaction, freedom to choose a place of residence etc» [i, 131].

Object of encroachment in analyzed crime is personal human freedom. The immediate object is a state-protected right to choose a place of residence by the person discretion at his own. An additional object is the life and health of human.

Human freedom is divided into species depending on the degree of its implementation in various spheres of public and private life. Thus, the physical human freedom is expressed in a human's ability to act in accordance with his will, there are no specific physical (material) factors limiting his action. For example, freedom in choosing of place of residence, freedom of movement, freedom in choosing a profession etc.

On the objective side, considered act consists in illegal deprivation of freedom, not related to his abduction. Illegal deprivation of freedom is recognized, which was committed in violation of constitutional rights on the personal integrity of citizens. Deprivation of freedom consists in depriving the right to free movement and the possibility to choose their location at their own discretion. As a result, the victim is deprived of the opportunity to move freely (restricted in movement) in space, to choose a place of his stay. In the case of illegal deprivation of freedom, taking person from his environment habitual for him and moving to another place does not occur.

Illegal deprivation of freedom according to the most common definitions in the theory of criminal law «is expressed in the illegal deprivation of freedom of movement in space and time, in unlawful obstruction to choose his place of residence on his own will. It can be expressed in depriving the victim of freedom of movement by forcible or deceptive confinement (locking) in a closed room, another house, a basement, a garage, etc. and keeping him in this place against his will, which deprives the victim of the opportunity to behave as he sees fit» [ii, 220].

We agree with the point of view of A. I. Rarogh that the delusion of a person to a remote place or place from which he cannot quickly get out (an island, a cave, etc.) cannot be considered as illegal deprivation of freedom, since a person of his own free will, although not guessing about the consequences, was moved there. The retention of a lost child against his will should be qualified as an illegal deprivation of liberty.

Illegal deprivation of freedom is possible not only by action, but also by inaction — for example, in the case of the deprivation of a wheelchair of a person who cannot move independently, or when the victim is in a room previously locked with his consent, and subsequently guilty refuses to release him [iii, 11].

Illegal deprivation of freedom consists of one act - of containment. Forced isolation implies the restriction of the victim in freedom of movement, and not complete isolation of him from the outside world. The place of illegal deprivation of freedom can be any space, including the place of permanent or temporary residence, place of work, study of victim, etc. As a rule, the perpetrator invites the victim to a predetermined place and only then deprives him of his liberty.

Victims of illegal deprivation of freedom can be any individual, including close relatives, regardless of gender, age, citizenship. In case of illegal deprivation of freedom, the guilty persons are interested in one reason or another in the specific personality of the victim (as happens, for example when recovering a debt, eliminating a competitor, etc.). When depriving a person of their freedom the guilty seek to avoid publicity, informing interested persons (partner or relative) is carried out only because of necessity (for example to hold a ransom).

The consent of a person to isolation in a certain place excludes the element of analyzed crime. However, the subsequent illegal detainment of a person who is in a certain place at his own will (for example, a seasonal worker upon the expiration of the contract) is an illegal deprivation of freedom. The deprivation of freedom of another person with the necessary defense (Article 32 of the Criminal Code of the Republic of Kazakhstan), extreme necessity (Article 34 of the Criminal Code of the Republic of Kazakhstan) or detention of a criminal (Article 33 of the Criminal Code) is not regarded as illegal.

By construction of the element of the crime is analyzed as formal. In formal element of crimes, socially dangerous consequences are not a constituent element of crime, and the criminal law considers the crime terminated after committing a socially dangerous act regardless of the onset of criminal consequences. The moment of the end of the illegal deprivation of freedom N. N. Boyko considers the moment of committing actions excluding out victim the possibility of leaving a certain room, when a person is actually deprived of the opportunity to move in space at his own discretion. If deprivation of freedom was to be placed in some other place, then the moment of its termination will come only after the transfer of the victim to this place and commitment of actions there [iv, 13].

The length of the illegal deprivation of freedom does not matter for the application of Article 126 of the Criminal Code. Consequently, the period of retention of the victim in a certain place does not affect on legal evaluation of the act. At the same time, an apparently insignificant period of time for which a person was forcibly restricted by freedom of movement may indicate a minor significance of the act (Part 4, Article 10 of the Criminal Code of the Republic of Kazakhstan).

The list of cases when a person can be legally deprived of his freedom is strictly limited: administrative detention, hospitalization in a psychiatric hospital, criminal procedural coercion and criminal penalty.

These signs allow us to determine the objective side of illegal deprivation of freedom, whether illegal secret or open, non-violent or violent, without using or using deceit or abuse of trust, carried out by action or inaction, restriction of the liberty of the victim against or in addition to his will, consisting in isolating him from social environment by hindering to choose their place of stay and possibility of movement. Consequently, illegal deprivation of freedom is expressed in an illegal restriction of freedom committed against will of the victim, not related to his abduction.

The subjective aspect of illegal deprivation of freedom is characterized by direct intent that means the person realizes that he illegally detains another person in a certain place, against will of the victim, limiting his physical freedom and wishes. Continuous deprivation of freedom of the victim testifies the guilt's intention to achieve his goal, by keeping the victim without further movement. As motives for illegal deprivation of freedom may be revenge, jealousy and hooligan actions, facilitating to commitment of another crime, depriving the victim of the opportunity to participate in any official or public affairs, disruption of business negotiations. It should pay attention to the lack of selfish motive, as it is attributed to qualifying feature of element of the crime by the legislator.

The subject of illegal deprivation of freedom may be a physical, responsible person who has reached the age of 16 years at the moment of commitment of the crime. Establishing the general age of criminal responsibility from 16 years, the criminal law takes into account that with the attainment of such age, the minor is fully able to evaluate his behavior, including criminal behavior.

On the basis of the foregoing, the conclusion suggests that historical and legal analysis of criminal legislation in the field of the protection of personal freedom of human allows us to assert that personal freedom has always become an object of legal protection at all stages of the development of society and the state, its stage were inseparably linked with the principles of organizing the social-political way of life of society, the economic basis of the functioning of the state.

In the process of improving the criminal legal means of ensuring human freedom for the period of the Criminal Code of the RSFSR in 1922, 1926, the Criminal Code of the KazSSR in 1959 and the Criminal Code of the Republic of Kazakhstan in 1997 and 2014 was gained considerable experience of law making methods, which created the prerequisites for further optimization of the norms of criminal legislation, in the context of a number of legislative novels that predetermined the introduction of amendments and additions to the criminal law setting responsibility for illegal deprivation of freedom.

The current Criminal Code of the Republic of Kazakhstan is a sufficiently effective tool for combating criminality and criminal-legal protection of human rights and freedoms, interests of the state and society [v].

#### **РЕЗЮМЕ**

В статье рассматриваются объективные признаки, вопросы квалификации такого уголовного правонарушения, как незаконное лишение свободы.

#### **ТҮЙІН**

Мақалада заңсыз бас бостандығынан айыру сияқты қылмыстық құқық бұзушылықтың біліктілігі туралы мәселелері, объективті белгілері қарастырылады.

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