

On the question of the differentiation between kidnapping taking hostages according to the criminal law of Azerbaijan Republic

Abstract: It is considered the matters related to the application of Article 144 of Criminal Code of the Republic of Azerbaijan. The author considers the questions connected with the definition of crime, determination of the nature of kidnapping, delimitation of other associated crimes, etc.

What is more, legal treatment of the crime is taken as the major problem, as far as it covers evidence gathering, solution of other issues of investigation and conviction of the guilty, etc.

Necessity for development of recommendations and measures meant for improvement and more effective application of the law by enforcement and judicial authorities, as well as measures for prevention and suppression of criminal activity prove the relevance and topicality of the article.

Keywords: capture; differentiation; abduction; consist; crime; sign; competition; adjacency; law.

Freedom of a man is one of the fundamental values declared with conventional acts and national legislations of the legal democratic states. The Constitution of Azerbaijan Republic of 1995 [5] and international treaties [1], are the integral constituent part of our state legislation system. They provide the right to liberty and security of person, the right to live in safety. Man's freedom deprivation is allowed only of the grounds established by the law and on a court decision. Proclaiming the security of person among the basic rights of a man, the state takes obligation to create the conditions when the right to security of person is not only declared but also provided. Along with the right to life and health, the right to liberty and security of

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person, and the right to live in safety are in the list of criminal legal protection of the state and are the constituent part of defence of the fundamental rights and freedoms of a person, society and the state.

We will consider as an example the differentiation issues of kidnapping from taking of hostages.

The head about responsibility for the crimes against freedom, honour and dignity of a person is stipulated in acting criminal legislation, though corpus delicti included currently in this head, had also in Criminal Code of 1960. Separation of the chapter considered and its pertinence to the chapter about the crimes against personality come from constitutional provisions about protection of freedom, honour and dignity of personality [7, p. 427].

Studying of the current state of the criminal legal protection of public relations testifies that despite continuous work on optimization of legal toolkit, number of criminal encroachments is characterized with significant problems under qualification. Analysis of the situation's reasons testifies that law-enforcement mistakes a large extent provided with shortcoming of the technical legal nature.

One of the characteristic problems, inherent to the acting criminal law, is a description of various criminal legal delicts through use of etymologically similar notions. Stated fact "dilutes" the boundaries of appropriate crimes and is caused different approaches to criminal legal assessment legally significant facts.

Typical sample of the problem stated, as indicated above, is an issue of *differentiation taking of hostages from kidnapping*.

It is necessary to note that competition of indicated corpus delicti for a doctrine of criminal law is not a new subject of studying. So, in period of acting of the previous criminal code L.D. Hauhman has ever paid attention to the problem [2, p. 47]. Though, until now there is not resolved differentiation concerning approach to informative content of constructive features of considered criminal legal delicts.

In opinion of the author, the main mistake in process of differentiation of hostages taking from kidnapping is its put into practice on the separate corpus delicti's elements. At the same time studying of the issue testifies that the right

qualification is possible only if to keep mandatory to the terms of total analysis of constructive features in their interrelation. The arguments in worth of this position are the following circumstances.

One of the criteria differentiating hostage's taking from kidnapping is an object of criminal encroachment.

Applicably to the object, we should indicate that taking hostages accompanied with great extent threat of public relations' stability than kidnapping.

First, based on the structure of criminal legislation, we may make a conclusion that a lawmaker determined a basic object of kidnapping as the interests of specific person as and at the same time an object of taking hostage are defined as the interests of public security. Obviously, on their significance the rights, freedoms and welfare of separate person, despite their unconditional value, are not compared with society security, under which is understood a certain combination of relations, regulating safety conditions of life all members of a society and providing such level security, which is sufficient for normal functioning of society [6, p. 174]. Similar positions are kept by most theorists who are studying the issue of differentiation of these crimes' corpus delicti. For example, according to F.Y. Samandarov, "an object of taking hostage is public security, life and health of man, and also set in the Constitution of Azerbaijan Republic (art. 28 and 32) a personal freedom of man and his/her immunity, the essence of which is a fact, that this deed infringes vital interests to whole society, and not a specific person" [4, p. 564, 568].

Second, studying of international normative acts testifies that taking of hostages, in compliance with Convention of 17th December 1979, determined as international crime, that defines the most significance of the object of stated criminal legal delict in comparison of kidnapping. On 9 November 1999 Azerbaijan Republic is one of the participants of this Convention. According to part 2 article 148 of the Constitution of Azerbaijan Republic, the norms of the Convention of 1979 are an integral part of legislative system of our state [3, p. 44-45].

Establishing the object of crime as one of the criteria of differentiation of crimes considered, we should establish a basic ground of its definition. According to the

author, an optimal solution of the issue of the object determination is analysis of subjective side of the corpus delicti. Apart guilt as a constructive feature of any encroachment of criminal nature, key significance of considered topic has determination of intention, which is possible only through establishing of the crime goal.

It appears the following problem – determination of subjective signs; the process of the most complex to establish proving. Here, examination of the features of objective side (scene, time, situation of crime committing, requirements' content like term of release of captured person and others) is become necessary element to establish legally significant facts and exact qualification of an offence.

Unconditionally, the author does not pretend on exclusiveness of the position stated in the present article. The differentiation issue of hostages' taking from kidnapping should be resolved only through formulation doctrinal approaches to decision of it. A main direction is a scientific controversy directed to optimization of acting legal toolkit as qualitative normative instructions are the main term of effective criminal legal protection of the public relations.

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