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SPECIFIC FEATURES OF THE QUALIFICATION OF CRIMES AGAINST THE FREEDOM OF A PERSON

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Abstract: In this article, the author examines the specifics of qualifying crimes against human freedom. In particular, the signs of the objective side of crimes of this category are comprehensively studied, the results of scientific research, views and approaches of scientists and researchers regarding the qualification of crimes against human freedom and their differentiation from crimes with a similar composition are analyzed. Based on the results of the study, the author provided the corresponding scientific and theoretical conclusions.

Keywords: human trafficking, freedom, slavery, recruitment, kidnapping, deprivation of liberty.



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Introduction

The qualification of criminal acts is an important element of sentencing for any crime. When evaluating the actions of a criminal, including a person who encroached on the physical freedom of a person, the investigator, prosecutor, and court are required to resolve the issue of which criminal law norm should be applied, that is, to correctly qualify the committed socially dangerous act. Thus, the classification of crimes in accordance with the criminal law of the Republic of Uzbekistan is the legal basis for the occurrence of criminal responsibility and its implementation.

Special literature focuses on the issues of qualification of crimes[1]. The classification of crimes usually means determining the compliance of the signs of the committed act with the signs of the crime structure provided for in the criminal law [2]. The correct qualification of a socially dangerous act ensures the observance of the legal rights and interests of the persons who committed this act, as well as the observance of the legal rights and interests of the citizens affected by it.

The classification of crimes is based on the norms of the General and Special parts of the Criminal Code of the Republic of Uzbekistan, and in some cases other normative documents referred to in the Criminal Code of the Republic of Uzbekistan.

Experts distinguish formal and informal qualifications depending on the subject of the crime. Official qualification is carried out by specially authorized officials or state bodies, and unofficial qualification is carried out by other persons (lawyers, students and teachers of law universities, etc.). As a type of informal qualification of crimes, one can distinguish the doctrinal qualification carried out by scholars in the field of criminal law in textbooks, reviews, monographs, training manuals, etc.

L.D.Gauxman distinguishes between general and specific rules for the qualification of crimes. General rules apply to a specific set of qualifying acts and are used in the process of law enforcement, while special rules are used for scientific purposes and are included in one or another section of criminal law [3]. The general rules for the classification of crimes are based on the fact that the act must be provided for in the Criminal Code, contain the signs of a concrete crime and be based on

correctly determined information [4]. L.D.Gauxman, while dividing the stages of the general rules of the qualification of crimes, puts the set of articles of the Special Part of the Criminal Code corresponding to the committed act in the first place, and determining the object of the crime in the last - eighth place. Taking into account that the signs of the act committed in the classification of crimes are compared with the signs of the crime described in the law, the classification of the crime begins with the analysis of the object of criminal aggression in accordance with the general methodological rule[5].

Methods

The research in the study above employs a qualitative legal methodology, focusing on the analysis of criminal law provisions, judicial practices, and doctrinal interpretations within the context of the Criminal Code of the Republic of Uzbekistan. By examining primary sources such as legislative texts and judicial decisions, along with secondary sources including legal literature, monographs, and scholarly articles, the study systematically explores the qualification of crimes against personal freedom. The methodology emphasizes the application of general and specific rules of criminal law, comparative legal analysis, and interpretation of key concepts to address the theoretical and practical challenges in differentiating and classifying crimes with similar characteristics.

Results and Discussion

In crimes against personal freedom, the physical freedom of a living person is the main direct object of the crime. If a person's freedom is an additional object, the person's actions cannot be qualified according to the articles of the Criminal Code of the Republic of Uzbekistan, which provide for responsibility for crimes against the person's freedom. In order to evaluate the committed act as one of the crimes against the freedom of a person that deserves punishment according to the criminal law, first of all, it is necessary to determine whether the object of criminal-legal protection, that is, the physical freedom of a person has been harmed or not. It is the identification of the object of criminal aggression and its concretization that makes it possible to qualify the act as criminal, and later to distinguish it from similar crimes.

The characterization of the analyzed criminal acts has some features related to incomplete crime, participation in the crime, as well as the use of aggravating factors and special factors of aggravating responsibility, and we will discuss each of them in more detail below.

Qualification of unfinished crimes against the freedom of the person

The first stage of an incomplete criminal act is preparation for the crime, which is defined in the first part of Article 25 of the Criminal Code of the Republic of Uzbekistan. If an act of a person creating conditions for committing or concealing a deliberate crime is stopped before it begins due to circumstances beyond his control, such an act is considered preparation for a crime.

Committing certain crimes, such as gun theft, possession of drug paraphernalia, is also against a person's liberty. preparatory actions for committing crimes can be considered. In such a situation, the actions of the guilty person can be qualified both according to the relevant articles (Articles 247, 276) of the Special Part of the Criminal Code of the Republic of Uzbekistan, and according to Articles 135-138 of the Criminal Code of the Republic of Uzbekistan with reference to the first part of Article 25 of the Criminal Code of the Republic of Uzbekistan, that is, according to the set of crimes .

Currently, in the science of criminal law, the prevailing opinion is that an attempt to commit a crime can be committed only with the right intention . However, the idea that an attempt to commit a crime can be committed with intent has also been put forward [6]. Against personal freedom Attempting to commit crimes can be expressed in the actions of a person directly aimed at committing the same crime.

Against the freedom of the person described above any actions of a person directly aimed at fulfilling the objective aspect of these crimes before the completion of the crimes are against the freedom of the person it can be concluded that there is an attempt to commit crimes. In such cases, the actions of the culprit should be qualified according to the relevant part of Articles 135-138 of the Civil Code of the Republic of Uzbekistan, with reference to the third part of Article 25 of the Civil Code of the Republic of Uzbekistan.

Features of the qualification of crimes against the freedom of a person committed in participation

In the science of criminal law, there are many researches related to participation, its forms and types, but this problem is considered one of the most complex and insufficiently developed problems in criminal law [7]. It is not a coincidence that a large number of mistakes made in the qualification of most crimes, including criminal acts aimed at encroaching on the freedom of a person, fall on group crimes.

The concept of participation in crime is defined in Article 27 of the Criminal Code of the Republic of Uzbekistan, according to which two participation of one or more persons in the commission of an intentional crime is considered participation. While the actions of the perpetrator are qualified as actions committed by an organized group, the act is not qualified as having been committed by a group of individuals in advance. If the crime against the freedom of the person was committed in participation, that is, organizers, witnesses and assistants did not directly participate in the performance of the objective aspect of the analyzed crime, their actions cannot be qualified as premeditated collusion by a group of persons[7].

Oganyan defined the actions of the organizers, witnesses and assistants of crimes against the freedom of a person, in particular, kidnapping, as actions committed with malice or other low intentions, in which they received any payment from the perpetrators for their criminal actions or received it (for example, for the release of the victim considers that it is qualified with the intention of receiving a share of the compensation later[8].

In our opinion, the actions of these persons should be qualified not only in this situation, but also in cases where the motives determining the actions of the executor (joint executors) are covered by the consciousness of the organizer, witness or executor.

Different aspects of crimes against the freedom of a person from crimes of similar content

While explaining the different aspects of crimes against the freedom of the person from crimes of a similar content, it is necessary to dwell on two issues in this regard : the first is to distinguish crimes against the freedom of the person from each other, and the second is to distinguish crimes against the freedom of the person from other crimes of a similar content.

Distinguish between crimes against the freedom of the person

Differentiation of crimes against the freedom of the person is done mainly according to the signs of the objective side of the act. Unlawful deprivation of liberty by force as a general norm is related to the structure of the crime of kidnapping as a special norm. Investigation and judicial practice show that in seven out of ten cases, there are problems of qualification and differentiation of crimes related to illegal deprivation of liberty and kidnapping. This situation is mainly explained by the fact that the crimes of illegal deprivation of liberty and kidnapping are not clearly defined in the law. Kidnapping (Article 137 of the Criminal Code of the Republic 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). The fact that the content of the concept of "unlawful deprivation of liberty by force" is not clarified in the provision of Article 138 of the Criminal Code of the Republic of Uzbekistan creates serious difficulties in the

qualification of the acts under analysis. Kidnapping is always a complex act of taking the victim captive, moving him from one place to another and keeping him there. Unlawful deprivation of liberty by force is only detaining a person against his will and thus restricting his freedom of movement and choice of place of residence. V.M. Puchnin also considers cases where the victim himself came to the place where he was later held to be kidnapping.

To prove his point, he cites the following example taken from judicial practice and which he describes as kidnapping: "On the evening of February 25, 1997, P. L. who came to visit while staying at his house. He thinks that he does not want to pay back the debt. In order to scare, P. forcibly locks L. in the basement of his house. Here L. It will be 12 hours, and then he will take advantage of the fact that everyone in the house is sleeping and leave the basement through the hole he found. We cannot agree with the opinion of the author or with the decision of the court. The cited situation can only be considered as illegal deprivation of liberty using force. The victim came to the perpetrator's house voluntarily and the perpetrator's intention to detain the victim appeared only after his arrival. If the accused person was taken to his home by deception and kept there, these actions could be classified as kidnapping. In a word, kidnapping is a broader concept than its objective signs. Detention, which constitutes the essence of unlawful deprivation of liberty by force, is also a component of the complex act known as kidnapping.

Kidnapping is always done by active actions. Unlawful deprivation of liberty by force can also be done by inaction. Immobility can be expressed in not giving a person who can't move independently a wheelchair or keeping the victim in a room that was previously closed with his consent, as well as refusing to perform actions to free him[9].

Kidnapping is characterized by the secret nature of the place where he is later held. The "hiddenness" of the place has no significance in the case of unlawful deprivation of liberty by force. Any place, room (in most cases, permanent or temporary place of residence of the victim or perpetrator, workplace, etc.) can be a place of detention of the victim. Therefore, as in the case of kidnapping, in the case of illegal deprivation of liberty by force, the fact that the person was deprived of liberty by force and the place where he is kept is not revealed, the demand for compensation from his relatives or relatives, if it is to be made, from other citizens, especially law enforcement it is kept secret from the authorities[10].

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.

Illegal deprivation of liberty by force and kidnapping is also reflected in the punishments applied to the persons who commit them. For example, the punishment provided for in the first part of Article 138 of the Criminal Code of the Republic of Uzbekistan is a fine of up to fifty times the amount of the basic calculation or correctional work for up to three years or deprivation of liberty for up to three years, and the punishment that can be imposed under the first part of Article 137 of the Criminal Code of the Republic of Uzbekistan - imprisonment for three to five years. In the presence of aggravating circumstances, the punishment that can be imposed is deprivation of liberty from three to five years in accordance with the second part of Article 138 of the Criminal Code and from five to ten years in accordance with the second part of Article 137 of the Criminal Code. Unlike the crime of kidnapping, there are no specific aggravating circumstances for unlawful deprivation of liberty by force. The specified punishment terms indicate that despite the fact that these crimes are similar in many respects, they are significantly different from each other according to the level of social danger and, consequently, they are included in the ranks of crimes with different levels of severity.

Kidnapping and human trafficking share some common characteristics. These are taking a

person captive and separating him from the microenvironment he is used to. But in the case of kidnapping, making certain demands to the victim or his relatives, the fulfillment of which is considered an indispensable condition for the release of the abducted person, is a necessary stage of this crime. In human trafficking, the victim essentially becomes the subject of a civil-legal contract, handed over to the buyer without any conditions (except payment of fees) and for an indefinite period. Both kidnapping and human trafficking are committed for profit. As a general rule, it is a material benefit for a kidnapper and a trafficker, and other, including non-material benefit (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 also 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.

Distinguishing crimes against personal freedom from other crimes of similar content

Differentiation of a specific crime from crimes of a similar content is carried out by applying uniform rules for the qualification of crimes. These rules contain a combination of signs that allow us to distinguish crimes from each other. At the same time, different types of crimes are particularly similar to each other, that is, they are characterized by a large number of compatible signs.

The consistency of such differentiation is determined by the degree of closeness of crimes with similar content to the considered crime[11]. As we mentioned above, the concept of illegal deprivation of liberty using force (Article 138 of the Criminal Code of the Republic of Uzbekistan) is not clearly defined in the current Criminal Code, and kidnapping (Article 137 of the Criminal Code of the Republic of Uzbekistan) is defined by the fact that there are no signs of taking a person as a hostage in the act (that is, vague by symbol) is defined. The relationship between these elements of the crime and taking a person as a hostage (Article 245 of the Criminal Code of the Republic of Uzbekistan) is not defined at all. This ambiguity opens a wide way for subjective interpretation, allowing the same act to be qualified under different articles of the criminal law, thus creating a ground for arbitrariness. However, "defects related to the exact observance of the sentence of the criminal law are nothing compared to the defects related to interpretation"[12].

Kidnapping and hostage taking capture

The existing competition of norms that provide for responsibility for kidnapping committed with malice or other low intentions (clause "b" of the second part of Article 137 of the Criminal Code of the Republic of Uzbekistan) and taking a person as a hostage for the same motive (Article 245 of the Criminal Code of the Republic of Uzbekistan) it requires setting clear criteria for distinguishing the elements of this crime. According to the level of social danger, taking a person as a hostage is equal 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 of the Republic of Uzbekistan) are included in the range of extremely serious criminal acts. But these crimes, despite the existence of a certain degree of similarity between some objective and subjective signs, are not considered the same, and in a number of cases the law enforcer faces difficulties in solving the issue of distinguishing these crimes. The situation is determined to some extent by the fact that hostage-taking is considered by most scholars to be a form of kidnapping and illegal deprivation of liberty"[13].

According to many jurists, the main distinguishing feature between kidnapping and hostage-taking is the lack of intent to coerce third parties into complying with certain requirements in the first offense[14]. According to N.E.Martinenko, "characters that distinguish the composition of the crime of kidnapping from crimes of a similar composition include the following: a) as a rule, the presence of three actions performed one after the other: capture, transfer from one place to another, and detention of the abducted person; b) secrecy of the place where the abducted person is kept; c) lack of close kinship between the abducted person and the abductors; g) limited range of persons to whom demands are made (the abducted person himself, his close relatives, friends, colleagues)"[15].

to what extent are the indicated signs sufficient to clearly distinguish between the crimes of kidnapping and hostage-taking? 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 direct object of aggression. Detaining a person as a hostage for the purpose of requiring the state, international organization, individual or legal entity to commit any act or refrain from committing any act under the condition of the release of the person taken as a hostage by the legislature, or detention (Article 245 of the Criminal Code of the Republic of Uzbekistan). He appropriately placed this crime under the chapter of crimes against public safety. Holding a person as a hostage is considered a crime against public safety, along with organization of a criminal organization, smuggling, public disorder. There are the following grounds for this conclusion.

First, as a result of committing the crime of taking a person hostage, the social values of the society are at risk. In addition to encroaching on a person's freedom, this crime disrupts the normal functioning of various economic and social institutions. All this causes property damage. Since these actions are covered by a single intention and a single goal, taking a person as a hostage is primarily considered a crime against public safety.

Secondly, taking a person as a hostage, both as a type of international terrorism and as an independent international crime, is not a violation of individual rights and freedoms of a person, but a group of crimes that harm peaceful cooperation between states and the process of normal implementation of interstate relations.

Thirdly, according to its objective and subjective characteristics, taking a person as a hostage is closer to crimes against public security than crimes against personal freedom[16]. However, in the literature, a different opinion has been put forward regarding the direct object of arresting a person as a hostage and the place of this crime in the system of the Special Part of the Criminal Code. It is known that the rule on responsibility for taking a person as a hostage in the USSR, which was in force earlier, was included in the chapter on crimes against the life, health, freedom and dignity of a person. N.N.Kozlova believes that the freedom of the person is the direct object of the considered act, and because of this, the norm on responsibility for this act should be included in the mentioned chapter of the Criminal Code[17].

The well-known German scientist W.Middendorf distinguished three groups of objects of aggression when taking a person hostage:

- 1) a person who is directly affected (taken hostage as a hostage);
- 2) a person who is indirectly injured (claims are made);
- 3) any other organizations whose interests may be affected[18].

In the crime of kidnapping, demands are always placed on the abducted person or his relatives, and foreign organizations are not affected by this.

Distinguishing the elements of the considered crime according to their objective aspect also

creates serious difficulties in practice. Both hostage taking and kidnapping with malice intentions, as mentioned above, taking a person into captivity with or without violence, as a rule, separating him from the microenvironment to which he is accustomed, depriving him of his freedom or restricting his freedom, and with the condition of releasing the abducted person to other subjects consists of setting certain requirements. Thus, the objective aspects of the composition of both crimes are practically identical.

The nature and addressee of the demands is an important and at the same time controversial characteristic of the crimes of kidnapping and hostage-taking. In kidnapping, if the perpetrator tries to prevent his act from being revealed to the public, the purpose of the crime is to attract public attention when taking a person as a hostage. Kidnapping by its very nature implies the secrecy of actions and location, but the very act of taking the victim into captivity can also be done openly, at least to the victim himself. Secrecy is expressed in the fact that the perpetrator tries to keep the victim in a place unknown to the law enforcement authorities and those interested in the release of the kidnapped person[19].

A person guilty of taking a person as a hostage, on the contrary, acts openly, and the effect of the act is allegedly determined for him by this very openness. In order to have a stronger impact on the public, these demands are sometimes given a political tone.

This openness, which shows that criminals will stop at nothing to achieve their goals, makes hostage-taking more dangerous to society than kidnapping. At the same time, all the proposed criteria can be applied to both crimes. The comments of supporters of this point of view "as a rule" also point to this.

Second, the proposed criteria do not come from the content of the provisions of the norms and can be considered as a product of a broad interpretation of the law at the theoretical level. The main condition for the release of hostages is the fulfillment of certain requirements (for example, giving weapons, money, providing a car, releasing prisoners, etc.). It does not matter who fulfills these requirements. No demands are placed on hostages, criminals only use them to get their demands met. The objective aspect of the crime is determined by the fact that the arrest of the person as collateral is made in order to impose demands on third parties.

When talking about the differences between the types of crimes under consideration, it is appropriate to mention that taking a person as a hostage can be included among international crimes, since the fight against it is carried out in accordance with the International Convention on the Taking of Persons as a Hostage, adopted by the UN General Assembly on December 17, 1979.

Like kidnapping, hostage-taking is done with subjective intent. Only in the case of kidnapping, the purpose of the crime is not considered an inevitable sign of this content, and in practice it can be different (malice, jealousy, revenge, forcing the victim to perform certain actions in front of the perpetrator or refrain from performing them). As for the purpose of taking a person hostage, it is defined by law and consists of forcing a state, organization or citizen to perform a certain action or refrain from it.

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

At this point, a natural question arises: if all the signs of different criminal elements match, how should the act be qualified? As mentioned above, taking a person hostage is a form of kidnapping. Consequently, Article 137 and Article 245 of the Constitution of the Republic of Uzbekistan are interrelated as special and general norms, and when special and general norms compete, a special norm is used. V.Brilliantov also agrees with this point of view: "Detention of a person as a hostage committed with malicious intentions and kidnapping committed with the same intentions and related to the imposition of demands on a third party are in fact one crime and should be evaluated as the detention of a person as a hostage".

The issue of qualification of kidnapping and hostage taking as a set of crimes is controversial both in theory and in practice. In the published judicial practice, it is possible to encounter cases of qualification of these actions by a set of crimes for committing the same actions. However, the act can be qualified under Article 137 and Article 245 of the Criminal Code of the Republic of Uzbekistan only when there is a set of real crimes, for example, kidnapping of another person, in addition to taking a person as a hostage.

that it is impossible to clearly distinguish between the crimes of kidnapping and taking a person as a hostage, as well as the crimes of unlawful deprivation of liberty using force. once again confirms that it is explained by not giving a clear definition.

Kidnapping, unlawful deprivation of liberty by force, and unlawful detention or arrest

The crimes provided for in Articles 137 and 138 of the Criminal Code of the Republic of Uzbekistan have similar aspects to the crime of illegal detention or arrest (Article 234 of the Criminal Code of the Republic of Uzbekistan). In all of the mentioned articles, the right of a person to privacy is violated, only in articles 137 and 138, if this right is considered the main direct object of aggression, the actions provided for in article 234 of the JK of the Republic of Uzbekistan are, first of all, unjustified attacks on the normal activity of courts, prosecutor's offices and investigative bodies that ensure the privacy of a person. attacks.

The objective aspect of unlawful deprivation of liberty by force (Article 138 of the Criminal Code of the Republic of Uzbekistan) and unlawful detention or arrest (Article 234 of the Criminal Code of the Republic of Uzbekistan) is always related to keeping the victim in a room by force. The subject of the crime is the main feature that allows us to distinguish these types of crimes from each other. If the subject of the crime under Article 138 of the Criminal Code of the Republic of Uzbekistan is general, the subject of the crime under Article 234 of the Criminal Code of the Republic of Uzbekistan is always a special one (a person with certain powers of detention or arrest). The provision of Article 234 of the Criminal Code of the Republic of Uzbekistan directly refers to detention, that is, placement in a specially designed institution.

A comparison of Articles 234 and 137 of the Criminal Code of the Republic of Uzbekistan also allows to observe certain similarities. Kidnapping involves three interrelated acts: abduction, transfer, and detention. Unlawful detention or arrest may also consist of these three actions, but considering that kidnapping is characterized by several other special features (making demands on relatives of the abducted person, the secret nature of the victim's detention), Articles 137 and 234 of the Criminal Code of the Republic of Uzbekistan it is not difficult to distinguish from each other.

Kidnapping, using force illegally deprivation of liberty and extortion

Kidnapping and illegal deprivation of liberty by force must also be distinguished from extortion in connection with the use of force. The law defines extortion as "using force on the victim or his relatives, causing damage to property or destroying it, or demanding the transfer of property or property rights, giving property interests, or committing property actions, or forcing the victim to to

put in a situation that forces one to give up one's property or the right to property". In the case we are considering, we are talking about extortion by force. V.N.Safonov qualifies the extortion committed by force: a) the direction of the intention; b) the ratio of the amounts of sanctions; v) emphasizes the need to take into account the fact that extortion actions correspond to the characteristics of crimes against a person described in the relevant articles. In his opinion, depending on these circumstances, it can either be about the fact that extortion committed with the use of force covers certain types of use of force, or about a set of crimes[20].

Extortion committed by unlawful deprivation of liberty by force differs from malicious kidnapping in that it is a crime against property. Consequently, it allows us to conclude that it cannot cover kidnapping, which encroaches on the freedom of a person, and in the case of extortion in connection with kidnapping, the act should be qualified under the set of crimes (Articles 165 and 137 of the Criminal Code of the Republic of Uzbekistan).

Conclusion

1. The concept of "personal freedom" consists of three interconnected elements: desire, choice of path and responsibility for the chosen path.
2. Violation of a person's freedom and integrity is not always considered an attack on a person's freedom. However, at the same time, encroachment on the freedom of the individual always leads to the violation of the freedom and integrity of the individual.
3. Freedom of the individual is a complex concept that includes freedom and personal integrity, it is the ability of a person to act actively in accordance with his wishes and needs, taking into account the opportunities and conditions provided by society, the ability of a person to protect himself from any unlawful encroachments on his physical and mental integrity. .
4. Crimes against the freedom of the person are any illegal attacks against the freedom of a person to independently choose his place of residence, to move from one place to another, to choose his own path and to take other active actions, as well as to his physical and mental integrity.

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