



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 58

Moscow

24 December 2019

On Judicial Practice in Cases regarding Abduction, False Imprisonment and Human Trafficking

The Constitution of the Russian Federation recognises and guarantees everyone's right to liberty and security of person (Article 22); this right is one of the inalienable rights, which belong to every person from birth, have direct effect and determine the meaning, content and application of laws, as well as the activities of the legislative and executive powers, of the local self-government, and is ensured by the judiciary (Part 2 of Article 17, Article 18).

Everyone's right to liberty and security of person is stipulated in international acts, in particular in the Universal Declaration of Human Rights of 10 December 1948 (Article 3), the International Covenant on Civil and Political Rights of 16 December 1966 (Article 9), the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Article 5) and presupposes that no one shall be deprived of liberty save on the grounds and in accordance with a procedure prescribed by law.

In the interests of protection of the human right to liberty and security of person, the Criminal Code of the Russian Federation stipulates liability for socially dangerous acts that violate this right.

In order to ensure the uniform court application of legislation on criminal liability for abduction, false imprisonment and human trafficking (Articles [126](#), [127](#), [127.1](#) of the Criminal Code of the Russian Federation), the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following clarifications:

1. It is drawn to the attention of the courts that the social danger of crimes stipulated in Articles 126, 127, 127.1 of the Criminal Code of the Russian Federation (hereinafter – the CrC RF) consists in unlawful restriction of a person’s physical liberty, in particular of the freedom of movement and the freedom to choose one’s location.

2. By implication of criminal law, abduction of a human being should be understood as its unlawful capture, movement and subsequent detention for the purpose of perpetration of another crime or for other motives, which are of no significance for qualification of the act. The capture, movement and detention of a human being may be performed with the use of threats, violence, using the helpless state of the victim. Abduction may also be perpetrated by way of deceit of the victim or abuse of trust for the purpose of moving and subsequently capturing and detaining the victim.

Abduction is regarded as an accomplished crime from the moment of capture of the human being and beginning of its movement. Where movement was performed by the victim her-/himself, due to deceit or abuse of trust, the crime is recognised as accomplished from the moment when that person is captured, and forcible movement begins, or from the moment when detention begins, if the person was not moved any more.

3. The courts should take into account that in contrast to abduction, in case of false imprisonment, stipulated in Article 127 of the CrC RF, the victim remains at her/his location, but her/his movement is restricted without lawful grounds (e.g. the guilty person shuts the victim inside a house, apartment or other premises where the latter is staying, ties the victim up or otherwise deprives her/him of possibility to leave a certain place).

The act stipulated in Article 127 of the CrC RF is an accomplished crime from the moment when a human being is actually deprived of liberty, independent of how long the victim remains in such a state.

4. Where the guilty person, initially depriving a human being of liberty, subsequently moves the victim to another place, the act is qualified under the corresponding Part of Article 126 of the CrC RF without additional qualification under Article 127 of the CrC RF.

The actions of the guilty person, performed in the process of abduction and consisting in illegal restriction of liberty of the victim during her/his movement and (or) detention at another place, are completely covered by the elements of the crime stipulated in Article 126 of the CrC RF and do not require additional qualification under Article 127 of the CrC RF.

5. During legal assessment of the act, the courts should proceed from the premise that the use of violence that is not dangerous to the life or health of a person is covered by Part 1 of Article 126 of the CrC RF or by Part 1 of Article 127 of the CrC RF.

Murder threats or threats of infliction of grave harm to the health during abduction are covered by Item “c” of Part 2 of Article 126 of the CrC RF, while vocalizing or otherwise expressing such a threat during false imprisonment should be qualified as a cumulation of crimes stipulated in the corresponding Part of Article 127 of the CrC RF and in Article 119 of the CrC RF [Threat of Murder or Grave Harm to the Health].

6. The courts should take into account that during abduction and false imprisonment, violence or threats to use violence may be perpetrated both in regard of the person being abducted or falsely imprisoned and in regard of other persons, including close relatives, for the purpose of eliminating obstacles to the capture, movement or detention of the victim.

7. Where, in accordance with prior arrangements among the accomplices regarding abduction, the guilty person performs a separate action that is comprised in the objective element (*actus reus*) of the crime, he/she is criminally liable as a co-perpetrator of a crime committed by a group of persons by prior conspiracy (Item “a” of Part 2 of Article 126 of the CrC RF).

8. Abduction is qualified under Item “h” of Part 2 of Article 126 of the CrC RF (as motivated by profit), if it is perpetrated for the purpose of obtaining material gain for the guilty person or other persons (money, property or rights to receive property, etc.) or for the purpose of release from material costs (returning of property, repayment of

debt, payment for services, fulfilment of property obligations, payment of alimony, etc.), as well as if it is perpetrated under a contract providing for material remuneration or release from material costs for the perpetrator of the crime.

Persons that organised an abduction committed by the perpetrator for material remuneration, instigated the perpetrator to commit that crime or acted as accessories in commission of that crime are subject to liability under the corresponding Part of Article 33 and Item “h” of Part 2 of Article 126 of the CrC RF.

9. If abduction is accompanied by simultaneous requests for transfer of another person’s property or rights to property, or for performance of other actions of material nature, then, if there are corresponding grounds, the actions of the guilty person are qualified as a cumulation of crimes stipulated in Item “h” of Part 2 of Article 126 and in the corresponding Part of Article 163 of the CrC RF [Extortion].

10. Where the capture and movement of the person were not aimed at detaining the victim in another place, but at murdering the victim, this is qualified under the corresponding Part of Article 105 [Murder] and is not subject to qualification under Article 126 of the CrC RF.

If the intent of the guilty person to murder the abducted person arises during movement or detention of the victim, the act is subject to qualification as a cumulation of crimes stipulated in Articles 126 and 105 of the CrC RF.

11. Proceeding from Note to Article 126 of the CrC RF, freeing the abducted person should be regarded voluntary, where the guilty person was aware that it was actually possible for her/him to continue detaining the victim, but freed the victim, in particular handed the victim over to her/his relatives, to the authorities, directed them to the location of the abducted person, where he/she could be freed.

By implication of criminal law, voluntarily freeing an abducted person does not exempt the guilty person from criminal liability for other illegal actions, in particular for the acts perpetrated during the abduction, if they contain the elements of an independent crime (e.g. intended infliction of harm to the health, illegal turnover of weapons).

12. Human trafficking may be constituted by performance of one or several actions indicated in Part 1 of Article 127.1 of the CrC RF – purchase and sale or another transaction in regard of a human being – independent of their purposes, and, likewise,

recruitment, transportation, handover, concealment or receipt of a human being for the purposes of its exploitation.

Herewith it should be noted that the purpose of exploitation of a human being is an obligatory element of crime only for such actions as recruitment, transportation, handover, concealment or receipt of the victim. The purpose of exploitation is not an obligatory element of crime for purchase and sale or performance of other transactions in regard of a human being, although it may be pursued by the guilty person in performance of said actions.

Whether the victim is aware of the nature of actions performed with her/him and consents to their performance has no effect on qualification of these actions as human trafficking.

13. In the context of Article 127.1, the purchase and sale of a human being are understood as performance of actions consisting in handing over the human being by one person to another person (other persons) for monetary remuneration, and other transactions in regard of a human being – as other unlawful actions resulting in handover of the victim from one person to another (e.g. non-compensatory handover, exchange for any valuables).

Recruitment means search, selection and hiring of persons for performance of any works, rendering of services or engagement in other activities in the interests of the employer or of other persons, in particular on the territory of a foreign state, performed for the purpose of subsequent exploitation of the recruited person. For example, promise of remuneration, blackmail, deceit or abuse of trust (in particular, under the pretext of employment or an opportunity to learn a particular profession) may be used in order to obtain consent of the victim.

Transportation is understood as movement of the person by any transportation means from one place to another, in particular within the boundaries of the same locality, for the purpose of further exploitation of the victim.

Handover of a human being consists in providing the victim to another person, in particular for transportation, concealment, exploitation of the victim; receipt consists in accepting the victim from the person handing him/her over, in particular for transportation or concealment and, likewise, for exploitation.

Concealment of a human being consists in hiding the victim from the authorities, relatives, interested persons during performance of actions pertaining to human trafficking, for example by knowingly providing false information about the victim's identity or location.

14. The courts should determine the moment of accomplishment of the crime stipulated in Article 127.1 of the CrC RF depending on the manner of its commission. In case of purchase and sale of a human being or other transactions in regard of the victim, the crime is qualified as accomplished from the moment of actual handover and receipt of the victim; in case of recruitment – from the moment when the consent of the victim to engagement in activities, for which recruitment was performed, is obtained.

Where other actions are performed that constitute human trafficking, the act is qualified as an accomplished crime during handover or receipt of the human being, or from the moment when transportation or concealment for the purpose of exploitation begins.

15. Where purchase and sale of a human being or performance of other transactions with it, which pertain to human trafficking, are preceded by abduction of that person, this forms a cumulation of crimes stipulated in the corresponding parts of Article 126 and of Article 127.1 of the CrC RF. False imprisonment of a human being for the purpose of performing actions pertaining to human trafficking in its regard and, likewise, illegal restriction of the victim's liberty in the process of said actions are covered by the corresponding part of Article 127.1 of the CrC RF and do not require additional qualification under Article 127 of the CrC RF.

16. Actions pertaining to human trafficking, where perpetrated with the use of violence, both posing and not posing a threat to the life or health of the victim, and, likewise, with the threat of such violence should be qualified under Item "f" of Part 2 of Article 127.1 of the CrC RF.

17. In accordance with Item 1 of Note to Article 127.1 of the CrC RF, a person that has committed the crime stipulated in Part 1 or in Item "a" of Part 2 of that Article is exempt from criminal liability, if he/she voluntarily frees the victim (victims) and contributes to solving the crime committed with her/his participation, unless her/his actions contain the elements of a different crime.

Herewith, voluntarily freeing the victim (victims) does not exempt the guilty person from criminal liability for other illegal actions, in particular for actions perpetrated in the course of human trafficking, if they contain the elements of an independent crime.

18. It is recommended to the courts, when considering criminal cases regarding abduction, false imprisonment and human trafficking, to discover the circumstances that contributed to commission of said crimes, violation of rights and freedoms of citizens, as well as other violations of law committed during preliminary investigation or consideration of criminal cases by lower courts and, in accordance with Part 4 of Article 29 of the Criminal Procedure Code of the Russian Federation, to draw the attention of the corresponding organisations and officials to those circumstances by adopting special court decrees (rulings).

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov

ANNEX

Translation of articles of the Criminal Code of the Russian Federation, referred to in the text of the Ruling (as of 1 June 2020)

Article 126. Abduction

1. Abduction of a human being -
is punished by compulsory labour for a term up to 5 years or by deprivation of liberty for the same term.

2. The same act, where:

- a) perpetrated by a group of person by prior conspiracy;
- b) *abrogated*
- c) perpetrated with the use of violence that is dangerous to life or health, or with the threat of such violence;
- d) perpetrated with the use of weapons or items used as weapons;
- e) perpetrated in regard of an underage person, which is known to the guilty person;
- f) perpetrated in regard of a woman in a state of pregnancy, which is known to the guilty person;
- g) perpetrated in regard of two or more persons;
- h) motivated by profit, -

is punished by deprivation of liberty for a term of 5 to 12 years, with or without restriction of liberty for a term up to 2 years.

3. Acts stipulated in Parts 1 or 2 of this Article, where:

- a) perpetrated by an organised group;
- b) *abrogated*
- c) through negligence they result in death of the victim or other grave consequences, -

are punished by deprivation of liberty for a term of 6 to 15 years, with or without restriction of liberty for a term up to 2 years.

Note:

A person that voluntarily freed the abducted person is exempt from criminal liability, unless her/his actions contain the elements of a different crime.

Article 127. False Imprisonment

1. False imprisonment of a human being, not related to its abduction, - is punished by restriction of liberty for a term up to 2 years, or by compulsory labour for a term up to 2 years, or by arrest for a term of 3 to 6 months, or by deprivation of liberty for a term up to 2 years.

2. The same act, where perpetrated:

- a) by a group of person by prior conspiracy;
- b) *abrogated*
- c) with the use of violence that is dangerous to life or health;
- d) with the use of weapons or items used as weapons;
- e) in regard of an underage person, which is known to the guilty person;
- f) in regard of a woman in a state of pregnancy, which is known to the guilty person;
- g) in regard of two or more persons, -

is punished by compulsory labour for a term up to 5 years or by deprivation of liberty for a term of 3 to 5 years.

3. Acts stipulated in Parts 1 or 2 of this Article, where they are perpetrated by an organised group or result, through negligence, in death of the victim or other grave consequences, -

are punished by deprivation of liberty for a term of 4 to 8 years.

Article 127.1. Human Trafficking

1. The purchase and sale, other transactions in regard of a human being and, likewise, recruitment, transportation, handover, concealment or receipt of a human being for the purposes of its exploitation -

are punished by compulsory labour for a term up to 5 years or by deprivation of liberty for a term up to 6 years.

2. The same acts, where perpetrated:

- a) in regard of two or more persons;
- b) in regard of an underage person;
- c) with the use of powers vested in a person by virtue of her/his office;
- d) with transfer of the victim across the State Border of the Russian Federation or with illegal detention of the victim abroad;

- e) with the use of forged documents and, likewise, with seizure, hiding or destruction of the victim's identification documents;
- f) with the use of violence or with the threat of violence;
- g) for the purpose of removing the victim's organs or tissues;
- h) in regard of a person, who is in a helpless state or is materially or otherwise dependant on the guilty person, which is known to the guilty person;
- i) in regard of a woman in a state of pregnancy, which is known to the guilty person, -

are punished by deprivation of liberty for a term of 3 to 10 years, with or without deprivation of right to hold a certain office or engage in certain activities for a term up to 15 years, with or without restriction of liberty for a term up to 2 years.

3. Acts stipulated in Parts 1 or 2 of this Article, where:

- a) through negligence they result in death, causing of grave harm to the health of the victim, or other grave consequences;
- b) perpetrated in a manner that is dangerous to the life and health of numerous people;
- c) perpetrated by an organised group, -

are punished by deprivation of liberty for a term of 8 to 15 years, with or without restriction of liberty for a term up to 2 years.

Notes:

1. A person that perpetrated the acts stipulated in Part 1 or Item "a" of Part 2 of this Article for the first time, who voluntarily freed the victim and contributed to solving the committed crime, is exempt from criminal liability, unless her/his actions contain the elements of a different crime.

2. In this Article, exploitation of a human being is understood as use of its engagement in prostitution by other persons and other forms of sexual exploitation, slave labour (services), servitude.

DISCLAIMER

This publication is made for information purposes only. It does not constitute the official texts of the Ruling and of the Code. In order to consult the authoritative version, please turn to the original Russian texts of the Ruling and of the Code.

Translated by George Borisov, counsellor of International Cooperation Department
of the Supreme Court of the Russian Federation