Hostage-taking: a Legal Interpretation

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Abstract

The authors of the article consider hostage-taking as one of the most dangerous crimes, the legal interpretation of which requires clarification. The research is interdisciplinary in nature and is aimed at filling gaps in Russian legislation in the field of countering terrorism.

Key words: hostage, hostage-taking, terrorism.

JEL codes: K-10; K-14.

1. Introduction

The appearance in recent years of such a dangerous crime as hostage-taking has aroused considerable interest in it from criminologists. It is caused both by the nature and degree of public danger of the crime itself, and by the complexity and shortcomings of the legislative definition of this crime.

The international situation today is very complex, which makes the relevance of the article rather obvious. The explosion on board the Russian A321 plane in Egypt, the terrorist attacks in Paris, one of which is the hostage-taking at

the Bataclan concert hall, indicate that terrorism threatens all progressive humanity. That is why this article is devoted to hostage-taking as one of the most terrible and cruel ways of committing acts of terrorism (see Fig.1), since the essence of hostage-taking is the forcible detention of people in order to force the state, organization or individuals to fulfill certain requirements.

2. Main part

Modern criminal law legislation defines hostage-taking as follows: it is an unlawful seizure of a person, accompanied by deprivation of his liberty. Holding a hostage is an unlawful forcible obstacle to the release of a hostage.

Illegal actions of a person are accompanied by the presentation of demands to the State, organization, individual citizens to commit any action or refrain from committing any action as a condition for the release of a hostage (for instance, the requirement to provide him with weapons, drugs, an airplane or other vehicle to move outside the state; release arrested or convicted persons).

Fig.1. Terrorism crimes in Russia in 2003-2017 (blue columns are crimes of a terrorist nature; red columns are crimes with terrorist orientation)

Source: Ministry of Interior Affairs of the Russian Federation, 2003-2017.

Hostage-taking is recognized as an international crime. The International

Convention against Hostage-Taking, adopted by the UN General Assembly on December 18, 1979, defines the main directions of countering this crime.

In the Russian Federation, responsibility for this crime occurs in accordance with the Criminal Code of the Russian Federation (Article 206).

Article 206 of the Criminal Code of the Russian Federation defines the purpose of the crime as the commission by representatives of the state, organizations or citizens of certain actions as conditions for the release of a hostage.

The object of this crime is public safety in the broadest sense of this word.

An additional direct object of the crime under investigation is social relations that ensure personal physical freedom of a person, at the same time, with special qualifying signs of the composition, the life, health and property of a person acts.

The objective side of the crime provided for in Part 1 of Article 206 of the Criminal Code of the Russian Federation is expressed in the following actions: 1) a capture; 2) holding a person as a hostage.

The composition of the crime related to the hostage-taking is of a formal nature. Critically analyzing the various points of view of scientists on this issue, we adhere to the position of those researchers who believe that the moment of the end of the hostage-taking is the time of the actual forcible capture or retention. At the same time, from the point of view of the release of hostages, this crime will be really over from the moment of the actual termination of the act. The time interval from the capture and presentation of demands to the moment of the complete release of the hostages characterizes the hostage-taking as a continuing crime.

Hostage-taking falls under the definition of an international crime given by Professor Karpets: 'An international crime is an act provided for by agreements (conventions) that do not relate to crimes against humanity, but encroach on normal relations between States, harming peaceful cooperation in various fields of relations (economic, social- cultural, property, etc.), as well as organizations and citizens, punishable either according to the norms established in international

agreements (conventions) ratified in accordance with the established procedure, or according to the norms of national criminal legislation in accordance with these agreements' [8].

Thus, the generic object of the crime under consideration is the relations of public security and the place of the norm on this crime should be in the system of crimes against public security (Chapter 10 of the Criminal Code). Then the social meaning of hostage-taking as a crime will be obvious and this will give sufficient grounds for distinguishing it from related crimes. Clarifying the place of the norm on hostage-taking in the system of the Special Part of the Criminal Code will allow a different look at the very concept of hostage-taking.

The subjective side of hostage-taking is characterized only by direct intent, since only direct intent provides for the perpetrator to foresee the inevitability of the onset of socially dangerous consequences, whereas indirect intent presupposes only the possibility of their occurrence. Since the perpetrator, when committing an act, clearly understands that socially dangerous consequences as a result of his actions will inevitably occur, it is impossible to say that the volitional moment of intent can be expressed in unwillingness to the onset of consequences or indifference to them.

The subject of hostage-taking can only be a sane individual who has reached the age of fourteen, as well as foreign citizens and stateless persons.

The use of violence dangerous to life or health is a qualifying sign of the composition of hostage-taking (paragraph 'v' of the part 2 of Article 206 of the Criminal Code of the Russian Federation). Its concept currently does not cause much discussion, given the existence of a thorough explanation contained in paragraph 21 of the Resolution of the Plenum of the Supreme Court of the Russian Federation (dated December 27, 2002) № 29 'On judicial practice in cases of theft, robbery and robbery', according to which under 'violence dangerous to life or health (Article 162 of the Criminal Code of the Russian Federation) it is necessary to understand such violence, which entailed causing serious and moderate harm to the victim's health, as well as causing minor harm to the victim's health, which

caused a short-term health disorder or a minor persistent loss of general working capacity' [10].

This approach to the definition of violence dangerous to life or health seems to be correct, although, as noted in the legal literature, it is advisable to include torture in this type of violence [1]. At the same time, it must be remembered that according to paragraph 'g' of Part 2 of Article 117 of the Criminal Code of the Russian Federation, a qualified type of torture takes place when the perpetrator tortures a person abducted or taken hostage. In such a case, the actions of the torturer, if he or she took part in the abduction of the victim or taking him/her as a hostage, should be assessed according to the totality of crimes provided for, respectively, by Article 126 of the Criminal Code of the Russian Federation or Article 206 of the Criminal Code of the Russian Federation (paragraph 'v' Part 2), as well as by paragraph 'g' Part 2 of Article 117 of the Criminal Code of the Russian Federation [7].

The concept of violence in relation to Article 206 of the Criminal Code of the Russian Federation has certain specifics. In this criminal law norm, there is no indication of such a qualifying or basic feature of the corpus delicti as the commission of an act with the use of violence that is not dangerous to life or health [3]. Quite often, the legislator simultaneously mentions both dangerous and non-life- or health-threatening violence in articles of the Special Part of the Criminal Code of the Russian Federation (for instance, articles 166, 221, 226, 229, 296, 318, 321 The Criminal Code of the Russian Federation), which makes it possible to distinguish between them, to determine the subject of proof in a criminal case [4]. In the same cases, when the article of the Special Part of the Criminal Code of the Russian Federation refers only to violence dangerous to life or health as a qualifying feature of the corpus delicti, it is usually implied that the objective side of the main corpus delicti includes the use of violence that is not dangerous to life or health (for instance, Part 1 of Article 126, Part 1 of Article 127, part 1 of Article 211 of the Criminal Code). A similar situation is typical for the objective side of the main hostage-taking (Part 1 of Article 206 of the Criminal Code of the Russian

Federation). The main argument is the specifics of the method of committing this criminal [2].

According to Part 1 of Article 206 of the Criminal Code of the Russian Federation, the objective side of the crime is to capture or hold a person as a hostage [5]. And, in fact, taking a hostage (i.e. unlawful restriction of a person's physical freedom) and holding him in such a capacity (i.e. illegal actions that hinder a person's physical freedom), in fact, fall under the concept of violence that is not dangerous to life or health, which has developed in judicial practice. This is exactly how, i.e., as non-life-threatening and health-threatening violence, the restriction of freedom is interpreted in paragraph 21 Resolutions of the Plenum of the Supreme Court of the Russian Federation (dated December 27, 2002) No. 29 'On judicial practice in cases of theft, robbery and robbery'[9].

The question also arises in the qualification of hostage-taking, committed with the threat of violence, dangerous to life or health. Are such cases covered by paragraph 'v' of Part 2 of Article 206 of the Criminal Code of the Russian Federation or are they subject to qualification under Part 1 of this article? It seems that here it is necessary to use a literal interpretation of the law, which gives an answer to this question in favor of qualifying such an act under Part 1 of Article 206 of the Criminal Code of the Russian Federation. Given the severity of the sanction of this criminal law norm, which provides for a penalty of imprisonment for a period of 5 to 10 years, the analyzed threat can have a fairly wide range: from the threat of beatings, committing acts that cause physical pain, torture to the threat of rape and murder [6]. The threat in this case can be attributed to physical impact, and even only gestures that demonstrate to the victim the possibility of causing serious harm to life and health, for instance, grabbing the throat, pressing on the eyes, demonstrating the possibility of tearing the mouth with fingers, etc.

Paragraph 'g' of Part 2 of Article 206 of the Criminal Code of the Russian Federation provides for increased responsibility for hostage-taking with the use of weapons or objects used as weapons. Although the legislator in this case does not apply the term 'violence', one can agree with the opinion of a number of

researchers that all crimes in which the use of weapons or objects used in its capacity is named as a sign of the composition are associated with violence, and dangerous to life or health [11]. Thus, the use of armed violence should include not only the use of weapons to harm life or health, but also the threat to use it for its intended purpose.

In the criminal legal assessment of hostage-taking with the use of weapons or objects used as weapons, the courts qualify the deed only according to paragraph 'g' of Part 2 of Article 206 of the Criminal Code of the Russian Federation [2].

Let's consider a case from the legal practice (the names of the process are changed). Thus, according to paragraphs 'a', 'g', 'zh', 'z' of Part 2 of Article 206 of the Criminal Code of the Russian Federation, G. and I. were convicted, who, while serving a sentence of imprisonment in a correctional colony, took six employees from among the staff of the medical unit of this institution as hostages. At the same time, they put kitchen knives and scalpels to the women's throats, accompanying their actions with death threats up to murder. In addition, G. and I. put forward demands addressed to the administration of the correctional colony to release them from the place of imprisonment, while providing a car filled with gasoline, cash in the amount of 40 thousand rubles, a mobile phone for negotiations and fire extinguishers as a condition for the release of hostages. The demands were met, after which the three women were released. Hiding behind the remaining hostages, they tried to get into a car provided by the administration of the correctional colony, but were detained.

This conclusion is supported by the fact that for taking a hostage with the use of violence dangerous to life or health (paragraph 'v' of Part 2 of Article 206 of the Criminal Code of the Russian Federation), and with the use of weapons or objects used as weapons (paragraph 'd' Part 2 of Article 206 of the Criminal Code of the Russian Federation), provides for the same penalty of imprisonment for a period of 6 to 15 years with restriction of liberty for a period of 1 to 2 years. Such qualification of armed hostage-taking cases corresponds to the literal interpretation

of the criminal law.

If, in the process of hostage-taking, accompanied by the use of weapons or objects used as weapons, the victim's health was intentionally harmed (but not death), the deed, taking into account the current wording of Article 206 of the Criminal Code of the Russian Federation, should be qualified according to paragraphs 'v' and 'g' of this article.

3. Conclusion

The methods of action of the perpetrators, the likelihood for any member of society to be in the role of a hostage, the multiplicity of possible harm - all this affects the atmosphere of public tranquility, gives rise to a sense of insecurity among citizens in their own safety, disbelief in the capabilities of law enforcement agencies. In other words, when hostages are taken, the damage is caused primarily to the relations that provide safe living conditions for society. Thus, the generic object of the crime under consideration is the relations of public security and the place of the norm on this crime should be in the system of crimes against public security (chapter ten of the Criminal Code). Then the social meaning of hostage-taking as a crime will be obvious and this will give sufficient grounds for distinguishing it from related crimes. Clarifying the place of the norm on hostage-taking in the system of the Special Part of the Criminal Code will allow a different look at the very concept of hostage-taking.

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