

**5.5.8 ҲУҚУҚИ ҶИНОЯТӢ ВА КРИМИНОЛОГИЯ; ҲУҚУҚИ ИҶРОИ ҶАЗОИ ҶИНОЯТӢ**  
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**PROTECTION OF PERSONAL  
FREEDOM UNDER THE  
ARTICLE 130 OF THE  
CRIMINAL CODE OF REPUBLIC  
OF TAJIKISTAN**

**ҲИМОЯИ ОЗОДИИ ШАХС  
МУТОБИҚИ МОДДАИ 130-  
ЮМИ КОДЕКСИ ҶИНОЯТИИ  
ҶУМҲУРИИ ТОҶИКИСТОН**

**ЗАЩИТА ЛИЧНОЙ  
СВОБОДЫ ПО 130-й СТАТЬЕ  
УГОЛОВНОГО КОДЕКСА  
РЕСПУБЛИКИ ТАДЖИКИСТАН**

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*According to the Constitution of the Republic of Tajikistan, human freedom is recognized as the highest value and is protected by the state. The protection of human and civil rights and freedoms occupies a priority position within the current legal framework. The most serious infringements upon personal liberty include kidnapping, human trafficking, and unlawful deprivation of liberty. «Kidnapping» is understood as intentional unlawful conduct carried out secretly, openly, or by means of deception, aimed at the unlawful seizure of a person, his or her transfer, and detention in another place against his or her will. The legal foundation for counteracting these offenses is the CC RT, one of whose principal objectives is the protection of individual rights and freedoms. Article 130 of the Criminal Code establishes criminal liability for kidnapping. The article provides a detailed analysis of all qualifying elements of this offense.*

**Keywords:** *Constitution, protection of rights, protection of freedom, personal freedom, kidnapping, criminal code, qualification of crime, punishment for kidnapping*

*Мувофиқи Конститутсияи Ҷумҳурии Тоҷикистон озодии инсон арзиши олии эътироф гардида, аз ҷониби давлат ҳифз карда мешавад. Ҳифзи ҳуқуқи озодиҳои инсон ва шахрванд дар низоми қонунгузори амалкунанда мавқеи афзалиятнокро ишғол менамояд. Савдои одамон ва гайриқонунӣ маҳрум сохтан аз озодӣ аз ҷумлаи хавфноктарин таҷовузҳо ба озодии инсон, яъне одамрабӣ ба ҳисоб мераванд. «Одамрабӣ» амали қасдонае мебошад, ки бо роҳи пинҳонӣ, ошкоро ё бо истифода аз фиреб содир гардида, ба рабудани шахс, интиқол ва нигоҳ доштани ӯ дар ҷои дигар бар хилофи иродаи равона шудаанд. Заминаи ҳуқуқии муқовимат ба чунин ҷиноятҳо Кодекси ҷиноятии Ҷумҳурии Тоҷикистон мебошад, ки яке аз вазифаҳои асосии он ҳифзи ҳуқуқи озодиҳои шахс аст. Моддаи 130 КҶ ҚТ барои*

*одамрабӣ ҷавобгарии ҷиноятиро пешбинӣ мекунад. Дар мақола ҳамаи аломатҳои квалификатсионии ин ҷиноят ба таври муфассал таҳлил шудаанд.*

**Калидвожаҳо:** *Конститутсия, ҳифзи ҳуқуқ, ҳифзи озодӣ, озодии шахс, рабудани одам, Кодекси ҷиноятӣ, квалификатсияи ҷиноят, ҷазо барои одамрабӣ*

*Согласно Конституции Республики Таджикистан, свобода человека признаётся высшей ценностью и охраняется государством. Защита прав и свобод человека и гражданина занимает приоритетное место в действующем законодательстве. К наиболее опасным посягательствам на личную свободу относятся: похищение человека, торговля людьми и незаконное лишение свободы. Похищение представляет собой умышленные противоправные действия, совершённые тайно, открыто либо с использованием обмана, направленные на изъятие человека, его перемещение и удержание в ином месте против воли. Правовой основой противодействия данным преступлениям является Уголовный кодекс Республики Таджикистан, одной из ключевых задач которого выступает охрана прав и свобод личности. Статья 130 УК РТ предусматривает уголовную ответственность за похищение человека. Подробно анализируются все квалифицирующие признаки данного преступления.*

**Ключевые слова:** *Конституция, защита прав, защита свободы, свобода личности, похищение, Уголовный кодекс, квалификация преступления, наказание за похищение*

The formation and consolidation of national statehood, shaped by the significance of each developmental stage and the achievement of defined goals, laid a solid groundwork for advancing sustainable development, reinforcing the principles of societal democratization, enhancing the efficiency of public governance, and refining the prevailing framework of legal relations.

At present, the Tajik people stand at a pivotal stage in the construction of a democratic legal order and the formation of a mature civil society. In pursuit of these goals, the state and the Government of the country have endeavored to establish dignified living conditions for their citizens, grounded in the consistent implementation of legal principles and the protection of the fundamental rights and freedoms of every individual, guarantees that are firmly enshrined in the Constitution of the Republic of Tajikistan.

By virtue of the Constitution of the Republic of Tajikistan, human freedom is proclaimed as the highest value and is placed under the direct and unwavering protection of the state. [1,1] The safeguarding of human and civil rights and freedoms stands as a foremost priority, national legislation guarantees every citizen a comprehensive set of fundamental rights, encompassing the right to life, housing, education, employment, rest, personal inviolability, freedom of expression, marriage, healthcare, social security, and judicial protection, as well as the right to participate in political and cultural life. The state bears full responsibility for upholding these guarantees, while government bodies are held to heightened accountability in ensuring their practical implementation.

Among the gravest violations of personal freedom, kidnapping, human trafficking, and unlawful deprivation of liberty stand out as particularly heinous offenses. Human trafficking, in particular, is orchestrated by organized criminal networks that pursue illicit objectives through calculated manipulation, deceiving vulnerable individuals with promises of financial prosperity, enticing them with prospects of employment and lucrative wages abroad, and ultimately exploiting them to fulfill their criminal agenda. According to estimates by Anti-Slavery International, more than 49.5 million people in the world are de facto slaves. [2,10]

The world community is taking the necessary measures to reduce consumer demand for human trafficking, especially women and children, and to raise awareness of the catastrophic consequences of human trafficking. The organized and transnational nature of criminal human

trafficking in the world requires trust and urgent efforts by countries to unite their efforts.

The Republic of Tajikistan, as an active and full member of the international community, having joined international conventions such as the Convention for the Suppression of Trafficking in Persons and Their Use for the Purpose of Prostitution of Others, the Convention on the Rights of the Child, the UN Convention against Transnational Organized Crime and other documents of international legal significance, in order to protect citizens, has strengthened national legislation in this area, in particular, it also takes measures and initiatives against violence, cruel treatment and other illegal and unlawful behavior against the individual. [8.6]

The safeguarding of citizens' rights in the face of human trafficking in the Republic of Tajikistan rests upon a robust and multifaceted legal foundation, encompassing the Constitution alongside norms drawn from administrative, criminal, family, and labor legislation. Fully acknowledging the profound social threat posed by this phenomenon, the Government of the Republic of Tajikistan consistently pursues timely and effective measures directed at its detection and eradication. A pivotal milestone in consolidating the national legal framework was marked by the adoption of the Law of the Republic of Tajikistan "On Combating Human Trafficking and Assistance to Victims of Human Trafficking," which entered into force on July 26, 2014. Spanning nine chapters and forty-eight articles, this legislative instrument lays down the organizational and legal groundwork for effectively countering human trafficking, articulates a comprehensive system of protective, support, and rehabilitation measures designated for victims, and delineates the overarching directions of state policy within this vital sphere.

Further emphasizing the importance of safeguarding human rights and freedoms, the Government approved the State Program for Combating Crime for 2021–2030y. Within this Program, the prevention and suppression of human trafficking, along with the provision of comprehensive support to its victims, are identified as priority measures to ensure respect for human rights. Human trafficking represents a particularly grave threat to society, as it entails profound violations of fundamental rights and freedoms, undermines national security, and jeopardizes the stability of socio-economic development [3, 15]. In the scholar literature, the prevailing view is that the immediate object of this crime is the personal freedom of the individual, that is, human freedom as a fundamental legal value [6, 41].

The primary legal instrument in the fight against crimes targeting personal freedom is, unquestionably, the Criminal Code of the Republic of Tajikistan. The steadfast protection and guarantee of the rights and freedoms of every individual and citizen represent one of its most foundational and defining objectives. In this connection, Chapter 17 of the Criminal Code of the Republic of Tajikistan establishes criminal liability for the perpetration of the following offenses committed against personal freedom:

- kidnapping (Article 130 Criminal Code of the Republic of Tajikistan)
- human trafficking (Article 130<sup>1</sup> Criminal Code of the Republic of Tajikistan)
- illegal deprivation of liberty (Article 131 Criminal Code of the Republic of Tajikistan)
- illegal placement in a psychiatric hospital (Article 133 Criminal Code of the Republic of Tajikistan)
- coercion (Article 134 Criminal Code of the Republic of Tajikistan)

Moreover, by virtue of the Law of the Republic of Tajikistan "On Combating Human Trafficking and Assistance to Victims of Human Trafficking," the Government of the Republic of Tajikistan is explicitly vested with the authority to establish the catalogue of offenses associated with human trafficking. Acting upon this delegated legislative power, the Government promulgated a Resolution on July 2, 2019, thereby expanding the prevailing legal framework by identifying a supplementary range of offenses to be recognized as crimes connected to human

trafficking, that reaching beyond the boundaries of those already prescribed within the existing criminal legislation:

- the use of a teenagers for the purpose of producing materials or objects of a pornographic nature (Article 241<sup>2</sup> Criminal Code of the Republic of Tajikistan)
- illegal crossing of the state territory of the Republic of Tajikistan, in connection with human trafficking (part 3 of article 335 Criminal Code of the Republic of Tajikistan)
- organizing the illegal entry of foreign citizens or stateless persons into the Republic of Tajikistan or organizing illegal transit through the territory of the Republic of Tajikistan in connection with human trafficking (part 3 of Article 335<sup>1</sup> Criminal Code of the Republic of Tajikistan)
- organization of illegal migration (Articles 335<sup>2</sup> Criminal Code of the Republic of Tajikistan)
- theft or damage of documents, stamps, seals, for the purpose of human trafficking (part 3 of Article 339 Criminal Code of the Republic of Tajikistan)
- forgery, production or sale of forged documents, state awards, stamps, seals, forms, for the purpose of human trafficking (part 3 of Article 340 Criminal Code of the Republic of Tajikistan)

Analyzing the Criminal Code of the Republic of Tajikistan, the following acts also can be recognized as crimes against human freedom:

- forcing human organs or tissues for transplantation (Article 122 of the Criminal Code of the Republic of Tajikistan)
- forcing to participate in a strike or to refuse to participate in a strike (Article 152 of the Criminal Code of the Republic of Tajikistan)
- trafficking of teenagers (Article 167 of the Criminal Code of the Republic of Tajikistan)
- illegal adoption (Article 172 of the Criminal Code of the Republic of Tajikistan)
- taking hostage (Article 181 of the Criminal Code of the Republic of Tajikistan)
- forcing to conclude a transaction or to refuse to conclude it (Article 267 of the Criminal Code of the Republic of Tajikistan)
- bribery or coercion to give false testimony, a false conclusion, or an incorrect translation (Article 353 of the Criminal Code of the Republic of Tajikistan).

Thus, the CC RT establishes criminal punishment for more than 18 crimes against human freedom. The main objects of these crimes may be different social values and relations, but the essence of these crimes is an infringement on human freedom.

A more detailed and systematic analysis of the principal categories of these offenses is therefore called for. Under the Criminal Code of the Republic of Tajikistan, the foundational crimes directed against personal freedom comprise kidnapping (Article 130 of the Criminal Code of the Republic of Tajikistan), human trafficking (Article 130<sup>1</sup> of the Criminal Code of the Republic of Tajikistan), and unlawful deprivation of liberty. Together, these offenses constitute the central legal mechanisms through which criminal law protects and preserves individual freedom as an inviolable and universally recognized human value.

In accordance with the provisions of the Criminal Code of the Republic of Tajikistan, kidnapping is understood as the unlawful seizure of a person, perpetrated either covertly or openly, through deceptive means or the deliberate exploitation of trust, or carried out with the application of physical force or the threat thereof, on the condition that the act does not contain the constituent elements of the offense prescribed under Article 181 of the Criminal Code of the Republic of Tajikistan.

The concept of kidnapping encompasses deliberate unlawful conduct carried out covertly or openly, including acts committed through deception, which involve the abduction of a living person, the deprivation of his or her ability to participate in normal social relations, and the

transfer of that person from a place of permanent or temporary residence for the purpose of detention in another location against his or her will. In analyzing the objective element of kidnapping, particular attention is given to the notion of “recruitment,” as in practical terms it may resemble preparatory actions associated with the subsequent transfer or exploitation of a person. In legal doctrine, recruitment is generally understood as a form of activity aimed at attracting individuals for future exploitation. It may include such actions as identifying potential victims, advertising or persuasion, registering applicants, and arranging their transportation to the place where exploitation is intended to occur [4, p. 97].

The main object of this crime is the personal (physical) freedom of a person. In some cases, life safety, human health, property relations, etc. are also considered as additional objects. Any person, regardless of age, position, citizenship, social status, etc., can become a victim of this crime. The objective element of kidnapping manifests in the unlawful seizure of a living individual through covert or overt means, or by way of deception, effectively severing the victim's participation in ordinary social life and forcibly displacing them from their place of permanent or temporary residence with the intent of holding them against their will in another location. Kidnapping is committed only by active action. Kidnapping is carried out hiddenly, openly, by deception or trust. In many cases, the acts of kidnapping, moving and detaining a person are simultaneously important. In practice, it is also possible to bring a person to a place by deception or by using trust and then detain him. It is worth noting that the period of detention is not important for the classification of the crime.

The time of completion of the abduction is calculated from the moment of the abduction and its movement to another place.

However, it should be noted that caring for one's own child or an adopted child without the consent of the spouse, other parents or relatives is not qualified in accordance with Article 130 of the Criminal Code of the Republic of Tajikistan. Keeping a child by relatives (for example, grandparents) without their consent is also not considered abduction if it is carried out in the interests of the child.

Kidnapping can be committed together with other criminal acts, such as threats of murder, assault, rape, etc. In some cases, this type of kidnapping is carried out using physical or mental coercion with the purpose of committing acts aimed at kidnapping (for example, paying money for release, paying off a debt, transferring property to the kidnappers, etc.).

The subjective element of kidnapping is defined by guilt manifesting in the form of direct intent. The offender acts in full awareness that they are unlawfully taking hold of another person and relocating them against their will from one place to another, and proceeds to do so with deliberate purpose. Although personal gain most commonly underlies the criminal motivation, other factors may equally drive the commission of the offense in specific circumstances, among them revenge, jealousy, hooliganism, and analogous impulses.

The subject of kidnapping is any person who has carried out the act of abduction and had reached the age of fourteen years by the time the offense was committed.

The qualifying circumstances that aggravate the offense of kidnapping are set out in paragraphs "a" through "i" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan. The commission of kidnapping by a group of persons acting pursuant to a prior agreement, as provided under paragraph "a" of Part 2 of Article 130, presupposes that all participants arrived at a shared understanding concerning the intended abduction prior to the actual execution of the crime. In this context, the offense involves accomplices each of whom took an active part in the seizure and physical transfer of the victim, that is, in displacing them from one location to another against their will. In instances where the kidnapping was executed

through a division of roles among the participants, those accomplices who did not directly take part in the abduction and movement of the victim, with the exception of the principal perpetrator, shall not bear liability under this particular paragraph. Instead, such individuals are held accountable under the remaining provisions of Article 130, with the corresponding application of Article 36 of the Criminal Code of the Republic of Tajikistan.

The concept of "kidnapping accompanied by violence dangerous to life or health" as enshrined in paragraph "c" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan, covers situations in which the victim sustains bodily harm ranging from minor to moderate or serious in nature, or where the violence employed in the course of the offense gives rise to a genuine and substantial threat to the victim's life or physical wellbeing. The presence of such danger may be demonstrated through deliberate actions including strikes to vital areas of the body, strangulation, hurling the victim from a moving vehicle or from an elevation, or the deployment of specific means capable of inflicting grave injury. Moreover, psychological violence, namely, the explicit threat of applying force dangerous to life or health, likewise falls within the ambit of this qualifying characteristic and is subject to classification under the same legal provision.

Kidnapping committed with the use of a weapon or an object employed as a weapon (paragraph "g" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan) refers to situations in which a firearm, a bladed weapon, a gas weapon (such as a pistol or revolver), or any other object capable of causing bodily harm is utilized during the commission of the offense. Such objects may be specifically manufactured or adapted for inflicting physical injury, for example, a piece of rubber hose reinforced with metal, as well as ordinary household items, including an axe, knife, or stone. For the purposes of legal qualification, it is irrelevant whether the weapon or object was prepared in advance or obtained at the scene of the crime. However, the mere presence of such items is insufficient to establish this qualifying circumstance; it must be demonstrated that they were actually used in the commission of the kidnapping.

The kidnapping of a person known to be a minor, as provided under paragraph "d" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan, pertains to the abduction of an individual who has not yet reached the age of eighteen, including a child. A critical element in this context is that the perpetrator must have been aware, at the time of commission of the offense, that the victim was indeed underage, meaning that this qualifying circumstance is contingent upon the offender's actual knowledge of the victim's age.

The kidnapping of a woman known by the perpetrator to be pregnant, as stipulated under paragraph "d" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan, is established where the offender possessed certain knowledge of the victim's condition at the time the offense was carried out. The heightened degree of social danger inherent in this qualifying circumstance stems from the fact that such conduct imperils not only the life and health of the woman herself, but equally that of the unborn child she carries.

Kidnapping of two or more persons (paragraph "k" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan) is established where the offender intentionally abducts and transfers two or more victims. Such acts do not necessarily have to be carried out simultaneously; it is sufficient that the perpetrator acted pursuant to a single criminal intent directed at the abduction of multiple individuals.

Kidnapping committed for mercenary motives (paragraph "i" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan) is characterized by the pursuit of material gain for the offender or for third parties, for example, obtaining payment in exchange for the release of the kidnapped person. In this context, the qualifying element is the presence of a self-serving motive, as the perpetrator seeks financial or other material benefit through the commission of the offense.

In circumstances where the kidnapping of an individual is accompanied by extortionate

demands aimed at unlawfully acquiring property or rights thereto, such conduct is subject to dual qualification, simultaneously under Article 250 of the Criminal Code of the Republic of Tajikistan and paragraph "i" of Part 2 of Article 130 of the Criminal Code of the Republic of Tajikistan.

A distinct and more severe category of qualification for kidnapping is established under Part 3 of Article 130 of the Criminal Code of the Republic of Tajikistan. This provision addresses acts falling within the scope of Parts 1 and 2 of the same Article where they are perpetrated by an organized group, committed with the purpose of sexual or other forms of exploitation of the abducted person, carried out with the intent of removing the victim's organs or tissues for transplantation purposes, executed under conditions of a particularly dangerous recidivism, or resulting in the death of the victim through negligence or giving rise to other grave consequences. [7, 237]

Kidnapping perpetrated by an organized group, as set forth in paragraph "a" of Part 3 of Article 130 of the Criminal Code of the Republic of Tajikistan, refers to an abduction carried out by a cohesive and stable association of individuals united by a common purpose of committing one or more criminal offenses, which need not be confined exclusively to kidnapping. Under such circumstances, all members of the organized group are recognized as co-perpetrators regardless of the internal allocation of roles or functions within the group's structure. As a consequence, no additional reference to Article 36 of the Criminal Code, which governs the forms and conditions of complicity, is required for the purposes of qualification.

Kidnapping perpetrated with the purpose of subjecting the victim to sexual or other forms of exploitation, as stipulated under paragraph "b" of Part 3 of Article 130 of the Criminal Code of the Republic of Tajikistan, is established where the offender carries out the abduction driven by a specific and deliberate intent to exploit the kidnapped individual. The distinguishing feature of this qualifying circumstance lies in the clearly articulated exploitative purpose that underlies and motivates the commission of the offense.

Where the act of kidnapping leads, through negligence, to the death of the victim or to other grave consequences within the meaning of paragraph "d" of Part 3 of Article 130 of the Criminal Code of the Republic of Tajikistan, the law requires that such outcomes bear a direct and indisputable causal connection to the abduction itself, stemming specifically from the negligent behavior of the offender. Put differently, an unequivocal causal relationship must be established between the commission of the kidnapping and the fatal or otherwise severe consequences that ensue. When the victim's death occurs as a consequence of negligence, the offense is fully encompassed within paragraph "d" of Part 3 of Article 130, rendering additional qualification under Article 108 of the Criminal Code of the Republic of Tajikistan unnecessary. However, where the victim's death during the course of the kidnapping stems from the intentional infliction of bodily harm, the conduct falls outside the complete scope of paragraph "d" of Part 3 of Article 130 and accordingly necessitates additional qualification under paragraph "c" of Article 110 of the Criminal Code of the Republic of Tajikistan. Moreover, where the death of the victim constitutes a deliberate and intentional killing, it must be further qualified under the applicable provisions governing homicide, including Article 104 of the Criminal Code of the Republic of Tajikistan.

Other serious consequences of kidnapping include: suicide of the victim, death of his relatives, serious illness, causing other serious harm to his health, causing significant material damage to the victim, violation of a major business contract, and others.

In conclusion, the analysis of Article 130 of the Criminal Code of the Republic of Tajikistan demonstrates that the criminal law framework provides a sufficiently structured and comprehensive mechanism for safeguarding personal freedom. The normative construction of this provision reflects the fundamental objectives of criminal legislation and is intended to ensure effective protection of the freedom of the individual and the citizen as a core legal value.

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