

The crime of kidnapping in Algerian Law

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Abstract---This paper is of particular importance because kidnapping has increased in Algeria in recent years. The phenomenon has become more severe, and the number of victims has also grown across different ages and social groups. Organized criminal groups have appeared and committed kidnapping against both citizens and foreigners. They have often detained the victims to pressure a third party, usually the government, in order to influence its decisions or to obtain a benefit or advantage. This situation has created fear within civil society. As a result, the Algerian legislator adopted a special law on the prevention and suppression of kidnapping. This is Law 20/15, which sets out the penalties for kidnapping adults and children. It also includes procedural and preventive measures to confront this crime. In this article, we examine the conceptual framework of kidnapping and assess whether the provisions enacted by the Algerian legislator are sufficient to deter and counter these crimes.

Keywords---Kidnapping, Algerian Penal Law, Violence and Deception, Child Abduction, Criminal Prevention.

INTRODUCTION

Human freedom is one of the most valuable rights a person holds. It is a legitimate and protected right in various legal systems and religions throughout history. Islam guaranteed this right and fought against enslavement, restrictions on individual liberties, and any violation of personal freedom. The well-known statement of ‘Umar ibn al-Khattāb—“Since when have you enslaved people when their mothers gave birth to them free?”—reflects the high status of freedom in Islamic society.

With the development of human civilization and the attempt to regulate global affairs after the Second World War, the international community established several institutions, including the United Nations. In 1948, the United Nations adopted the **Universal Declaration of Human Rights**, which affirmed the legitimate rights of every person, including the right to liberty. Article 1 states: “All human beings

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are born free and equal in dignity and rights.” Constitutions around the world later followed this approach and guaranteed the rights listed in the Declaration, especially the right to freedom.

The Algerian Constitution, like others, recognizes individual and collective rights and guarantees public and private freedoms. The Penal Code also grants the judiciary the authority to restrict the liberty of individuals involved in criminal acts as a form of punishment. At the same time, it criminalizes kidnapping and the illegal restriction of a person’s freedom outside the framework of the law.

This research paper gains special relevance due to the recent rise in kidnapping cases in Algeria and the serious consequences they produce. The victims belong to various age groups and social categories. Organized criminal networks have become active and have carried out kidnappings targeting citizens and foreigners alike. They often detain the victims to pressure a third party—usually the government—to influence its performance or to obtain a benefit. This situation has generated fear in society.

Consequently, the Algerian legislator enacted **Law No. 20-15**, dated 30 December 2020 (15 Jumada al-Ula 1442), on the prevention and suppression of kidnapping (Official Gazette No. 81). The law focuses on the penalties for kidnapping adults and children and includes procedural and preventive rules designed to combat this crime.

This article examines the conceptual framework of kidnapping and evaluates the adequacy of the provisions and measures introduced by the Algerian legislator. To answer this question, we rely on the descriptive method to present the concepts related to the crime and the analytical method to examine the legal texts. The study is organized into two sections: the first explains the concept of kidnapping, and the second discusses the motives and forms of the crime.

Section One: The Concept of Kidnapping

In this section, we present the definition of kidnapping in the first subsection and the characteristics of the crime in the second.

Subsection One: Definition of Kidnapping

We address the definition of kidnapping from linguistic, juristic, and legislative perspectives.

First: The Linguistic Definition

The Arabic word *ikhṭitāf* (kidnapping) is derived from the verb *khaṭafa*. The verb refers to seizing something quickly. It indicates sudden and rapid taking. For example, it is said that lightning “snatches” sight, meaning that it removes it instantly. The linguistic meaning therefore involves quick action, sudden removal, or swift taking. Speed is an essential element in the act, and it implies rapid transport and immediate removal from one place to another.

(Sources: www.maajim.com, www.almaany.com, www.arabehome.com, accessed 01-06-2022.)

Second Subsection: The Juristic Definition of Kidnapping

Criminal law scholars define the crime of kidnapping as the forcible seizure of a person followed by detaining him in order to extort money from his relatives. They consider this purpose unlawful. They also describe it as the wrongful and coercive removal of a person from one place to another, followed by detention for an unlawful aim. According to criminologists, the act of kidnapping is a criminal act. Its legal classification is that of a felony, which requires the imprisonment of the offender. The severity of the punishment depends on the result of the criminal act.

It appears from these definitions that criminologists rely on the forms through which this crime is committed. They limit the meaning to the idea of unlawful captivity. (Zouaoui, 2022, pp. 586–589)

Third Subsection: The Legislative Definition of Kidnapping

Here, we present the legislative definition of the crime of kidnapping.

1. The Algerian Penal Code (Law 14-01)

(Law No. 14-01 of 4 Rabi' al-Thānī 1435 / 4 February 2014, amending and supplementing Ordinance No. 66-156 of 18 Šafar 1386 / 8 June 1966, which contains the Penal Code)

Article 291 of the Algerian Penal Code establishes imprisonment for anyone who kidnaps, arrests, detains, or seizes any person without an order from the competent authorities. We note that this article does not provide an independent definition of the crime of kidnapping. It only refers to the acts that fall under the crime. These acts include arrest, detention, and confinement without legal authorization.

2. Law No. 20-15 on the Prevention and Suppression of Kidnapping

By examining Law No. 20-15 on the prevention and suppression of kidnapping, we find that Article 2 states: "This law applies to acts of kidnapping, or arresting, detaining, or confining persons without an order from the competent authorities, and outside the cases in which the law permits or authorizes the arrest of persons, as referred to in this law." (Law No. 20-15 of 30 December 2020, Official Gazette No. 81)

When analysing this article, we observe that it adds nothing new and does not provide a definition of the crime. The legislator only identifies the acts included in the term "kidnapping," namely arrest, detention, and confinement.

By comparing Article 2 of Law No. 20-15 with Article 291 of the Penal Code, we conclude that the two texts are nearly identical. The only change lies in terminology: "arrest of individuals" in Article 291 became "arrest of persons" in Article 2 of Law 20-15.

From the legislative standpoint, it is clear that the Algerian legislator did not define the crime of kidnapping either in the Penal Code or in Law No. 20-15. The task of defining the crime has therefore been left to legal scholars and criminology specialists.

Second Requirement: Characteristics of the Crime of Kidnapping

A crime is an act prohibited and punishable by law. Every crime has specific characteristics. These may relate to the seriousness of the penalty or to the nature of the act itself. A crime may be described as "compound" when it consists of more than one act. It may also have harmful material consequences or involve moral harm that signals danger or threatens damage.

Here, we limit our discussion to some prominent characteristics of the crime of kidnapping.

First Subsection: Kidnapping as a Serious Crime

Kidnapping is classified as a serious crime due to the punishment imposed on the offender. This classification is consistent with the approach of the Algerian Penal Code, which divides crimes into felonies, misdemeanors, and infractions based on the severity of their penalties.

Articles 292 and subsequent articles of the Penal Code (Law No. 14-01 of 4 February 2014 amending Ordinance 66-156 of 8 June 1966) provide varying penalties for kidnapping depending on the circumstances of the crime. The penalty ranges from five (5) years' imprisonment in simple kidnapping to ten (10) years, and may reach twenty (20) years. It may even reach life imprisonment if the offender uses an official or military uniform, uses a motor vehicle, or threatens the victim with death.

The most recent amendment added another circumstance that calls for severe punishment: physical torture inflicted on the kidnapped or detained victim. The amendment also made no distinction between victims, whether male or female, regardless of age, when the offender uses deceptive methods, fraud, violence, or threats. In such cases, the penalty ranges from ten (10) to twenty (20) years, in addition to a fine between one million and two million Algerian dinars.

If the kidnapping is committed for ransom, the penalty is life imprisonment. Because of the seriousness of this crime, public prosecution expires after ten (10) years from the date of the offense (Law No. 14-01, Penal Code)

The penalty itself becomes statute-barred after twenty (20) years from the date of the final judgment. The same time limits apply to legal and judicial rehabilitation, according to Articles 673 and subsequent articles of the Code of Criminal Procedure. (Ordinance 66-155 of 8 June 1966, amended and supplemented, Official Gazette No. 48, year 3)

Subsection Two: Kidnapping as a Compound Crime

A compound crime is one that consists of several actions, each of which constitutes an independent crime. These individual crimes are then combined to form a single, distinct crime that is governed by one set of legal principles. In contrast, if the crime can be completed with a single act, it is referred to as a simple crime.

As we mentioned earlier, the crime of kidnapping involves taking and seizing a victim. To complete this crime, the victim must be moved and removed from the scene of the crime to another location, under the perpetrator's full control. The act of taking and seizing is, in itself, an independent action. Likewise, the act of removing the victim from the scene is also an independent act. Kidnapping can only be completed when both acts occur together. If one is missing—such as when the perpetrator takes the victim but does not move them from the original location—the crime of kidnapping is not considered fully realized.

This concept also applies to crimes involving the kidnapping of means of transportation. If the vehicle is diverted from its designated route to another route chosen by the kidnapper, this constitutes the kidnapping of a means of transportation. However, if the vehicle is merely taken or seized but remains in the same place, this may constitute a crime of detention or theft, but not kidnapping.

It is also important to note that jurisdiction applies to any court where an act of kidnapping occurs within its territorial jurisdiction.

Subsection Three: Kidnapping as a Crime of Harm

Crimes can be classified based on the nature of their criminal results as either crimes of harm or crimes that expose individuals to risk. A "criminal result" refers to the harm or risk caused by the perpetrator to the protected legal interest. If the result is harm, the crime is classified as a crime of harm. If the result is danger, the crime is classified as a crime of risk.

It is noteworthy that most crimes under the Penal Code are crimes of harm, as the criminal result is visible and forms an essential element of the material component of the crime. Kidnapping is a crime of harm because it is unimaginable for the crime to occur without harm to the victim. The criminal result of kidnapping is the removal and transportation of the victim from their original location to another location, without their consent.

The harm caused by the crime affects the individual or individuals targeted by the attack. Upon a closer examination of this crime, one can see that kidnapping, in itself, is often a precursor or means to a more severe crime, such as murder, rape, sodomy, assault, extortion, or unlawful detention. If the crime does not result in completion, the law punishes the attempt with the same penalty as the completed crime, since kidnapping is a felony. This is in accordance with Article 29 of the Penal Code. (Laws of Algeria, Article on Kidnapping and its Forms, Comprehensive Research, qawaneen.blogspot.com, accessed on 01-06-2022)

Chapter Two: Motivations and Forms of Kidnapping Crimes

It is essential to highlight the main causes and motivations that contribute to the rise in kidnapping crimes worldwide. These causes are numerous and varied, and we can mention some of them as examples. (First Requirement) and (Forms of Kidnapping Crimes - Second Requirement).

First Requirement: Motivations for Kidnapping Crimes

In this section, we will examine the motivations behind kidnapping crimes in the following subsections.

Subsection One: Personal Motivation

One of the key driving forces behind kidnapping is personal motivation. This typically involves achieving personal objectives, such as financial gain (e.g., obtaining money), which may then lead to extortion for ransom. The motivation may also involve committing an act of terrorism to escape a judicial sentence or to free individuals who have been convicted. In some cases, the motive behind a terrorist act may be extortion, where a group of individuals kidnap someone to demand a large ransom.

Another personal motivation for committing kidnapping is to seek political asylum in a specific country. Finally, personal motivations may stem from mental or emotional disturbances, such as psychological trauma or other mental health or neurological disorders.

Subsection Two: Economic Motivation

The economic motive is a key factor driving the rise and spread of kidnapping crimes. This motive provides fertile ground for the crime to spread, both at the national and international levels. There are two primary indicators associated with this motive:

- **A.** Studies on kidnapping have shown that young people form the largest group of offenders, as they often face difficult economic and social conditions.
- **B.** Most kidnappers tend to be concentrated in cities with poor economic and social conditions, where the standard of living is low. The challenging economic conditions create an environment conducive to criminal behavior. For example, unemployment, inflation, low living standards, and the mismatch between wages and prices all push a wide sector of young people to engage in such criminal activities as a release for their pent-up frustrations.

Thus, the economic motive can particularly affect unemployed youth and may also impact their psychological state, leading them to deviate from the law and engage in operations that harm the country's economic well-being.

Subsection Three: Political Motivation

Political motivations form a significant portion of the reasons behind kidnapping and terrorism. Most kidnapping operations are driven by political motivations, especially when all legal avenues have been exhausted. In such cases, the oppressed or weak party may resort to kidnapping as the only way to express their opinion, demand their rights, or bring their cause to global attention.

Political motivations for kidnapping may also stem from internal factors, such as the weakness or ineffectiveness of political parties, which are preoccupied with power struggles. This can lead young people to join organizations that make them feel powerful and important by instilling fear, panic, and terror to promote a specific cause. Moreover, modern technological advances in mass media have allowed some kidnappings to attract global public attention to particular causes, generating sympathy for the perpetrators. This, in turn, exerts pressure on governments to focus on the issue and engage in negotiations with the parties involved.

Subsection Four: Cultural Motivation

It is important to highlight the role of cultural motivations in driving the phenomenon of kidnapping. Ignorance plays a major role in creating the conditions necessary for kidnapping crimes to occur. A lack of environmental, health, or scientific awareness often results in individuals being more susceptible to ignorance, illness, and deviant behavior. This calls for governments to properly educate young people, focusing on science, morality, and preserving societal values and traditions through the use of media.

As previously mentioned, after this brief presentation of the national motivations for kidnapping, it is essential to note that the mere presence of these motives does not automatically lead to kidnapping. There are no specific motives that inevitably lead to kidnapping or terrorism. Rather, these actions are the result of a complex interaction of various motives, including the ones discussed here. Despite these factors, individuals should not resort to kidnapping, and the presence of these motives should not necessarily lead to criminal actions. They remain potential triggers for criminal behavior (Zawawi, 2022, pages 591-593)

Second Requirement: Forms of Kidnapping

From our study of the articles in the Algerian Penal Code addressing kidnapping crimes, we have concluded that there are two forms in which kidnapping can occur: the first involves kidnapping with

the use of violence, threats, or deception (Subsection One), and the second occurs without the use of violence, threats, or deception (Subsection Two).

First Branch: The Crime of Kidnapping Using Violence, Threats, or Deception

This is addressed in the first paragraph of Article 292 of the Penal Code, which states: "If the arrest and kidnapping are carried out while wearing an official uniform, insignia, or appear to be so, or by impersonating a false identity or under a forged order..." (Law No. 14-01, dated 4th Rabi' al-Thani 1435 AH, corresponding to 4th February 2014, amending and supplementing Order No. 66-156, dated 18th Safar 1386 AH, corresponding to 8th June 1966, which includes the Penal Code). Similarly, the first paragraph of Article 293 bis reads: "Anyone who kidnaps or attempts to kidnap any person, regardless of age, using violence, threats, or deception shall be punished..." (Law No. 14-01, dated 4th Rabi' al-Thani 1435 AH, corresponding to 4th February 2014, amending and supplementing Order No. 66-156, dated 18th Safar 1386 AH, corresponding to 8th June 1966, which includes the Penal Code).

From this text, we understand that the crime of kidnapping is committed when the perpetrator abducts a person, male or female, with the intent of removing them from their family and home and restricting their freedom. This act is done using deception, threats, or violence to force the victim into submission and carry out the crime.

Thus, the crime requires the presence of a material element where the perpetrator employs deceptive tactics, violence, or threats against a specific individual, and this is accompanied by a criminal intent, which represents the mental element of the crime.

The material element remains the same for all forms of kidnapping, whether the act is committed through violence, threats, or deception. The material element is achieved when the perpetrator forcibly removes the victim from their environment and transports them to another location, where they are detained to be hidden from their family and loved ones. The same applies to the mental element, which is consistent across all variations of the crime. To avoid repetition, we will focus on defining the terms "violence," "threat," and "deception" as they form part of the material elements of kidnapping.

Violence, Threats, and Deception:

Algerian legislation in Article 293 bis, first paragraph, requires that kidnapping be carried out with violence, threats, or deception. This means that the material element of this crime is only complete if the kidnapping is carried out using one of these methods to enable the perpetrator to complete the crime (Law No. 14-01, dated 4th Rabi' al-Thani 1435 AH, corresponding to 4th February 2014, amending and supplementing Order No. 66-156, dated 18th Safar 1386 AH, corresponding to 8th June 1966, which includes the Penal Code).

Violence refers to physical coercion, that is, the actions performed by the perpetrator that forcibly strip the victim of their will, such as transporting the victim from one location to another using physical strength and force. Threats, on the other hand, refer to acts where the perpetrator warns the victim of harm or danger that will occur to them, their property, or their family unless they comply with the perpetrator's orders. It can be said that threats are a form of psychological or moral violence, where the perpetrator warns the victim of grave harm if they do not agree to go with the perpetrator or perpetrators to a place of their choosing, away from their family and environment.

Regarding the meaning of deception, it refers to trickery, fraud, or any form of manipulation that misleads the victim into believing a falsehood, enabling the perpetrator to carry out the kidnapping.

To satisfy the material element, the victim must have been removed from their residence (home) involuntarily and against their will. This is done by influencing their will through deceptive means that mislead the victim into believing a false situation, such as impersonating a false identity or presenting a forged document containing an order from the authorities, as outlined in Article 292 of the Penal Code, first paragraph (Law No. 14-01, dated 4th Rabi' al-Thani 1435 AH, corresponding to 4th February

2014, amending and supplementing Order No. 66-156, dated 18th Safar 1386 AH, corresponding to 8th June 1966, which includes the Penal Code).

Second Branch: The Crime of Kidnapping Without the Use of Violence, Threats, or Deception

This issue is addressed in the case of the kidnapping of minors, as detailed in the first paragraph of Article 326 of the Penal Code, which states: "Anyone who kidnaps or removes a minor who has not reached the age of eighteen without the use of violence, threats, or deception, or attempts to do so, shall be punished..." (Law No. 14-01, dated 4th Rabi' al-Thani 1435 AH, corresponding to 4th February 2014, amending and supplementing Order No. 66-156, dated 18th Safar 1386 AH, corresponding to 8th June 1966, which includes the Penal Code).

In this case, Article 326 of the Penal Code requires that the victim be a minor who has not yet reached eighteen years of age, irrespective of gender. The material element of this crime, therefore, consists of the act of kidnapping and removal without the use of violence, threats, or deception.

Kidnapping in this case occurs when the child is forcibly taken from their environment, transported to another location, and detained there, hidden from those responsible for their care and guardianship. The material element of the crime is established by the perpetrator's deliberate action, which in this case is the abduction of the minor and their subsequent transportation to a different location, severing their connection with their family.

CONCLUSION

The greatest corruption on earth is the fear instilled in people regarding their own safety, their property, or their dignity, and the violation of their freedoms and honor through kidnapping. This is further compounded by the physical and psychological harm that often accompanies kidnapping, such as bodily harm, sexual assault, or damage to property. Such crimes justify the application of the harshest penalties, no matter how severe, to protect individuals and communities. These penalties must reflect the detrimental effects of the crime.

Furthermore, preventive measures must be developed to combat these crimes before they occur. This highlights the importance of cooperation between various state institutions (such as security forces, the judiciary, the media, and others) to eliminate this crime. It is also critical to act decisively against criminals, enforce penalties, and raise awareness of the risks and consequences of these crimes on individuals, communities, the economy, politics, and the state as a whole.

Through this study, we have arrived at several findings and recommendations that can contribute to combating this crime and addressing some of the related issues, as detailed below:

Findings:

- Kidnapping refers only to the act of taking and moving a person quickly, or altering their course of action.
- The subject of the kidnapping crime is any person, regardless of age or gender, provided they are transported by any means of conveyance.
- The crime may involve force and violence, but it can also occur through deception or entrapment.
- Kidnapping differs from theft, which involves property, while kidnapping involves a living person.
- Kidnapping is a serious crime with harmful effects on individuals, societies, economies, public order, and international relations.
- The law treats both the perpetrator and the accomplice as equally responsible for kidnapping crimes.
- Kidnapping is closely associated with crimes such as physical harm, and the law considers it an aggravating circumstance.

- Kidnapping is linked to extortion, which may target public authorities or individuals.
- Efforts from all parties are essential to combat and eliminate this crime.
- Addressing national economic issues and ensuring fair distribution of wealth and jobs can help prevent crime.

Recommendations:

- Judicial authorities should separate the act of kidnapping from any related crimes when determining punishment.
- The Algerian legislator should clarify whether an accomplice is considered an original perpetrator.
- Laws related to the kidnapping of minors should be more specific regarding the victim's age and gender.
- Special provisions should be created to address the kidnapping of newborns, especially given its recent prevalence in Algeria.
- Penalties should be imposed on individuals who lead kidnapping organizations, as they are the masterminds behind these acts.
- A provision should be made to grant immunity from punishment to those who report kidnappings or provide information on the whereabouts of the perpetrators.
- Legal provisions should be added to address cases of kidnapping followed by sexual assault or sodomy, whether the victim is a minor or an adult.
- Penal sanctions should be more severe for security or military personnel involved in kidnapping, as their position facilitates the crime and undermines public trust in law enforcement.
- A provision should be added regarding the possibility of repentance for kidnappers before they are apprehended, which could encourage criminals to abandon their actions.
- A review of kidnapping-related provisions should be undertaken to encompass all related crimes, including theft, detention, extortion, physical harm, and rape.
- Authorities must take decisive action against kidnappers, ensuring they are brought to justice and that the families of victims refrain from meeting ransom demands, as this only encourages further crimes.
- Finally, the state must prioritize addressing youth unemployment, providing equal opportunities for employment and fair wealth distribution to prevent the rise of crimes like kidnapping.

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