Vol.5 Iss.1 2024
Modern Law Research
https://doi.org/10.37420/j.mlr.2024.009

Jurisprudence of Aggravation of the Crime of Buying Abducted Women or Children

Wenxin Dong*
School of Law, Beijing Normal University, Beijing, China
***Corresponding author,E-mail:dwx2023@126.com**

Abstract
China's crackdown on human trafficking has maintained a high-pressure situation, but the risk of women and children being trafficked is still serious, and the leniency of the penalty for the crime of buying abducted women or children has caused people to reflect on the setting of penalties for this crime, and voices of aggravation of the crime have become more and more prevalent. The aggravation of the penalty should be based on the aggravation of social harm, and the aggravation of social harm should be judged comprehensively from multiple perspectives, such as the degree of infringement on legal interests. Therefore, it is necessary to first clarify that, based on the behavioral pattern of the act of buying, the right not to be bought or sold is the corresponding legal interest to be protected in this crime, and to build up a legal interest concept of not being bought or sold. Subsequently, the value of the social harm of this crime should be comprehensively analyzed from the angles of human rights infringement, legal interests infringement and social evaluation, so as to provide a theoretical basis for the aggravation of this crime.

Keywords
criminal law; legal benefit; social harm; crime of buying abducted women or children

1.Introduction

"No act, no crime", to discuss a crime, it should fit the most intuitive and fundamental elements of the crime for analysis, which is inseparable from the analysis of the behavioral ontology of the criminal act. The criminal behavior of the perpetrator must correspond to the infringement of some kind of legal interests, and thus the analysis of the infringement of legal interests should also start from the characteristics and nature of the behavior, which is to determine the theoretical basis for the legal interests of the crime and the social harm caused by the crime and to lay the analytical keynote. It is only from this point that a detailed discussion of the criminological and penal aspects of the crime of buying abducted women or children can be initiated.

2.Characterization of the legal benefits of the crime of buying abducted women or children

2.1.Behavioral pattern of the crime of buying abducted women or children

The legal interests protected by this crime should be based on the crime of buying abducted women or chil-

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

dren, i.e., the legal interests infringed by a single act of buying should be discussed. We need to study the behavioral pattern of the act of buying, and the first step is to separate the act of buying from the act of trafficking. Buying only refers to the buyer and traffickers to carry out transactions, which is often a relatively short period of time, in the buyer and traffickers to contact and reach a preliminary purchase agreement, should be recognized that the crime is established and start, at this time, the buyer's buying behavior has already begun to the legal interests of the person who is being bought to create a direct, real and imminent danger. When the buyer's subsequent transaction of "handing over the money to the buyer with one hand and handing over the person with the other hand" is terminated, the crime shall be declared accomplished. Therefore, this crime is different from the crime of trafficking in women and children, and this paper argues that the crime of buying abducted women or children is often regarded as a behavioral crime, while the crime of trafficking in women and children is regarded as a continuing crime. Therefore, the discussion on the legal benefit of this crime should be based on the short-term behavior of buying, rather than simply applying a broad legal benefit directly to the analysis of this crime. At the same time, we should be combined with the criminal law will be a separate crime of special protection considerations, based on the subjective purpose of the legislator to make some explanation.

2.2.The interaction between behavior and legal interests

Compared with the controversial legal interest in legislation and regulation function, the legal interest has the function of explaining the existing law in criminal law is seldom questioned. Even though some scholars believe that the theory of legal interest in the context of security criminal law has collapsed,but we can not deny the instrumental value of the legal interest itself and its own interpretive capacity, the theory of legal interest still plays a supporting role in the evaluation of the reality of the law. Although we continue to high-pressure situation to combat the sale of human crimes, but to Fengxian chained women as a representative of a series of cases of exposure, people reflect on the buy abducted women , children, the establishment of the crime of whether there is a problem that makes it difficult to implement the provisions of the law, so that the social effect of its due did not happen.

Different types of crimes involve the infringement of different legal interests, and the same type of crime also directly or incidentally infringes on different legal interests due to the characteristics of the crime itself. Therefore, it is very important to clarify the behavioral pattern of a criminal act in order to clarify the main legal interests infringed by the act. The evaluation of legal interests should be closely related to the characteristics of the behavior, and should not be too deviated and abstract. Such as the act of murder can not be evaluated in the infringement of personal freedom, such as rape is the infringement of sexual interests, although also belongs to the broad sense of the security of the person or health, but the broad sense of the security of the person or health for the evaluation of the interests of the law has been detached from the specific pattern of behavior, and too broad. If the evaluation of legal interests is too broad and abstract, then there will be a large number of crimes that will be mixed, failing to achieve the protection and punishment purposes of the criminal law for which the provision was established. The act of buying abducted women or children should not be interpreted in such a way as to include forced sexual intercourse or unlawful detention, injury, etc., which would result in a blurring of the boundaries between the crime and the subsequent offenses.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

2.3.Characterization of legal interests within the scope of the act

In the basic composition of the crime, the evaluation of the crime should be carried out within the scope of the act, and must not confuse the subsequent act with the previous act, nor must the incidental infringement within the act be omitted. The discussion of result-aggravated crime and circumstance-aggravated crime is also based on the establishment of the basic crime, which is subject to aggravated evaluation by the criminal law because the criminal act causes a more serious incidental infringement of the legal interests or other legal interests. With the exception of a few legalistic formulations, the aggravating results and circumstances do not change the criminal behavior and the infringing legal interests on which the basic crime "relies".

After clarifying the behavioral pattern of the criminal act, the discussion of legal interests should be conducted on the basis of it. Discussion should not be for the sake of discussion, and criticism should not be for the sake of criticism. The ultimate purpose of the discussion of legal interests is not to promote the revision of legislation through discussion and criticism; the problem can never be completely solved, nor can the law be revised endlessly. So the purpose of the discussion of legal interests is to play the interpretive function of legal interests on the basis of clarifying the behavioral patterns. In the legal provisions, existing legal problems are analyzed, and loopholes are closed by clarifying or interpreting the legal interests, or legal penalties are appropriately revised within the scope of legal interest evaluation, so as to respond to the new requirements put forward by the development of society while maintaining the stability of the law. In the determination of penalties, the interpretation of legal interests can guide the degree of punishment to be imposed for the acts involved in a particular crime, and whether the different acts involved in the crime should be aggravated or punished concurrently. In the judicial chain, different crimes that infringe on the same legal interests can be considered systematically, and crimes with obvious flow, such as crimes of buying and selling human beings and money-laundering, can be considered comprehensively, so as to combat the crime chain in a comprehensive manner.

3.Discussion of legal interests based on behavioral patterns

3.1.Family stability

Some views identify the legal interest infringed by this crime as infringing on the family stability of the bought person, which is not the main legal interest protected by this crime.

First of all, the family stability of the purchased person has already been violated when the purchased person was abducted and sold, or it can be understood that since the purchased person was abducted and sold, his original family stability has been violated. The various subsequent behaviors were all caused by the initial act of abduction and sale, and the act of purchase itself did not result in a direct and separate violation of the family of the purchased person; otherwise, the crime of abduction and sale of women and children would have been sufficient to evaluate the entire act of purchase and sale. Secondly, some trafficked persons do not have a family, or are disabled, deaf, mute or other vagrants, and there is no legal interest in family stability; under these conditions, traffickers abduct and sell them by deception, coercion and other unlawful

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

means, and if this family stability is taken as a legal interest to be protected, then this will create a loophole in the evaluation and protection of legal interests. Finally, the perception of family legal interest infringement is not centered on the victim of this crime, and the sale of human beings is a crime that has obvious infringement on the person, so the victim should be sought in the personal point of view of the infringement of this crime.

3.2.Personal freedom and personal safety said

Most of the subsequent behavior of the buyers of detention, injury, rape and other harmful acts, the criminal law also has provisions of the buyers of the subsequent existence of rape, detention and other acts should be punished, according to some points of view that the crime of buying abducted women , children is the infringement of personal liberty or physical security benefits of the law. However, if the personal freedom and physical safety of the purchased person are regarded as the legal interests protected by this crime, there may be the possibility of deferring the evaluation of the harm of subsequent acts. In the so-called "sale" process, although there may be detention and other harmful acts, the personal freedom of the abducted person is not in the purchase suffered infringement, but in the abduction has been infringed upon, for the infringement of personal safety can be analyzed by the logic of this, which is in itself to facilitate the smooth progress of the sale, not simply to infringe on the personal freedom and physical safety of the person. Not simply to infringe on their personal freedom and personal safety and buy, personal freedom and personal safety in the process of infringement, but not the main, should be recognized as an incidental infringement. If this is the protection of legal interests, then most of the subsequent aggression against the purchased person can be bought abducted women , children, the crime of the crime, the subsequent behavior can also be included in the aggravating circumstances of the former crime, or the crime directly into the crime of the circumstances of the crime of the subsequent aggression that may be involved in the crime, at this time there is no longer a need to punish the several offenses, which formally contrary to the current legal provisions, in essence This may lead to the loss of the value of independent evaluation of this crime.

3.3.The right not to be bought and sold

And then on the human dignity of the legal point of view, human dignity and the right not to be bought and sold belongs to the category of human rights, the concept of human rights itself is relatively broad, so we need to make a specific and targeted within the scope of human rights, in line with the value of the order of comparison and choice.

Human rights are the rights that human beings should enjoy because they are human beings, and they can be subdivided into specific legal interests that need to be protected. Taking into account the behavioral characteristics of abduction, trafficking, and buying, they can be subdivided into the rights that human beings cannot be bought and sold because they are human beings, and it can be regarded that the act of buying and selling is a degradation of the victim's human dignity and disregard for it. At this point, we need to analyze the specific behavioral pattern of the buyer, focus on the transaction attributes of the act of buying and selling, and select the legal interests of the crime in the field of human rights.

In the act of buying and selling, although there is some infringement on the legal interests of freedom and

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

dignity, it should be regarded as the infringement attached to the act of buying and selling, and the direct infringement of the act of buying and selling is still the right of the person not to be bought and sold. As an independent subject, the person himself is not the object of commodity trading, so this cognition is more direct and targeted. Throughout the criminal law, against the natural person of the crime itself has the human dignity or other human rights interests of the infringement, so in this crime of human rights infringement of the value of the order, the right not to buy and sell the person should be a higher order, more suitable for the evaluation of this crime, the person not to buy and sell the concept of the legal interests of the construction of up.

4.The aggravating basis of the crime of buying abducted women or children

4.1.Aggravation of the infringement of legal interests

The social harm of the crime is essentially the infringement of the legal interests. The construction of the concept of the legal interests of the person not to be bought and sold itself is the aggravated evaluation of the infringement of the legal interests of the crime. To the victim's own cognition, in the process of trading, forced to "commoditize" the image of their physical and mental are all the time, causing cognitive, mental and other multiple damage. The act causes indirect damage to the personal dignity, freedom and health of the purchased person, as well as direct damage to the victim's own physical and mental health, and the criminal law should provide a higher level of protection for this legal interest.

From the point of view of preventing subsequent crimes, the act of buying often has a high degree of secondary behavior with detention, rape and other acts. In the population of the fight against the purchase, the purchase of a single transaction behavior on the perpetrator caused by the direct violation of the possibility is small, and the follow-up "high secondary" rape, detention and other acts to the perpetrator caused by the direct violation of the more serious, which is the criminal law to speak of this crime and the crime of rape and other crimes directly stipulated for the reason of the crime of several crimes and penalties. In order to strengthen the protection of subsequent legal interests, this crime should also be appropriate aggravation, to prevent the subsequent violations lead to more serious damage consequences.

4.2.Aggravated infringement of human rights

Based on the right not to buy and sell the right of this legal interest is unique human rights color, the act of buying human beings will inevitably cause serious infringement of human rights. With the awakening of people's awareness of their own rights and constantly strengthened, people's adherence to the basic rights of human rights will become more resolute. And the purchase of abducted women or children is to treat human beings as commodities for trade, which fundamentally denies the independent attributes of human beings but treats human beings as a kind of commodity, and fundamentally denies the value of human beings.

Therefore, under the construction of the legal concept of non-trade of human beings, the evaluation of human rights infringement on the perpetrator of the act of purchase should be aggravated. As a human rights

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

value of the person not to buy and sell an important underlying logic, it has been given more important significance, then corresponding should have higher protection value, on the basis of this analysis, the act of buying corresponds to the denial of human rights connotation of the underlying, is the objectification of human beings, so in the penalty should respond to the corresponding act of buying and selling of human beings should be given more serious penalties.

4.3.Comprehensive Evaluation of Social Harm

This crime is a crime that is closely linked to the social environment and social culture, so the social harm of this crime should also be analyzed and evaluated from a comprehensive perspective.

For the bought person himself, because of the hidden nature of this crime and the delay in combating it, if he is not rescued at the beginning of being bought, by the time the crime is committed, he will often have become the wife, mother, son, and other family roles of a new family for a healthy natural person. Regardless of his or her willingness to continue living with the family, the bought person's original social relations have been destroyed, and the newly established social relations are being reconstructed in a rapid manner. At this point, whether the law intervenes or not, it will cause more or less moral and livelihood infringements to the victim, leading to the disruption of his or her social relations and disrupting his or her normal order of life. At the same time, this will also cause some of the bribed persons to give up their families of origin after being rescued and return to the family of the bribed person, which is different from the cultural promotion of "seeking relatives to save the child" insisted on by the mainstream of the society, and also infringes on the social cognition to a considerable extent. Therefore, it is necessary to make a more severe evaluation of this crime, so as to ensure the timely and front-loading of the crime as much as possible, and to prevent the subsequent "fruits of the poisonous tree" from taking root and sprouting, or even flourishing.

People's awareness of human rights continues to increase, not only for themselves, but also for others in the situation of abuse will also form a more serious supportive debate, coupled with the Internet on the topic of women's rights and the protection of minors continue to "hot", the social interaction process in the new media environment will lead to the existence of a psychological group or public opinion group form of polarization of social public opinion. Polarization of public opinion in the form of psychological groups or opinion groups. The overall social assessment of the illegality of the sale is also increasing. There are many issues that have not been deeply thought about in the past, and many potential harms have not received much attention, such as the increasing attention paid to victim's mental damage in recent years, while the previous superficial perception of victim's damage only has been gradually discarded. The case in the social discussion in the rapid fermentation, filled with different views of the cognition of all parties in the "tear" in people's value judgment, which is undoubtedly the social order, people's value of emotional aggravation of the damage, put in view of the rule of law, the construction of human rights perspective, the damage caused by it needless to say. Therefore, the social harm of a crime should be considered from a comprehensive point of view, and its harm is not set in stone since the date of the legal provisions, the law should be aggravated by the social harm of criminal behavior and new social expectations to respond.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

5.Conclusions

The life of the law lies in the implementation of the doctrinal debate can not delay the fight against crime. From the judicial level, it is necessary to strengthen the punishment for the crime of buying, and use the existing relevant provisions in the criminal law. In the existing conditions, should strictly implement the existing legal provisions and the criminal law expressly stipulates the provisions of several crimes and punishments, with the existing legal provisions as the basis for strict crime fighting. Clarify the crime of infringement of legal interests and social harm of aggravation, for the crime of aggravation of punishment to provide the jurisprudence of connotation. Similarly, the educational value of the law should not be overlooked, and the legal concept of "non-trafficking in human beings" constructed on this basis will take on the role of social education, gradually reducing or even eliminating trafficking in human beings by osmosis, so that women and children will be free from the threat of and infringement by trafficking.

References

[1] Chan, K. L. . (2019). Problems and way out of the theory of legal interests. Law ,2019(11), 3-17.

[2]Liu, Yanhong. (2023). The development direction of China's criminal law: safety criminal law or freedom criminal law. Politics and Law Forum, 41(02), 60-72.

[3] Zhang Yong. (2022). Criminal responsibility for the crime of buying abducted women or children under the perspective of human dignity. Human Rights, 2022 (05), 87-107. doi:10.16696/j.cnki.11-4090/d.2022.05.005.

[4] Wang, Zuofu. (2013). Study on the practice of criminal law subsection (in Chinese) ,5th ed., Beijing: China Fangzheng Press.

[5] Qu Xinjiu. (2016). Criminal law ,5th ed., Beijing: China University of Political Science and Law Press.

[6] Zhang Y. (2022). Criminal responsibility for the crime of buying abducted women or children under the perspective of human dignity. Human Rights, 2022 (05), 87-107. doi:10.16696/j.cnki.11-4090/d.2022.05.005.

[7] Gao, Mingxuan. & Ma Kechang. (2017). Criminal law ,8th ed., Beijing: Peking University Press.

[8] Zhang, Mingkai. (2021). The preliminary study of legal interests (First volume) ,Updated edition, Beijing: The Commercial Press.

[9] Xia Qianfang, & Yuan Yongtao. (2017). From group polarization to public polarization:The way forward and turn of polarization research. Journalism and Communication Research, 24(06), 5-32+126.

[10] Lao, Dongyan. (2022). The protection of legal benefits and unlawful nature of the crime of buying and selling human beings--Based on the examination of the legislative theory of the crime of buying abducted women . Journal of the National Prosecutor's College, 30 (04), 54-73.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)