

The Crime of Child Abduction between Its Forms and Elements: An Analysis in Light of Law No. 20-15 on the Prevention of and Fight against Crimes of Abduction of Persons

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Abstract:

Given the seriousness of the crime of child abduction and its impact on children, families, and society as a whole, most legislations have sought to criminalize it and impose the most severe penalties capable of combating it or, at least, reducing its incidence. Algerian legislation is among those that have established several mechanisms and introduced a number of amendments, foremost among which is the amendment of the Penal Code and certain laws supplementing it. This demonstrates the provision of criminal protection for children as a vulnerable group within society. Furthermore, Law No. 20-15 on the Prevention of and Fight against Crimes of Abduction of Persons was enacted, providing for severe penalties and identifying the forms of this crime, namely: the crime of abducting a child without violence, threat, or deception, and the crime of abducting a child through the use of violence, threat, or enticement.

Keywords: child abduction crime, forms, material element, moral element, presumed element.

Introduction

Given the seriousness of the crime of abduction and its impact on the child, the family, and society as a whole, most legislations have sought to criminalize abduction and impose the most severe penalties capable of limiting its occurrence. However, their approaches in this regard differ¹. Some legislations tend to broaden the scope of criminalization by expanding the meaning of the act of abduction, whereas others limit themselves to narrowing the scope of this act. The differences in

¹ Fouzia Ayad, “Combating the Crime of Child Abduction under Algerian Legislation,” *Child Rights Laboratory Notebooks*, Vol. 13, No. 01, 2022, p. 02.

legislative approaches are attributable to the determination of the victim's age or sex, whether male or female².

Algerian legislation has paid particular attention to the phenomenon of child abduction, in view of the characteristics that distinguish children, including their physical weakness and limited mental capacities. Consequently, they lack the ability to defend themselves, which makes them easy prey³, on the one hand. On the other hand, this attention stems from the upward trend witnessed by this crime, which has shaken public opinion due to its association with other, more heinous crimes. It is also considered one of the crimes that violate children's rights to life, liberty, and security. It constitutes criminal conduct that, if it becomes widespread, may lead to destabilizing the stability of society and the State, particularly when it is associated with other crimes, such as organ trafficking, extortion, sexual exploitation, the employment of children in labor, terrorism, and organized crime⁴. This prompted the Algerian legislator to repeatedly amend the Penal Code and certain laws supplementing it, with the aim of providing criminal protection for children as a vulnerable group within society. Accordingly, it criminalized child abduction, beginning with the criminalization of abducting children without violence or threat pursuant to Article 326 of the Penal Code⁵. In addition to the offense of concealing a child following abduction pursuant to Article 329 of the Penal Code, the latter was amended in 2014⁶, introducing several legal provisions relating to the protection of children. It added Article 293 bis 01, which provides for the abduction of a child through violence and threat. This provision was subsequently expressly repealed and replaced by Article 28 of Law No. 20-15 on the Prevention of and Fight against Crimes of Abduction of Persons⁷.

It also criminalized the abduction of persons in general under Article 26 of the same law, regardless of age or sex. In contrast, it specifically and expressly provided for the crime of abducting a child through violence, threat, or deception, whereas the crime of abducting a child without violence, threat, or deception was subjected to the provisions of Article 26 of the aforementioned law, based

² Abdelatif Wali, *Legal Protection of Children's Rights: A Comparative Study of Algeria, Tunisia, and Morocco*, PhD dissertation in Law, Department of Public Law, University of Algiers 1, 2015, pp. 249–250.

³ Salima Benyettou, "The Crime of Child Abduction: Prevention and Combating Thereof in Accordance with Law No. 20-15 on the Prevention of and Fight against Crimes of Abduction of Persons," *Al-Ustadh Al-Bahith Journal of Legal and Political Studies*, Vol. 08, No. 02, December 2022, pp. 16–17.

⁴ Mohamed Salah Rouane, "The Crime of Execution and the Death Penalty: The Problematic Nature of the Heinousness of the Crime of Killing an Abducted Child and the Suspension of the Implementation of the Death Penalty under the Penal Code and International Human Rights Law," *Journal of Politics and Law Notebooks*, No. 16, Kasdi Merbah University, Ouargla, 2017, pp. 254–255.

⁵ Ordinance No. 66-156 of 8 June 1966, containing the Penal Code, Official Gazette No. 49, issued on 11 June 1966, as amended and supplemented.

⁶ Law No. 14-01 of 4 February 2015, amending and supplementing Ordinance No. 66-156 containing the Penal Code, Official Gazette No. 07, issued on 16 February 2014.

⁷ Dated 30 December 2020, relating to the prevention of and fight against crimes of abduction of persons, Official Gazette No. 81, issued on 30 December 2022. Article 1 thereof provides that: "This law aims to prevent and combat crimes of abduction of persons."

on the legal principle that the specific provision restricts the general provision. This was previously governed by Article 326 of the Penal Code. Although the repeal of this article was not explicit pursuant to Article 43 of Law No. 20-15⁸, legal reasoning requires that crimes involving the abduction of children be subject to a more severe penalty and classification than the abduction of adults. This is inferred from Article 26 of the aforementioned law, which classifies the crime as a felony punishable by more severe penalties than those provided for under Article 326 of the Penal Code. Therefore, the crime of abduction takes two forms.

In this regard, the following question arises: **What are the new provisions introduced by Law No. 20-15 with regard to the legal framework governing the forms and manifestations of this type of crime?**

To answer this question, this research paper is divided into two main sections:

Section One: The Form of the Crime of Abducting a Child without Violence, Threat, or Deception

The Algerian legislator provided in Article 26 of Law No. 20-15 that: “Any person who abducts a person within the meaning of Article 02 of this Law shall be punished by temporary imprisonment for a period of ten to twenty years and a fine ranging from DZD 1,000,000 to DZD 2,000,000.”

Upon examining the content of this provision, the following observations may be made:

1. The Algerian legislator has criminalized the abduction of persons in general, regardless of age or sex, meaning that the provision is general in nature and affords protection to both adults and minors.
2. The Algerian legislator has not distinguished between whether the victim is an adult or a minor, male or female.
3. Pursuant to this provision, the Algerian legislator has referred to the content of Article 02 of the same Law, which defines the acts constituting abduction as apprehension and detention without an order from the public authorities or without a legal order. It has also not specified the duration of the disappearance required for the crime of abduction to be established.
4. The Algerian legislator has not limited the punishment to a custodial sentence but has reinforced it with a financial penalty, given the serious nature of the crime⁹.

Given that the elements of a crime are the essential components upon which the existence of the crime depends, such that their absence results in the crime not being established in the first place,

⁸ It provides that: “An attempt to commit the misdemeanors stipulated in this Law shall be punishable by the penalties prescribed for the completed offense.”

⁹ Referring back to Article 02 of the aforementioned Law, we find that it provides: “This Law shall apply to acts of abducting, apprehending, imprisoning, or detaining persons without an order from the competent authorities and outside the cases in which the law permits or requires the apprehension of persons, which are referred to in this Law as ‘abduction crimes.’” In light of the wording of this provision, it can be inferred that the Algerian legislator has used the terms abduction, imprisonment, apprehension, and detention, all of which are terms and expressions indicating deprivation of liberty, despite the fact that they differ in terms of meaning, purpose, and criminalization.

and irrespective of doctrinal disagreements, the elements of a crime, in general, are threefold: the presumed element (first), the material element (second), and the moral element (third).

First: The Presumed Element

The legal element of a crime, in general, constitutes the effective embodiment of the principle of legality in criminal matters, as provided for in Article 1 of the Penal Code: “There shall be no crime, punishment, or security measure except by law.” It means that, in general, the establishment of a crime requires the existence of a legal provision criminalizing the act that the legislator considers likely to cause harm to an interest that the criminal legislator seeks to protect or to expose it to danger¹⁰.

Referring to the Penal Code, it becomes clear that the Algerian legislator criminalized child abduction in Section Four, entitled “Abduction of Minors and Failure to Deliver Them,” of Chapter Two, entitled “Felonies and Misdemeanors against the Family and Public Morality,” of Title Two, entitled “Felonies and Misdemeanors against Individuals,” pursuant to Article 326 of Ordinance No. 66-156 containing the Penal Code, as amended and supplemented by Law No. 06-23, which provides that: “Any person who abducts or removes a minor who has not completed eighteen years of age, without violence, threat, or deception, or attempts to do so, shall be punished by imprisonment for a term of one to five years and a fine ranging from DZD 20,000 to DZD 100,000.” The crime of abduction here constitutes a misdemeanor in view of the prescribed penalty. This misdemeanor is established whether the victim is male or female, as the legislator has not distinguished between the two sexes in terms of punishment. It is also established even if the abducted child accompanies the offender of his or her own free will, since the provision requires that the abduction be committed without violence, threat, or deception. This crime does not apply to the father or mother of the child victim pursuant to Article 328 of Law No. 06-23 amending the Penal Code¹¹.

The presumed element in the crime of abducting a child without violence, threat, or deception is the child victim. The legislator has extended its protection to every child who has not reached the age of 18, in accordance with the definition provided under the Child Protection Law¹², whether

¹⁰ Fouzia Ayad, op. cit., p. 03.

¹¹ It provides that: “The father, mother, or any other person who fails to deliver a minor, whose custody has been determined by a judgment enforceable on an expedited basis or by a final judgment, to the person entitled to claim custody of the minor shall be punished by imprisonment for a term of one month to one year and a fine ranging from DZD 20,000 to DZD 100,000. The same penalty shall apply to anyone who abducts the minor from the person entrusted with his or her custody or from the places where the minor has been placed, or removes the minor from such person or places, or induces another person to abduct or remove the minor, even if this occurs without deception or violence...”

¹² Law No. 15-12 of 15 July 2015, relating to child protection, Official Gazette No. 39, issued on 19 July 2015. This Law contains criminal provisions that criminalize and punish certain acts of which the child is the victim. Article 143 thereof refers, with regard to crimes of child abduction, to the Penal Code.

male or female. Furthermore, the abduction may be committed by an offender who is a relative of the victim or by a third party; however, the legislator has not distinguished between the two cases¹³.

Second: The Material Element

Before addressing the material element of the misdemeanor of abducting children without violence, threat, or deception, it should be noted that this misdemeanor requires the fulfillment of a condition relating to the victim, namely, that the victim be a minor who has not reached the age of 18, pursuant to Article 326 of the Penal Code. It is also based on three elements, namely: the criminal conduct, the criminal result, and the causal relationship between them.

Element of Criminal Conduct: This consists in removing the child from his or her environment, transferring him or her to another place, and detaining him or her therein with the aim of concealing the child from those who have the right to safeguard his or her person¹⁴. Thus, the criminal conduct is embodied in the act of abduction (first condition), which means abducting the child, removing him or her from the place where he or she is located, and transferring him or her to another place, whether the removal is from the environment in which the child lives or even from the place where he or she usually stays. However, removing a person from the place where he or she is located is not sufficient for the material element of the crime to be complete, even if it constitutes an act of execution; rather, it is also necessary to transfer the person to another place where he or she is concealed from his or her family, as was the case prior to the 2014 amendment¹⁵.

However, it should be noted that the Algerian legislator, in Article 26 of Law No. 20-15, did not require the distance between the places (the second condition) where the child is concealed. This means that abduction, apprehension, or detention is deemed to have occurred as soon as a neighbor takes his minor neighbor's child to his home, which is close to the victim's home, and conceals the child from his family. This requires the court to ascertain the place where the child victim was located and the place where the child became located following the abduction¹⁶.

It should be noted that no specific duration of concealment was provided, meaning that the period of absence or removal may range from one hour to one day or more. The Algerian legislator also did not require the removal to take place from places of residence or places of habitual presence;

¹³ Salima Benyettou, op. cit., p. 20.

¹⁴ For further details, see:

- Ahcene Bouskia, *The Compendium of Special Criminal Law*, Part One, 17th ed., Houma Publishing House, 2007, pp. 80–81.
- Salima Benyettou, op. cit., p. 39.
- Fouzia Ayad, op. cit., p. 04.

¹⁵ Kada Mahmoudi, "Criminal Procedures for Combating the Crime of Child Abduction," *Afaq Journal of Comparative Legal Studies*, No. 01, Saida University, 2016, pp. 16–04.

¹⁶ Aïgouli Ouled Rabah Safia, "The Crime of Child Abduction and Mechanisms for Combating It under Algerian Legislation," *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2018, p. 23.

rather, the child may be removed from his or her home, near the school, in a park, at a vocational training institute, or elsewhere¹⁷.

That the Abduction or Removal Be Committed without Violence, Threat, or Deception (Third Condition of the Criminal Conduct): The application of the penalty provided for in Article 326 of the Penal Code requires that the abduction or removal be committed without violence, threat, or deception. This means that the misdemeanor of abduction is established even where the victim accompanies the offender of his or her own free will. However, if it is established that the minor deliberately fled from home of his or her own accord, without any influence from the accused, the crime is not established in this case¹⁸. Nevertheless, the failure of the criminal result to occur for a reason beyond the offender's control does not exempt him or her from punishment; rather, the legislator has prescribed punishment in the event of an attempt¹⁹.

In general, this crime is established without the use of any means of threat, deception, or violence (the condition that the abduction be committed without violence, threat, or deception), meaning that it is committed with the consent of the child victim, as inferred by the trial judges from the facts of the case. It is well known that such consent is not legally recognized due to the minor's lack of legal capacity; rather, what is intended is to ascertain that the offender did not resort to threat, deception, or violence, on the one hand. On the other hand, this crime is considered a continuing offense, as it remains in existence as long as the victim has not returned to his or her family. Therefore, there must be a causal relationship between the act and the criminal result. The result is the effect arising from the criminal conduct, that is, the effect resulting from the act of abduction, namely the removal of the child, which constitutes an infringement of the child's right to freedom of choice and moved²⁰.

Third: The Moral Element

Prior to the 2014 amendment, the misdemeanor of child abduction without violence, threat, or deception was considered an intentional offense, requiring, for the establishment of its moral element, the presence of criminal intent in its two elements, namely knowledge and intent. This means that the offender must know that he or she is abducting and removing a child, and that his or her intent must be directed toward severing the child's connection with his or her family and relatives without the use of violence, threat, or deception²¹.

¹⁷ Salima Benyettou, op. cit., p. 21.

¹⁸ Fouzia Ayad, op. cit., p. 05.

¹⁹ An attempt to commit the misdemeanor of child abduction without violence, threat, or deception is punishable pursuant to Article 326 of the Penal Code, which provides: "Any person who abducts or removes a minor who has not completed eighteen years of age, without violence, threat, or deception, or attempts to do so, shall be punished..."

²⁰ Salima Benyettou, "Criminal Protection of the Child Victim in the Crime of Child Abduction: Concept and Mechanisms," *Research and Studies on the Phenomenon of Child Abduction in Algeria*, Academic Book Series of the Faculty of Humanities and Social Sciences, Mohamed Boudiaf University, M'Sila, Book Twelve, 2017, pp. 38–39.

²¹ Fouzia Ayad, op. cit., p. 06.

The crime of child abduction also requires the existence of a motive, which is a psychological force driving the will or the psychological incentive to satisfy certain needs, such as revenge or the gratification of desires. The abduction may also be committed for the purpose of sorcery, and other purposes²².

Section Two: The Form of the Crime of Abducting a Child through Violence, Threat, and Enticement

From the enactment of the Penal Code until its amendment pursuant to Law No. 14-01, the abduction of minors committed through the use of violence, threat, or deception was not regulated by the legislator under a specific provision; rather, it was subject to Article 293 bis 1²³ (meaning that, prior to the amendment of the Penal Code pursuant to Law No. 14-01, the crime of abduction was subject to the general provisions governing the crime of abduction), which was added to the Penal Code pursuant to Article 41 of Ordinance No. 75-47 amending and supplementing Ordinance No. 66-156²⁴. This provision did not distinguish between minors and adults.

With the enactment of Law No. 14-01 amending and supplementing the Penal Code, Article 5 of this Law amended Article 293 bis, removing the phrase “any person regardless of age.” It also introduced a fine that had not previously been provided for, and amended the amount of the penalty in the event that the abducted person was subjected to torture or in the event of his or her death. It thus came to provide: “Any person who abducts or attempts to abduct a person through violence, threat, or enticement...” What is noteworthy from the content of this provision is that the legislator removed the phrase “regardless of the age of the abducted person,” because the provision, prior to its amendment, afforded protection to all persons, including minors under the age of eighteen.

Article 293 bis 1 was also introduced pursuant to Article 6 of Law No. 14-01 amending and supplementing the Penal Code. Thus, the abduction of minors through violence, threat, or enticement became criminalized under a specific provision, and this crime was classified as a felony. The provision was subsequently repealed pursuant to Law No. 20-15 and replaced by Article 28 thereof, which provides: “Any person who abducts a child through violence, threat, enticement, or any other means shall be punished by life imprisonment.”

“The offender shall be subject to the penalty provided for in the first paragraph of Article 263 of the Penal Code if the abducted child is subjected to torture or physical violence, or if the motive for the abduction is the payment of a ransom or the execution of a condition or order, or if the abduction results in the death of the victim.”

²² Salima Benyettou, *op. cit.*, p. 10.

²³ It provides: “Any person who abducts or attempts to abduct a person, regardless of his or her age, by committing violence, threat, or deception in doing so shall be punished by temporary imprisonment for a period of ten to twenty years. The offender shall be punished by the death penalty if the abducted person is subjected to physical torture. If the motive for the abduction is the payment of a ransom, the offender shall also be punished by the death penalty.”

²⁴ Ordinance No. 75-47 of 17 June 1975, amending and supplementing Ordinance No. 66-156 containing the Penal Code, Official Gazette No. 53, issued on 4 July 1975.

Upon examining these legal provisions, we shall study the elements of the crime of abducting a child through violence, threat, or enticement. This crime, likewise, is based on three elements: the presumed element (first), the material element (second), and the moral element (third).

First: The Presumed Element

The presumed element is represented by the age of the victim, as the legislator merely used the term “child,” which, pursuant to Article 02 of Law No. 15-12 relating to child protection, refers to any person who has not reached the age of eighteen, whether male or female²⁵.

Second: The Material Element

The material element in the crime of abducting a child through violence, threat, or enticement does not differ from the crime of abducting a child without violence, threat, or deception, except with regard to the means used. The substance of the criminal conduct is the same in both crimes, revolving around removing a child from his or her environment, removing the child from the place where he or she was located, transferring the child to another place, or concealing the child from those who have the right to safeguard his or her person²⁶.

The material element of this crime is established only through reliance on three elements or means, namely: the element of threat, the element of violence, or enticement. **What is meant by these means? Is the use of only one of them sufficient? And are these elements mentioned by way of example or exhaustively?**²⁷

1. **Element of Violence:** It is defined as a coercive or forceful act that eliminates the victim’s resistance, or substantially and clearly diminishes it, provided that it is sufficient to complete the abduction²⁸.
2. **Element of Threat:** It is defined as moral coercion, psychological coercion, or violence, the purpose of which is to instill fear in the victim by exerting pressure on his or her psychological state, thereby limiting his or her freedom of choice and will²⁹.

It should be noted that the threat may be directed against the child victim in respect of his or her person, property, or honor, or against a person dear to him or her, such as his or her sister or mother, such as by disclosing a secret concerning the victim that could subject him or her to a major scandal affecting the victim and his or her family in society. An example of this would be threatening a girl to publish compromising photographs on social media pages, and so forth³⁰.

3. **Element of Enticement:** It is defined as the use by the abductor of persuasive means based on lying, deception, and fraud, with the aim of deceiving the child victim and inducing him

²⁵ It provides: “For the purposes of this Law, the following terms shall mean:

- **Child:** any person who has not reached the full age of eighteen (18) years.....”

²⁶ Ali Rashid Abu Hajilah, *Criminal Protection of Honor*, Dar Al-Thaqafa, Jordan, 2011, p. 259.

²⁷ Salima Benyettou, op. cit., p. 23.

²⁸ Salima Benyettou, op. cit., p. 24.

²⁹ Aïgouli Ouled Rabah Safia, op. cit., p. 25.

³⁰ Abdelaziz Saad, *Crimes against the Family System*, 2nd ed., National Office of University Publications, Algeria, 2002, pp. 38–40.

or her to follow the abductor easily, without resistance, to the place desired by the abductor and without arousing any suspicion as to the sincerity of his or her intentions³¹.

It should be noted that the mention of these means is by way of example and not limitation. This can be inferred from the wording of Article 25 of Law No. 20-15, which provides: “through violence, threat, enticement, or any other means.” The Algerian legislator has therefore left the door open for the introduction or inclusion of any means falling within this concept. The legislator’s approach may be explained by technological development, which may, in the future, place us before other means to be added to violence, threat, and enticement. Furthermore, an attempt to commit the felony of child abduction through violence, threat, or enticement is punishable by the penalty prescribed for the felony, as provided for in Article 43 of Law No. 20-15.

Third: The Moral Element

The moral element in the crime of abducting a child through violence, threat, or enticement is embodied in general criminal intent, which is manifested through the acts committed by the offender, with knowledge of the unlawfulness of the criminal conduct and of the means used therein, namely threat, violence, and deception. Nevertheless, his or her will is directed toward removing the child victim from the place where he or she is located to another place. In addition to this, there is the motive that prompted the offender to commit the crime, whether for the purpose of selling the child, selling his or her organs, demanding a ransom, or other purposes³².

Conclusion

Through this research paper, we reached a number of findings, the most important of which are as follows:

- The crime of child abduction is one of the crimes that has witnessed an upward trend in Algeria, particularly in recent times. It is considered one of the most serious crimes because it targets the vulnerable group in society, namely children, who are naturally characterized by physical weakness and limited mental capacities and, consequently, are unable to defend themselves. This necessitates effective criminal protection for them, particularly by the Algerian legislator, especially since this crime may be accompanied by and associated with their torture, sexual assault, and even murder and trafficking in their organs, as well as other heinous crimes that have affected an innocent segment of society.
- The Algerian legislator has established the legal framework governing the crime of child abduction and has sought to provide effective criminal protection through successive amendments to the legal provisions relating to this crime, culminating in the enactment of a law specifically addressing the prevention of and fight against crimes of abduction of persons, by establishing and strengthening mechanisms and means for combating this

³¹ Aïgouli Ouled Rabah Safia, op. cit., p. 25.

³² Salima Benyettou, op. cit., p. 26.

crime through an important mechanism, namely prevention, and has addressed the issue of providing renewed care for victims.

- The Algerian legislator criminalized the abduction of children without violence, threat, or deception and classified it as a misdemeanor, prescribing penalties for it under the provisions of Article 326 of the Penal Code. It is also classified, within the meaning of Article 26 of Law No. 20-15, as a felony when the crime of abducting a person, whether an adult or a minor, is committed, whereas the crime of abducting children through violence, threat, or deception was classified as a felony pursuant to Article 28 of Law No. 20-15.

In light of these findings, we make the following recommendation: the Algerian legislator should incorporate the crime of abducting children without violence, threat, or enticement into Law No. 20-15 relating to the prevention of and fight against crimes of abduction of persons, particularly given the contradiction between the provisions of Article 326 of the Penal Code, which classifies the crime as a misdemeanor, and Article 26 of Law No. 20-15, which classifies the crime of abducting children, whether adults or minors, as a felony. Since legal reasoning requires that the penalty be aggravated when the victim is a child, the Algerian legislator should intervene by expressly repealing Article 326 of the Penal Code and incorporating it, in an amended form, into Law No. 20-15.