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## Category of “Threat” in the Theory and Practice of Penal Law

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### Abstract

*Introduction:* the article analyzes the content of the interdisciplinary category of “threat”, which is an integral element of the methodology of criminal law sciences. Understanding the complexity of developing a definition of this evaluative concept, we believe that its lack will affect the effectiveness of law enforcement and law-making activities. *Purpose:* based on the study of norms of the Penal Code of the Russian Federation containing the term of “threat”, used in that interpretation, to develop proposals and recommendations for boosting effectiveness of penal legislation and practice of its application and to define the concept of “threat” in penal law. *Methods:* a set of general scientific (analysis, synthesis, induction, etc.), private scientific and special methods (formal legal, comparative legal, statistical). *Results:* the study of the legal category of “threat” in the field of the execution of criminal penalties makes it possible to roughly group threats into the following types: a) threat to life and health in connection with the illness of a close relative of the convicted person; b) threat against convicts from other convicts, staff and other persons; c) threats that are created directly by the convicted; d) threats during the introduction of a regime of special conditions. The objects of influence of threats and sources (subjects) of threats in the penal system are identified. It is noted that the category of “threat” manifests itself in such social reality as penitentiary crime. *Conclusions:* it is proposed to limit the law enforcement discretion in ensuring the right to personal safety of convicts held in a special regime correctional facility intended to serve a sentence of imprisonment. The author defines concepts of “threat” in penal law and “penitentiary crime”, as well as in the light of recent amendments made to Article 85 of the Penal Code of the Russian Federation describes concepts of “quarantine” and “real threat of an armed attack on a correctional facility” as new grounds for introducing a regime of special conditions in a correctional institution.

**Keywords:** category of “threat”; penitentiary crime; objects of threats; subjects of threats; classification of types of threats.

5.1.4. Criminal law sciences.

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### Introduction

Undoubtedly, the functioning of the system of execution of criminal penalties, covering

about 1 million 300 people in total (as of May 1, 2024), including those sentenced to criminal penalties associated with isolation from soci-

ety and without it, as well as the staffing of the Federal Penitentiary Service of Russia, is associated with the presence of risks (including corruption), dangers (including religious radicalization), and threats of a subjective and objective nature. In legal terminology, a threat is generally interpreted as an intention expressed in any form to cause harm to any person or public interests. According to L.B. Smirnov, in order to ensure the state of security of the penal system, it is important to achieve a balance between the security of institutions of this system and the degree of possible threats [1, p. 327]. This study will focus on types of threats regulated by norms of the Penal Code of the Russian Federation.

As a rule, each science uses a unique set of fundamental categories that form the methodological foundation of the relevant field of knowledge. These key categories set initial parameters for the theoretical structure of a given science, serving as guidelines that ensure scientific search and development of research methods [2].

Although the concept of threats does not belong to basic concepts of philosophy, it occupies a key position in the field of national security studies. In the context of the National Security Strategy of Russia, approved by the Decree of the President of the Russian Federation No. 400 of July 2, 2021, threat is defined as a set of circumstances and elements that can directly or indirectly harm the state interests. At the same time, the national interests of the Russian Federation cover vital aspects of the well-being of the individual, the stability of society and sovereignty of the state, as well as their safe and dynamic development.

The term of “threat” in the context of the national security theory, due to its universality and versatility, is reflected in legislation, especially in criminal law. However, despite its widespread use, the Criminal Code does not provide a clear definition of “threat”.

In Russian criminal law, the concept of “threat” is applied with various legal nuances. In the Criminal Code of the Russian Federation, this term is explicitly present in the headings of only two articles: Article 119 (threat of murder or serious harm to health) and Article 296 (crimes related to threats and violence in the context of judicial proceedings and preliminary investigation). However, as a criterion for evalu-

ating actions, this term is reflected in the text of over fifty articles of the Criminal Code of the Russian Federation, for example, articles 126, 127.1, 127.2, 131–133, 211, 247, 286, 318, 321 and others. This indicates that threat performs the function of a criminal legal category, taking different forms depending on the context: it can act as a way of committing a crime, characterize features of a criminal act or serve as a circumstance aggravating liability.

In the field of the execution of criminal penalties, the category of “threat” finds its expression in such a social phenomenon as penitentiary crime, which poses a threat to penitentiary security in particular and the national security of the state as a whole, as well as in the mechanism for ensuring the rights, freedoms and legitimate interests of the parties to penal law relations.

Penitentiary crime is a set of crimes committed by subjects and participants of legal relations in penitentiary institutions, executing punishments requiring isolation from society for life or for a certain period, as well as not involving isolation, such as forced labor.

In the Penal Code of Russia, the word “threat” in different interpretations is present in eight articles, namely in parts 1, 2 of Article 13, Article 50, Part 12 and 2.1 of Article 85, Part 1 of Article 97, Part 1 of Article 116, Part 1 of Article 127, Part 1 of Article 162 and Part 2 of Article 60.18.

Considering that threats in the field of the execution of criminal penalties may concern the penal system directly and indirectly, have different objects and subjects (subjects ensuring security in the penal system and subjects – sources of threats), we classify these threats into the following types: 1) threat to life and health due to the illness of a close relative of the convicted person; 2) threat against convicts from other convicts, staff and other persons; 3) threats posed by convicts themselves; 4) threats during the introduction of a special conditions regime.

#### *Research*

Threat to life and health due to the illness of a close relative of the convicted person.

The presence of a serious illness in a family member of a convicted person is the basis for the application of humanistic principles in the system of execution of sentences, thereby allowing to expand the rights of convicts while

serving their sentence. Although the critical state of health of a relative is not a direct threat to the safety of the institution executing the punishment, but the refusal to provide an opportunity to meet with him/her can directly affect the situation in places of detention, provoke discontent and destabilization, which indirectly affects the security of the institution.

Threat to life of a close relative of a convicted person, according to the Penal Code of the Russian Federation, is a special case and is considered as an exceptional personal circumstance that may give the convicted person the opportunity to leave the territory of a correctional facility with certain conditions.

In exceptional personal circumstances, persons serving restriction of liberty may obtain permission from the criminal executive inspection to temporarily leave borders of their municipality in accordance with paragraph "a" of Part 4 of Article 50 of the Penal Code of the Russian Federation. Under similar conditions, persons sentenced to imprisonment may be given the opportunity to make short-term trips for up to one week, while travel time is not taken into account (paragraph "a" of Part 1 of Article 97 of the Penal Code of the Russian Federation). In this context, the possibility of departure for convicts is not an unconditional right, but rather a legitimate interest, the responsibility of the institution's administration for providing such an opportunity remains in question and is implemented at its discretion. In the same way, in specific personal situations, military personnel serving sentences in disciplinary military units may be allowed to travel outside their borders for up to seven days, excluding the time required to travel there and back (Article 162 of the Penal Code of the Russian Federation).

The natural character of the threat to life and health of a close relative of a convicted person due to a disease is expressed in an objective danger that has a universal nature and capacities to arise in any individual suffering from any disease. The source of such a threat is human disease.

So, in some cases, a life-threatening illness of a close relative of a convicted person may indirectly concern the safety of the functioning of correctional facilities if the administration unreasonably exceeds discretion limits fixed in the Penal Code of the Russian Federation by

prohibiting the convicted person from visiting a seriously ill relative.

Threats against convicts from other convicts, employees and other persons.

Threats against convicts described in the Penal Code of the Russian Federation include threats to personal safety of persons sentenced to serving sentences in the form of forced labor, arrest or urgent imprisonment (Part 2 of Article 13 of the Penal Code of the Russian Federation), as well as life imprisonment (Part 1 of Article 127 of the Penal Code of the Russian Federation).

Guaranteeing the personal safety of convicts includes a legally established right to protect their life and health while serving their sentence. In the event of a threat, responsible employees are instructed to take necessary measures to ensure the safety of the convicted person, including his/her transfer to conditions that exclude risks to life or health, as well as performing other actions to neutralize such threats [3, p. 72].

The object of threats in various institutions, including correctional centers, correctional institutions, detention houses, special regime correctional facilities for life convicts, are the rights, freedoms and legitimate interests of persons serving sentences in these institutions.

The subjects posing a security threat may be employees of correctional facilities, convicts, as well as other persons. Most offenses, as noted by V.V. Bochkarev, are committed by those arrested and convicted, but a small number of committed offenses are committed by other persons and staff, which increases possible threats to the penal system [4, p. 25].

In the first half of 2024, 139 applications were sent to the Federal Penitentiary Service of Russia from convicts and their family members for transfer in order to protect personal safety (same period of the previous year – 195) [5].

In this context, attention should be paid to the specifics of the procedure for exercising the right of convicts to personal safety. If there is a threat to personal safety, those sentenced to forced labor, arrest or imprisonment are entitled to apply to any official with a request to ensure personal safety, who is obliged to immediately take all necessary measures to guarantee this safety.

When there is a threat to the personal safety of a person serving a life sentence, they can

also file an appeal to the management of the correctional facility with a request for protection. However, the possible transfer to solitary confinement depends solely on the decision of the head of an institution. According to Part 1 of Article 127 of the Penal Code of the Russian Federation, those sentenced to life imprisonment do not formally have a direct right, but only a legitimate interest in ensuring personal safety, the execution of which is not mandatory for the administration of the institution, leaving it the right to make an appropriate decision at its own discretion.

We are convinced that the use of subjective law enforcement in this situation is unacceptable. Convicts serving a life sentence should have a guaranteed right to personal safety in accordance with Article 127 of the Penal Code of the Russian Federation, taking into account the risks associated with the possibility of committing murder in a small cell and the fact that the killer will actually go unpunished. However, practice demonstrates disregard for this aspect on the part of convicts serving life imprisonment. An example is the decision of the Torbeev District Court of the Republic of Mordovia of March 5, 2020, where D.A. Il'osov, sentenced to life imprisonment, was found guilty of murdering a cellmate and sentenced to 14 years in prison in the same correctional facility [6].

Threats created by convicts themselves.

According to the Penal Code of the Russian Federation, threats posed by convicts, are also divided into two types. First, the category of "threat" appears in Part 3 of Article 116 of the Penal Code of the Russian Federation "Malicious Violation of the Established Procedure for Serving Sentences by Persons Sentenced to Imprisonment" and, second, in Part 2 of Article 60.18 "Supervision over Persons Sentenced to Forced Labor and Measures to Prevent Violations of the Order and Conditions of Serving Forced Labor".

Thus, the legislation qualifies threats made by convicts without elements of committing a crime as a gross violation of the order of serving a sentence. According to V.A. Utkin, in the first half of 2021, 276,972 cases of regime violations were registered in correctional institutions, of which 9 thousand were recognized as malicious. Most of them are related to the manufacture, storage or shipment of prohibited items

(4,163), followed by repeated violations committed during the year (2,921) and refusals from work (1,005). In addition, a significant volume (719) consists of cases of threats or disobedience to officials, as well as their insults without evidence of a criminal act [7].

We back the point of view of R.Z. Useev that the current penal legislation lacks interpretation of fundamental terms and categories, except for definitions given in articles 9, 82 of the Penal Code of the Russian Federation [8, p. 118].

The essence of threat in the absence of elements of a criminal act is discussable. Considering that threat, according to Part 1 of Article 116 of the Penal Code of the Russian Federation, is not qualified as a criminal offense similar to those stipulated in articles 119, 321 of the Criminal Code of the Russian Federation, the question arises about the nature of threat as a violation of disciplinary procedure in the penitentiary context. What threats do not entail criminal liability and fall under disciplinary responsibility in the penitentiary system? A.A. Krashennnikov points out that there are articles in the Criminal Code of the Russian Federation providing for liability for actions that pose public danger, including threats (up to eighty different compositions in total) [9, p. 44]; however, the code does not contain an unambiguous definition of the concept of "threat". Similarly, the Penal Code of the Russian Federation does not contain clear legislative definitions covering "threat" as a serious violation of the regime of serving a sentence by persons sentenced to imprisonment.

In order to prevent subjectivity in the application of laws, reduce the corruption factor, as well as to improve the quality of laws and their effectiveness in the field of penal legislation, it is extremely important to introduce the terminology that is characterized by clarity of definitions, depth of meaning, accessibility to understanding and conciseness of presentation.

From our point of view, taking into account the danger to law and order in the penal system, it is advisable to exclude the category of "threat" from the number of malicious violations of the regime and transfer it to the rank of a criminally punishable crime if there is an evidence base. This conclusion correlates with the opinion of V.S. Epaneshnikov, who argues that threats against employees of penitentiary institutions should be qualified as criminal offenses [10, p. 336].

The category of “threat” is also used in the execution of punishments that do not involve isolation, such as forced labor.

In accordance with the functions of control and supervision, the administration of a correctional center, by its decision, may place in a safe room for short-term detention for a period of 24 hours a person sentenced to forced labor who poses a threat to the life or health of others or him/herself. In this case, the threat is specified; Part 2 of Article 60.18 of the Penal Code of the Russian Federation fixes a criminally punishable threat provided for in Part 1 of Article 109 of the Criminal Code of the Russian Federation.

The objects of threats posed by convicts in correctional facilities and correctional centers are the procedure for the execution and serving of sentences in the form of imprisonment and forced labor, as well as the rights, freedoms and legitimate interests of convicts, staff and other persons. The subjects of threats are only those sentenced to imprisonment and forced labor.

Threats during the introduction of the special conditions regime.

There are threats that arise during the establishment of the special conditions regime in correctional facilities.

The special conditions regime is a unique legal regime for correctional institutions responsible for the execution of criminal penalties, which adapts standard norms of penal law concerning the status of subjects and participants in these legal relations. This includes modification of the process and conditions of the execution of punishments [11].

The occurrence of special events both around the territory and within the correctional institution itself serves as the basis for introducing the special conditions regime. According to Paragraph 1 of Article 85 of the Penal Code of the Russian Federation, the introduction of emergency circumstances, including emergency or martial law, high alert, emergencies or quarantine in a limited territory of the Russian Federation, entails the possibility of implementing this regime in correctional facilities located in these areas. Such measures can also be applied during hostage-taking, mass riots or group disorderly conduct, as well as because of possible attacks on the object.

In the updated version of Article 85 of the Penal Code of the Russian Federation, the term of “threat” is used in Part 1. It specifies two types

of threats during the introduction of the special conditions regime: external and internal. With the introduction of additions and amendments to Article 85 of the Penal Code of the Russian Federation, the type of external and internal threats has increased.

Currently, external threats include threats related to the imposition of a state of emergency or martial law. For example, martial law is imposed in the event of an immediate threat of aggression, and a state of emergency is imposed to protect against an external or internal threat and maintain public order.

This group also includes a high alert regime, which is a set of measures carried out by emergency services and responsible persons in accordance with legally established powers, aimed at reducing and eliminating the threat of an emergency and minimizing possible negative consequences.

According to the Federal Law No. 68-FZ of December 21, 1994 (as amended of December 8, 2020) “On the Protection of the Population and Territories from Natural and Man-Made Emergencies”, emergencies are characterized as conditions in a certain area caused by an accident, a terrible natural event, a catastrophe, an epidemic of diseases with a high risk to the population, a flood, an earthquake or other disaster. Such situations lead or may lead to the loss of life, harm to public health and the ecosystem, significant economic losses and disruptions in the normal functioning of society.

However, the emergency regime introduction can also be classified as internal threats, that is, taking place in institutions of the penal system (for example, epidemics of infectious diseases that threaten public health).

Among the circumstances in which a regime of special conditions may be declared are quarantine restrictions in correctional institutions located in certain areas. According to the Federal Law “On Sanitary and Epidemiological Welfare of the Population” No. 52-FZ of March 30, 1999, quarantine is established at checkpoints of the state border of the Russian Federation, within the country, on the territories of certain regions, municipalities, as well as in institutions and enterprises of various fields of activity at the threat of the appearance and spread of infectious diseases.

It should be noted that the introduction of quarantine can also be attributed to the num-

ber of internal threats, because Part 1 of Article 85 of the Penal Code of the Russian Federation emphasizes that the special conditions regime can be installed when restrictive measures (quarantine) are introduced within a correctional institution. In addition, quarantine, as it seems to us, is not an element of the concept of "emergency", since it is established in the event of the occurrence and spread of infectious diseases. It is also impossible to identify terms "quarantine department" (Part 2 of Article 79 of the Penal Code of the Russian Federation) and "quarantine" (Part 1, Part 2.1 of Article 85 of the Penal Code of the Russian Federation). Quarantine is a combination of administrative restrictive and regime anti-epidemic measures aimed at breaking the mechanism for transmission of infections, established for a period of up to 40 days or more. A quarantine department is a residential building where a complex of organizational, technical, psychological, pedagogical, preventive and health measures aimed at adapting convicts in a correctional institution for the period of serving their sentence is carried out for 15 days.

Internal threats under Part 1, Part 2.1 of Article 85 of the Penal Code of the Russian Federation include penitentiary threats: hostage-taking, mass riots or group disobedience.

An additional reason for establishing the special conditions regime in a correctional institution is the statement of a real threat accompanied by the use of weapons at the facilities of the Federal Penitentiary Service of Russia. We believe external threats to be the basis for introducing the special conditions regime.

The threat of an armed raid on a correctional facility can only come from the outside. All kinds of attacks on convicts, employees and other persons committed inside the correctional institution, pogroms, arson, destruction and damage to property are classified as mass riots.

The grounds for applying the special conditions regime (Article 85 of the Penal Code of the Russian Federation) are inextricably linked with the concepts of a real threat and an immediate threat, which, despite the variability of wording in the text of the article, are inherently synonymous. The real threat of an armed attack on a correctional facility is understood not just as a potential danger that may manifest itself in the

long term, but as a threat that already exists or is expected in the immediate future.

Taking into account the above, it should be emphasized that the implementation of an expanded list of criteria for the application of special conditions in a correctional institution is not aimed at narrowing the content and scope of the rights, freedoms and legitimate interests of convicts, but at their permissible and temporary restriction for socially significant purposes and strengthening legal guarantees for the rights and freedoms of convicts, staff and other persons during the period of operation of the penitentiary legal regime.

In accordance with Russian legislation, the authority to introduce the special conditions regime for a period of up to one month belongs to the Director of the Federal Penitentiary Service or the head of the territorial department of the regional penitentiary system. This action requires coordination with the Prosecutor General of the Russian Federation or the local prosecutor. However, the head of a correctional institution is not entitled to it. However, in the event of a direct danger to the life or health of convicts, employees of the institution or other persons, he may, on his own initiative, impose temporary restrictions specified in Part 2 of Article 85 of the Penal Code of the Russian Federation, and must immediately notify the authorized person, who within three days after receiving the relevant notification must either approve the introduction of the special conditions regime, or cancel previously applied measures, according to Part 4 of Article 85 of the Penal Code of the Russian Federation.

The object of threats during the introduction of the special conditions regime is the legal status of convicts, staff and other persons, as well as public safety and public order. The subjects of threats during the specified period may be convicts, staff and other persons located both on the territory of the correctional institution and outside it. As already noted, natural disasters and the introduction of special legal regimes in the area of the correctional facility can be a source of threats directly or indirectly.

#### *Conclusion*

The threat categorization system developed by us and the built-up classification model of the types of threats existing in the penal system

allow us to define the concept of “threat” as follows: a threat in penal law is a set of circumstances, factors and conditions of an objective and subjective nature that create a direct or indirect possibility of the violation of rights in the field of execution of criminal penalties, freedoms and legitimate interests of subjects and participants in penal relations.

An integral feature of any legal science is its explicit connection with law-making, law enforcement and legal realization activities. The legal doctrine and legal practice are insepara-

ble. The practice of execution of punishments currently cannot be effectively formed and developed without knowledge of the provisions, conclusions and recommendations of penitentiary science. Taking into account the above, we believe that the category of “threat” as an element of malicious violation of the established procedure for serving sentences by persons sentenced to imprisonment should be excluded from Part 1 of Article 116 of the Penal Code of the Russian Federation and transferred to the “rank” of a crime.

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