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SCOPE OF THE CONCEPT OF A CRIMINAL THREAT IN ACCORDANCE WITH ARTICLE 115 § 12 OF THE CRIMINAL CODE

In the legal-criminal aspect, a threat is undoubtedly of special importance. The concept of a criminal threat (included in the three successive Polish Criminal Codes: Article 91 § 4 of the Criminal Code of 1932, Article 120 § 10 of the Criminal Code of 1969 and Article 115 § 12 of the Criminal Code of 1997) has not changed substantially. In accordance with Article 115 § 12 of the Criminal Code in force, a criminal threat is a threat to commit a crime (a punishable threat) as well as a threat to undertake steps to initiate a criminal proceeding or dissemination of information that affronts the veneration of a person or his close relation. The term was broadened in the Criminal Code of 1969 by adding a clause (existing also in the Criminal Code of 1997) in accordance with which "an announcement of an intent to undertake legal steps in order to protect the rights violated by crime".

Thus, it is clear that a criminal threat contains three different types of threat:

a) a punishable threat (in accordance with Article 190 § 1 of the Criminal Code),
b) a threat to undertake steps to initiate criminal proceeding,
c) a threat to disseminate information affronting the veneration of a person or his close relation.

Re. (a): A punishable threat is of particular importance within the criminal threat category. It is mentioned in Article 115 § 12 of the Criminal Code at the top of other types of threat and constitutes a crime on its own against the liberty defined in Chapter XXIII of the Criminal Code[1]. Other types of criminal threat are the perpetrator's modus operandi aimed at achieving a particular objective.

[1] Article 190 § 1: "Who threatens another person to commit a crime to harm him or his close relation, if the threat raises the threatened persons justified fear that it will be carried out, is subject to punishment in the form of fine, limitation of liberty or imprisonment for up to two years."

A threat is against a person's legal peace, i.e. awareness of safety one has being protected by law. The subject to protection is, as it is often emphasised in the doctrine, a victim's subjective feeling of liberty that is limited by the fear that some unpleasant events included in the perpetrator's threats will come true[2]. Z. Papierkowski wrote that it is an activity petrifying the sphere of individual liberty[3]. W. Świda, on the other hand, stated that: "The protected good (…) is the feeling of liberty, a freedom from concern and fear"[4] and O. Chybiński discussed it in a bit broader way stating that it is a freedom from threats, i.e. an individual's feeling of safety free of a concern that a crime will be committed to harm him or his relation[5]. A similar opinion can be found in the more modern doctrine of criminal law where it is unanimously assumed that the subject to legal-criminal protection against a punishable threat is a man's freedom in psychological sense, a freedom from concern, fear resulting from an announcement that a crime will be committed to harm the threatened person or his close relation[6], or – as M. Filar states – "a freedom from the feeling of fear caused by other people's activities or a threat causing psychical discomfort and reducing his psychical life standard"[7]. It was also expressed in court rulings[8]. The subject to protection is

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[2] S. Glaser, *Polskie prawo karne w zarysie* [Polish Criminal Law – Outline], Kraków 1933, p. 333; L. Peiper, *Komentarz do kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających obie te ustawy* [Commentary on the Criminal Code, Law on Offences and Regulations on the Execution of the two Acts], Kraków 1936, p. 505; S. Glaser, A. Mogilnicki, *Kodeks karny. Komentarz; prawo o wykroczeniach, przepisy wprowadzające, tezy z orzeczeń Sądu Najwyższego, wyciągi z motywów ustawodawczych* [Criminal Code – Commentary; Law on Offences – Executive Regulations; Supreme Court Rulings Theses, Excerpts from Legislative Reasons], Kraków 1934, p. 802.

[3] See Z. Papierkowski, *Prawo karne (część szczególna)* [Criminal Law (Special Part)], z. I, Lublin 1947, s. 150.

[4] W. Świda [in:] *Kodeks karny z komentarzem*, I. Andrejew, W. Świda, W. Wolter (ed.), Warszawa 1973, p. 483; similarly I. Andrejew, *Polskie prawo karne w zarysie* [Polish Criminal Law – Outline], Warszawa 1976, p. 374 and D. Gajdus [in:] *Prawo karne. Zagadnienia teorii i praktyki* [Criminal Law – Theoretical and Practical Issues], A. Marek (ed.), Warszawa 1986, p. 343.

[5] See O. Chybiński [in:] *Prawo karne. Część szczególna* [Criminal Law (Special Issues)], O. Chybiński, W. Gutekunst, W. Świda (ed.), Wrocław–Warszawa 1980, p. 204; similarly J. Śliwowski, *Prawo karne* [Criminal Law], Warszawa 1979, p. 384.

[6] A. Marek, *Wolność jako przedmiot ochrony prawa karnego* [Liberty as Subject to Protection by Criminal Law] [in:] *Prawnokarne aspekty wolności* [Criminal Law – Liberty Aspects], M. Mozgawa (ed.), Zakamycze 2006, p. 26; J. Wojciechowski, *Kodeks karny. Komentarz. Orzecznictwo* [Criminal Code – Commentary – Rulings], Warszawa 2000, p. 359; R. Góral, *Kodeks karny. Praktyczny komentarz* [Criminal Code – Practical Commentary], Warszawa 2007, p. 321; J. Wojciechowska [in:] *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej, Rozdziały XXIII, XXIV, XXV i XXVII Kodeksu karnego. Komentarz* [Crime Against Liberty, Freedom of Thought and Religion, Sexual Orientation and Decency, Veneration and Bodily Inviolability – Chapters XXIII, XXIV, XXV and XXVII of the Criminal Code – Commentary], B. Kunicka-Michalska, J. Wojciechowska (ed.), Warszawa 2001, p. 33 and A. Zoll, *Kodeks karny, Część szczególna, Komentarz* [Criminal Code – Special Issues – Commentary], A. Zoll (ed.), volume II, Warszawa 2008, p. 509.

[7] See M. Filar, *Kodeks karny. Komentarz* [Criminal Code – Commentary], M. Filar (ed.), Warszawa 2008, pp. 790–791.

[8] See ruling of the Supreme Court of 9 December 2002, IV KKN 508/99, Lex No. 75496.

not a good that would be infringed if a threat were carried out[9]. On the other hand, in the decision of 15 February 2007, the Supreme Court pointed out that the level of threat to the feeling of a victim's safety must be assessed based on his behaviour[10].

The behaviour implementing the features of a crime of a punishable threat (Article 190 § 1 of the Criminal Code) consists in threatening another person that a crime will be committed to harm him or his close relation[11].

The feature of the verb expression "threatening that a crime will be committed" is within the definition of a criminal threat provided for in Article 115 § 12 of the Criminal Code. It contains an announcement of the commission of a crime, i.e. an announcement of the commission of a felony or a misdemeanour of harming the threatened person or his close relation. This scope of penalisation seems to be right. It would be purposeless to broaden the penalisation on a threat to commit an offence because it might cause the inclusion of a "not serious" threat into the scope of Article 190 § 1 of the Criminal Code, or narrowing it to a threat of specified crimes because the liberty of a man that a perpetrator infringes should be protected to the broadest possible extent.

A threat is an influence exerted on another person's psyche by announcing the evil that the threatened person will face from the threatening person or someone else whose behaviour the threatening person can influence. Usually, the evil is to happen to the threatened person in the event he refuses to comply with the threatening person's will but it is also possible that a threat is not connected with a demand but is intended to create the threatened person's feeling of fear that a threat will come true[12].

The subject to the executive activity provided for in Article 190 of the Criminal Code is a person who faces a threat[13] (and according to W. Świda, his psyche with regard to the feeling of safety)[14], but it does not have to be the same as the person on whom the threat is to be carried out but it has to be a close relation.

Persons against whom threats are made must be unambiguously defined although a threat does not have to be expressed in their presence. A threat does not have to be carried out straight away. It can be a future risk. For the existence

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[9] See ruling of the Appellate Court in Lublin of 30 January 2001 (II AKa 8/01), OSA 2001, No. 12, item 88.

[10] Decision of the Supreme Court of 15 February 2007 (IV KK 273/06), Prokuratura i Prawo 2007, No. 7–8, item 7, pp. 8–9.

[11] In accordance with Article 115 § 11 of the Criminal Code, a close relation is a spouse, an ascendand, a descendant, a sibling, a linear or collateral relative, a person that is in the relationship resulting from adoption and their spouse, and a cohabiting person.

[12] K. Nazar-Gutowska, *Groźba bezprawna w polskim prawie karnym* [Criminal Threat in Polish Criminal Law], Warszawa 2012, pp. 138–139.

[13] See S. Budziński, *O przestępstwach w szczególności. Wykład porównawczy z uwzględnieniem praw obowiązujących w Królestwie Polskim i Galicji Austriackiej* [On Crimes in Particular – A Comparative Lecture with Regard to Rights in the Kingdom of Poland and Austrian Galicia], Warszawa 1883, p. 44.

[14] See W. Świda, *Prawo karne* [Criminal Law], Warszawa 1978, p. 435.

of a crime, it is not necessary that a perpetrator undertakes any activities to carry out the threat or that he really intends to carry it out or has real opportunities to carry it out, neither is the fact why he makes a threat[15]. Only a subjective receipt of the threat by the threatened person is important, i.e. whether the threat really inflicted upon him a concern or the feeling of fear that it may be carried out[16].

Persons against whom a threat cannot be made are juridical persons because they are not able to feel the threat until its content includes a threat to natural persons representing a given juridical one[17].

The issue concerning the form that a threat may take is of key importance. It makes it possible to answer the question "In what way did the perpetrator threaten?" as well as it can have impact on the effectiveness of the threat or the penalty for the perpetrator. The form of a threat influences the quantity and the quality of the threatened person's feelings, which subsequently has impact on the level of fear experienced and the reduction of resistance[18].

It is possible to threaten, i.e. announce trouble, in many ways. The Criminal Code of 1997 that is in force in Poland (like the previous codes) does not introduce any limitations with regard to the form of a threat; what is important is that the threatened person understands he will face trouble. In the event of a punishable threat, he must realise that a crime will be committed to harm him or his close relation. The threat can be explicit or presumed. The form of a threat is sometimes determined by the event circumstances, especially personal features of the threatening and the threatened persons[19]. One cannot exclude a situational threat, i.e. one in which, in the light of circumstances, it is obvious that the perpetrator announces the future commission of a crime to harm the threatened person[20]. The perpetrator can threaten in a way that is not understandable for third parties but unambiguous for the addressee because of the situational context that is clear for the victim. Expressing a threat, a perpetrator can use various objects, e.g. a knife or even such an untypical thing as

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[15] K. Daszkiewicz-Paluszyńska, *Groźba w polskim prawie karnym* [Threat in Polish Criminal Law], Warszawa 1958, pp. 137–138; see also M. Filar [in:] *Kodeks karny, Komentarz* [Criminal Code – Commentary], O. Górniok (ed.), Warszawa 2006, p. 622.

[16] See ruling of the Supreme Court of 27 April 1990 (IV KR 69/90), Przegląd Sądowy 1993, No. 5, item 84.

[17] L. Peiper, Komentarz… [Commentary…], *op. cit.*, p. 506.

[18] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 121.

[19] Compare W. Makowski, *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austriackiego, niemieckiego i rosyjskiego, obowiązującego w Polsce* [Criminal Law – On Crimes in Particular – Comparative Lecture on Criminal Law in Austria, Germany, Russia and in Force in Poland], Warszawa 1924, p. 228.

[20] L. Peiper gave an example of waiting in front of a victim's place of residence in circumstances suggesting wrong intention; L. Peiper, *Komentarz…* [Commentary…], *op. cit.*, p. 505.

a car[21]. One can threaten with the use of spoken word[22] (expressed directly or via the means of communication, e.g. a mobile phone, or make threats which were recorded on electronic devices, e.g. CDs or DVDs), in writing (including short messages, e-mails, letters etc.), with gestures or any other behaviour that is clearly intended to be perceived as a threat to commit a crime. Thus, if the perpetrator's behaviour does not clearly show that he announces the commission of a crime or it is not evidently known who is going to be harmed, it cannot be assumed that there are features of a punishable threat[23].

In order to determine the scope of a punishable threat, it is essential to distinguish between a threat and a warning. It is highlighted in literature that the difference between a threat and a warning should be looked for in the different reason and aim of a threat and a warning. The reason for a threat is in general the perpetrator's hostile feeling while the reason for a warning is in general his benevolent feeling towards the addressee. A threat aim is to threaten another person while a warning is to protect the warned person against a danger facing them[24]. To distinguish between a threat and a warning, it is also important who is supposed to commit a crime that the warning concerns. It seems that the announcement of one's own crime should be usually treated as a threat. It would be difficult to assume that a person first announces that he is going to commit a crime that will harm another person and then wants to protect that person against this danger he himself is going to create[25].

The formulation of Article 190 of the Criminal Code does not provide that the person who expresses a threat and the person who is to carry the threat out must be the same. The threatening person and the perpetrator of a crime, however, must be linked in the sense that committing the announced crime depends on the threatening person, i.e. the threatening person must have influence on whether the announced crime is going to be committed or not[26]. According to A. Spotowski, informing another person that someone wants to kill him is not a punishable threat unless the information provider has influence on the behav-

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[21] Ruling of the Supreme Court of 3 April 2008 (IV KK 471/07), OSN 2008, No. 10, item 9; for more broadly see J. Kosonoga, Gloss on the ruling of the Supreme Court of 3 April 2008, IV KK 471/07, Wojskowy Przegląd Prawniczy 2010, No. 1, pp. 143–149.

[22] See M. Surkont, *Zniesławienie i znieważenie w polskim prawie karnym* [Defamation and Insult in Polish Criminal Law], Gdańsk 1982, p. 73 and *ibid*. *Treść i forma karalnego znieważenia* [Content and Form of Criminal Defamation], Palestra 1981, No. 6, pp. 66–74.

[23] A. Spotowski [in:] *System prawa karnego, O przestępstwach w szczególności* [System of Criminal Law – On Crimes in Particular], (ed.) I. Andrejew, L. Kubicki, J. Waszczyński, part II, volume IV, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1989, p. 30.

[24] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 131.

[25] A. Spotowski [in:] *System…* [System…], *op. cit.*, p. 31; compare also K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 132.

[26] See M. Filar [in:] *Kodeks…* [Criminal Code…], *op. cit.*, s. 791, and also K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 95.

iour of the third party. Even if the information provider wanted to cause the informed person's concern, such behaviour would not be a punishable threat[27].

One must distinguish between a situation in which a threatening person announces a commission of a crime by another person he is in agreement with and he can influence and a situation in which a threatening person addresses his announcement not directly to the threatened person but to another person who is to pass the announcement to the right addressee. This will be called an indirect threat. It is pointed out in literature that an "indirect" threat is a ground for criminal proceeding only in the event when there is a link of agreement between the threatening person and the person who passes the threat to the victim or when a perpetrator informing the third person about a threat at least predicted that the threat would be passed to the victim and gave consent to that[28].

We can also read about a problem connected with the determination of a difference between a threat expressed seriously to raise fear and limit the victim's freedom to make decisions and a threat that was not expressed seriously in order to make fun of a gullible person who is too ready to react to such an announcement with fear[29]. A threat for a joke will remain unpunished only when the concern it caused proves to be objectively groundless. But if a person threatening "for a joke" passes this threat in the way that will raise a justified concern about its implementation, he goes beyond the borders for penalization and his "joke" becomes a punishable threat[30]. In such a case, it is not enough to state that the perpetrator did not intend to carry out his threat (e.g. he threatened with an unloaded gun, which he knew).

One cannot speak about a punishable threat if the threatened person knew that the threatening person did not intend to carry out a threat because in such a case the threat does not raise justified fear that it would be fulfilled[31]. When a threat by joke is analysed, a question is asked whether the fact that other people knew that the perpetrator did not intend to carry out his announcement could influence the penalization of that threat. A. Spotowski's standpoint seems to be right. According to him, "This circumstance is not important because the knowledge other people have about the groundlessness of a threat cannot diminish the fear of the addressee"[32].

A punishable threat is a crime of result and the result is making a victim be concerned about the implementation of the threat. One cannot treat the implementation of a threat, i.e. a commission of a crime, as a result. For the existence

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[27] A. Spotowski, [in:] *System…* [System…], *op. cit.*, p. 31.

[28] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, pp. 137–138.

[29] *Ibid.,* pp. 133–134.

[30] M. Filar, *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 622; similarly A. Spotowski [in:] *System…* [System…], *op. cit.*, p. 34; differently J. Wojciechowski, *Kodeks karny, Komentarz* [Criminal Code – Commentary], Warszawa 1997, p. 331.

[31] J. Wojciechowska [in:] *Przestępstwa przeciwko…* [Crimes Against…], *op. cit.*, p. 691.

[32] A. Spotowski [in:] *System…*[System…], *op. cit.*, p. 35.

of a crime under Article 190 of the Criminal Code, the implementation of the threat does not matter. Neither can we agree with the standpoint that this crime is committed at the time of expressing a threat[33].

The assessment whether a threat really raised the threatened person's fear is based, apart from his reliable information about his feelings, on the symptoms of being endangered observed in his behaviour by others. The danger that the threat will be carried out does not have to be objective. Only a threat must be objective. The threatening person may be objectively dangerous and despite this the threatened person may be not afraid of his threat. And conversely, he may have an unimpeachable opinion and despite that can raise the threatened person's fear[34]. Causing the threatened person's fear should be assessed subjectively. The subjective feeling depends on a individual's personal features and his state that results from the threat. If, for instance, a perpetrator takes out a gun and threatens to shoot, although the gun is unloaded or damaged, the threatened person does not know about it and can treat the threat as possible. The threatening person knows that the threatened person will believe in the threat and it will make him be concerned. Subjective assessment is necessary but not sufficient because the Act uses a term "substantiated fear", thus its assessment requires an objective element[35]. A fear can be treated as substantiated if an average man that has similar features of personality, psyche, intellect and mentality in similar conditions in all probability would treat the threat as real and causing concern.[36] Thus, the decisive prerequisites will be circumstances and the way in which the threat was expressed, which can substantiate the real fear that it will be carried out. This makes it possible to eliminate threats that nobody sensible would treat as serious from the scope of threat penalization[37].

The crime of a punishable threat was classified in the Polish criminal law as a common crime (*delicta communia*). Any person can be subject to it if he meets the general conditions of criminal liability.

A punishable threat is a deliberate crime that can be committed in a direct intent. A controversy arises in connection with the other form of deliberateness, i.e. a possible intent. Some representatives of the doctrine believe that threatening another person is an intentional activity requiring deliberateness in the form

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[33] M. Siewierski [in:] *Kodeks karny...* [Criminal Code…], *op. cit.*, p. 426. This opinion is expressed by e.g. J. Wojciechowski, see *ibid*., *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 360 and R. Góral, who stated that the crime results in creating a given person's feeling of fear that a threat is going to be carried out and a commission takes place at the moment of expressing it; see *ibid*. *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 322.

[34] L. Peiper, *Komentarz…*, *op. cit.*, p. 508.

[35] See the ruling of the Appellate Court in Cracow of 4 July 2002 (II AKa 163/02), KZS 2002, No. 7–8, item 44.

[36] M. Filar, *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 622.

[37] A. Marek, *Kodeks karny. Komentarz* [Criminal Code – Commentary], Warszawa 2010, p. 437.

of a direct intent[38]. Others state that it is enough that a perpetrator predicts such an effect of the threat and gave it his consent[39].

Re. (b): Another type of a threat is **a threat to undertake steps to initiate criminal proceeding**. There is an evident difference in comparison with a punishable threat because a punishable threat is a crime in itself (Article 190 § 1 of the Criminal Code) and a threat to undertake steps to initiate criminal proceeding never has such features; moreover, it may not be classified as a criminal threat[40]. It must be reminded that in accordance with the regulations in force, everybody has a social duty to report a commission of a crime that is subject to the criminal proceeding *ex officio* (Article 304 of the Criminal Procedure Code)[41]. Thus, a given person does not only have the right but also a duty to report a crime. Based on the Criminal Code in force (similarly as in the Criminal Code of 1932 and 1969) a threat to undertake steps to initiate criminal proceeding constitutes a crime only in the event the perpetrator uses it as a means of forcing a person (to act, omit or annul)[42]. Threatening to undertake steps to initiate criminal proceeding as such (if a threatening person does not intend to force another person to any specific behaviour) is not punishable[43]. Such a threat would be unpunished if the perpetrator only made it or even carried it out. However, in the analysed case, criminality of the perpetrator's behaviour lies elsewhere.

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[38] The standpoint is expressed by: S. Goczałkowski [in:] *Encyklopedia podręczna prawa karnego* [Concise Encyclopaedia of Criminal Law], W. Makowski (ed.), volume II, Warszawa, p. 575; W. Świda, *Prawo…* [Criminal Law], *op. cit.*, p. 519; D. Gajdus [in:] *Prawo karne…* [Criminal Law…], *op. cit.*, p. 343; A. Marek, *Kodeks…* [Criminal Code…], *op. cit.*, p. 366; A. Zoll [in:] Kodeks karny. Część szczególna. Komentarz [Criminal Code – Special Issues – Commentary], A. Zoll (ed.), volume II, Zakamycze 2006, p. 546.

[39] O. Górniok [in:] *Kodeks karny, Komentarz* [Criminal Code – Commentary] (ed.) A. Wąsek, Gdańsk 2002, p. 977, similarly R. Góral, *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 322.

[40] M. Surkont, *Przestępstwo zmuszania w polskim prawie karnym* [Crime of Forcing in Polish Criminal Law], Gdańsk 1991, p. 95. M. Mozgawa, Przestępstwo zmuszania [Crime of Forcing] [in:] *Przestępstwa przeciwko dobrom indywidualnym, System Prawa Karnego* [Crime Against Personal Rights – Criminal Law System], vol. 10, (ed.) J. Warylewski, Warszawa 2012, p. 460.

[41] Article 304. § 1: Everybody, having learnt about the commission of a crime prosecuted *ex officio*, has a social duty to report it to a prosecutor or the Police. The provision of Article 191 § 3 is applied adequately. § 2. State and self-government institutions that, in connection with their duties, learned about the commission of a crime prosecuted *ex officio* are obliged to report it to a prosecutor or the Police without delay and undertake necessary steps until an organ responsible for prosecution arrives or until an adequate decisions are issued by that organ in order to prevent traces of crime and evidence being destroyed. § 3. The Police shall immediately pass a report about the commission of a crime that must be investigated by a prosecutor or their own data indicating the commission of a crime together with collected material to a prosecutor.

[42] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 96.

[43] As the Supreme Court noticed in its ruling of 12 November 1937, 2 k1072/37, see ruling 97/38, "a threat to undertake steps to initiate criminal proceeding, if it meets the requirements of Article 242 of the Criminal Code, constituting in fact a legal act, has the features of a crime defined in Article 251 of the Criminal Code [at present Article 191 of the Criminal Code – the authors' comment], only when it constitutes a means of implementation of another aim, which the perpetrator wants to achieve by a threat. It does not contain, however, any features of a crime when it announces an intent to undertake legal steps".

M. Surkont rightly notices that a threat to undertake steps to initiate criminal proceeding is a form of forcing; by exerting pressure on the victim's will a perpetrator wants to make him behave in a required way[44]. In general, one cannot use the knowledge about a crime committed by someone to make that person behave in a particular way, although there are some exceptions to that rule. And thus, if a victim who knows the perpetrator informs him that if he does not give the stolen object back or if the perpetrator does not compensate the damage, the crime will be reported, the threat is not going to be treated as a criminal one[45]. In fact, it is an example of a warning rather than a threat. As A. Spotowski notices, such an attitude often results in the resolution of a conflict without the involvement of a court with benefits for both parties (one of them regains their possession, the other avoids legal liability) and although such behaviour can be treated as inappropriate from the ethical point of view, it cannot be treated as a crime[46]. It must be noticed that a person who makes a threat against (or rather warns) a perpetrator that there is a possibility of initiating criminal proceeding does not have to be a victim himself. He may happen to be the third party, e.g. a witness of a crime, or someone who learns about a crime from a reliable person and addresses the perpetrator of a crime with a demand that he should return the stolen property to the victim or the crime will be reported to the law enforcement institutions.

As a rule, a threat to undertake steps to initiate criminal proceeding is a crime (Article 191 of the Criminal Code) only when it is a means of forcing, however, sometimes this kind of behaviour can be a crime in itself classified under Article 190 of the Criminal Code[47]. It will occur when a perpetrator threatens that he will report a crime that the threatened person did not commit. In such a case, the perpetrator threatens to commit a misdemeanour intended to harm a victim and his act should be classified based on Article 190 of the Criminal Code[48]. A threat to undertake steps to initiate criminal proceeding includes a threat to

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[44] M. Surkont, *Przestępstwo…* [Crime…], *op. cit.*, s. 95–96.

[45] As M. Siewierski writes "If a person injured by a crime demands – under a threat of reporting it to a prosecutor – a compensation for damage caused by that crime, we may only treat it as a warning of the perpetrator about legal and criminal consequences of his act and an appeal to him to compensate the damage. Whether it is only an admissible appeal to compensate damage or a crime specified in Article 167 of the Criminal Code [at present Article 191 of the Criminal Code – the authors' comment] depends on given circumstances. If, e.g. a victim uses it as a pretext and demands excessive compensation, his act will have the features of a crime specified in Article 167 [at present Article 191 of the Criminal Code – the authors' comment]". M. Siewierski [in:] *Kodeks karny…* [Criminal Code…], *op. cit.*, pp. 429–430.

[46] A. Spotowski [in:] *System…* [System…], *op. cit.*, p. 44.

[47] M. Mozgawa, *Przestępstwo zmuszania* [Crime of Forcing], p. 462.

[48] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 97. As the author writes "Treating such cases as threats to undertake steps to initiate criminal proceeding would not be right. It would result in impunity of people who threaten in this way without the use of the discussed threat as a means of forcing (because if such a threat is a means of forcing, the case does not raise any doubts and is classified as in Article 251 [at present Article 191 of the Criminal Code – the authors' comment] – K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 97.

file a private charge (in case of crimes prosecuted on private accusation), to file a motion to prosecute a crime (in case of crimes prosecuted on a motion of the injured person) or report a crime prosecuted *ex officio*[49]. Thus, it does not apply to any other kind of proceeding different than the criminal one, e.g. a civil proceeding (although sometimes the consequences of the other ones can be very troublesome, e.g. the obligation to compensate the damage) or a disciplinary one (where the consequence may be dismissal from work). Some doubts arise in connection with offences (especially now, when these cases are adjudicated by courts and not by boards judging petty offences). K. Daszkiewicz-Paluszyńska expressed an opinion that a threat to undertake steps to initiate criminal proceeding includes cases concerning misdemeanour (called penal-administrative proceeding then)[50] but W. Świda is contrary to it[51]. In the doctrine, the latter opinion is assumed to be right because a threat to undertake steps to initiate criminal proceeding in cases regarding misdemeanour does not find grounds in Article 91 § 4 of the Criminal Code of 1932 nor in Article 120 § 10 of the Criminal Code of 1969, nor in the context of Article 115 § 12 of the Criminal Code of 1997. There are arguments that this threat should regard only an announcement of the proceeding in criminal cases and not regarding misdemeanour because misdemeanour proceeding is not criminal proceeding in the sense of Article 115 § 12 of the Criminal Code[52]. It is not so certain, however, because one can say that is a special kind of proceeding that is defined outside the Criminal Procedure Code (in the Penalties Execution Code). While in the past, the case was simpler – as a rule, courts did not adjudicate on in cases of misdemeanour – today, this argument is not valid. A stronger argument is that if we assumed that a threat to undertake steps to initiate proceeding concerning misdemeanour applied, there would be a disharmony with a punishable threat (in the sense of Article 190 of the Criminal Code), which – as we know – applies only to a threat to commit a crime (and not misdemeanour)[53].

However, there is a problem how to deal with a threat to undertake steps to initiate proceeding in cases regarding minors. Here, again, it can be briefly stated that it is not applicable because these are not subject to criminal proceeding. But, if we take into account the plane of proceeding regarding punishable acts (i.e. acts that are crimes, fiscal crimes or are listed in the Act on the proceeding against minors), the situation is not so unambiguous. Why can we treat certain behaviour as one meeting the requirements of a threat to undertake steps to initiate a criminal proceeding when it is addressed to adults and not in the case

[49] K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 102.
[50] *Ibid.,* p. 103.
[51] W. Świda, *Prawo karne* [Criminal Law], Warszawa 1989, p. 443.
[52] A. Spotowski [in:] *System…* [System…], *op. cit.*, p. 46.
[53] M. Mozgawa, *Przestępstwo zmuszania* [Crime of Forcing], p. 463.

such a threat is made against a minor (a person on whom, because of their young age, this threat may exert even bigger pressure)? Yet, *de lege lata*, the situation is unambiguous – a threat to undertake steps to initiate criminal proceeding against a minor is not applicable, although we may have serious doubts if it is a right solution.

A threat to give evidence against a person in pending criminal proceeding can never be treated as a threat to undertake steps to initiate criminal proceeding. The Supreme Court was wrong in its opinion expressed in a ruling of 1933[54], in which it stated that: "a threat to undertake steps to initiate criminal proceeding can be applicable not only in connection with the initiation of activities in the juridical sense, i.e. as a form leading to the administration of criminal law, but can also concern the implementation of penal repression in substantive sense, and thus it will be a criminal threat to threaten to give evidence against the accused in the pending trial or threatening to deliver compromising evidence". The standpoint was rightly criticised in the doctrine[55], and the Supreme Court itself abandoned it in a later decision[56]. The phrase used by the legislator: "to initiate criminal proceeding" cannot get a broader interpretation, and thus e.g. a threat made by a victim that he is not going to withdraw an already filed motion to pursue the perpetrator is not a threat to undertake steps to initiate criminal proceeding (because it was already initiated).

The Act excludes the announcement to undertake steps to initiate criminal proceeding that aims to protect the legal good violated in the course of a crime by a person to whom it was addressed from the scope of a criminal threat category (e.g. a threat to report a crime planned by the perpetrator in order to prevent the commission of an illegal act or a threat to initiate a proceeding against a perpetrator of appropriation, who does not want to return a given object)[57].

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[54] 1 K 734/33, Zb. Orz. 28/11. The ruling quoted after K. Daszkiewicz-Paluszyńska, who does not give its date. K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 101.

[55] Compare criticism by K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 102. A. Spotowski rightly stated that such treatment of an announcement of an intent to make aggravating testimonies in the course of pending proceeding (or disclosing compromising evidence in connection with the pending proceeding) would be an inadmissible going beyond the scope specified in the provision (i.e. Article 251 of the Criminal Code of 1932, Article 167 of the Criminal Code of 1969, Article 191 of the Criminal Code of 1997) A. Spotowski [in:] *System…* [System…], *op. cit.*, p. 46.

[56] Compare ruling of the Supreme Court of 7 July 1949, Wa K 1305/49, PiP 1950, No. 7, p. 140.

[57] As A. Zoll emphasises, "such an announcement may refer to past events (a crime was committed by a perpetrator) as well as future events (a threat addressee is planning to commit a crime). It should be also assumed that an announcement to disseminate information affronting veneration is not a criminal threat if the conditions specified in Article 213 § 2 are met". A. Zoll [in:] *Komentarz KK, cz. szczególna* [Commentary on the Criminal Code – Special Part], vol. II, 2008, p. 518. Still in accordance with the Criminal Code of 1932, when there was no equivalent (Article 115 § 12 last sentence), K. Daszkiewicz-Paluszyńska expressed an opinion that an exception can be made from the rule that a threat to undertake steps to initiate criminal proceeding can be a threat based on facts that really substantiate criminal proceeding in the event when: (1) the threatening person is a victim, (2) action, omission or annulment, to which a perpetrator forces, remains connected with the forced person's act (e.g. to get a stolen object returned, to withdraw a discrediting allegation etc.), (3) the forced person does not flagrantly

It is obvious that such a threat is not a punishable one in the sense of Article 115 § 12 of the Criminal Code (and thus a person who makes it cannot be made liable based on Article 191 of the Criminal Code)[58]. The solution included in the last sentence of Article 115 § 12 of the Criminal Code ("the announcement of an intent to undertake steps to initiate criminal proceeding in order to protect the rights that were violated by crime is not a threat") was not known to the Criminal Code of 1932, however, even then both the doctrine and the judicature highlighted that it is necessary to limit the too broad concept of a threat[59]. The postulates of the doctrine were taken into account in Article 120 § 10 of the Criminal Code of 1969 by including a limitation similar to that in Article 115 § 12 of the Criminal Code in force. However, it should be pointed out that in the discussed regulations of the Criminal Code of 1969 and the Criminal Code in force, there is an unfortunate phrase: "…is not a threat". In each of these cases, the perpetrator's behaviour is a threat although with no criminal features. As a result, the postulate *de lege ferenda* of M. Surkont to substitute the phrase "is not a threat" by a phrase "is not a criminal threat" seems to be justifiable (and still up-to-date)[60]. Spending a bit more time on the interpretation of the last sentence of Article 115 § 12, one should consider also the terms: "crime" and "only" used in it. Is it really necessary to treat it as a crime *sensu stricto*? The question must be given a negative answer because there are no grounds to predict the protection of the right that was violated by a crime (*stricte*) but not by an illegal act (that is not a crime e.g. because of a lack of fault). This approach is also justified by logical and purposefulness interpretation. With regard to the phrase that the announcement of initiating proceeding aims only to protect law, it is necessary to state that linguistic interpretation directives unambiguously suggest that a person announcing his intent cannot aim at anything else (and anything more) as only to protect the right that was violated by a crime[61]. A. Marek

misuse his advantage over the forced person that results from that person's fear of criminal proceeding. K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, pp. 100–101.

[58] J. Wojciechowska [in:] *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej, Rozdziały XXIII. XXIV, XXV i XXVII kodeku karnego, Komentarz* [Crimes Against Liberty, Freedom of Thought and Religion, Sexual Orientation and Decency, Veneration and Bodily Inviolability, Chapters XXII, XXIV, XXV and XXVII of the Criminal Code – Commentary], B. Kunicka-Michalska, J. Wojciechowska (ed.), Warszawa 2001, p. 49.

[59] Compare S. Glaser, A. Mogilnicki, *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 390; K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 104. Compare also ruling of the Supreme Court of 12 January 1937, II K 1072/37, OSNK 1938, No. 4, item 97.

[60] M. Surkont, *Przestępstwo…* [Crime…], *op. cit.*, p. 100.

[61] Compare J. Majewski [in:] *Kodeks karny, Część ogólna, Komentarz* [Criminal Code – General Issues – Commentary], vol. I, A. Zoll (ed.), Zakamycze 2004, p. 1449; M. Surkont, *Groźba spowodowania postępowania karnego jako postać groźby bezprawnej w polskim prawie karnym* [A threat to undertake steps to initiate criminal proceeding as a form of criminal threat in Polish criminal law], Pal. 1993, No. 9–10, p. 18. Differently – as it seems wrongly – A. Wąsek believes that an aim or a motive of the perpetrator's action (protection of the right violated by a crime) does not have to be the only, or even the main one the perpetrator takes into account because he may want e.g. to distress another person. A. Wąsek [in:]

is right to emphasise that the perpetrator's striving to achieve another aim does not eliminate the features of a criminal threat (forcing to particular behaviour, e.g. a motion to prosecute, change of the will etc.)[62].

Re. (c): The third type is **a threat to disseminate information affronting the veneration of a person or his close** relation. A threat to disseminate information discrediting a person, if it does not aim to force, is not a crime; only the perpetrator's intent to force the threatened person to behave in a particular way constitutes forcing[63]. As K. Daszkiewicz-Paluszyńska rightly states, the threatening person announces his intent to damage the reputation of another person or challenge the good opinion of them, or will attempt to create an opinion of low moral values of that person or his close relation[64].

As the provision of Article 115 § 12 stipulates, a threat must concern "information" affronting the veneration. It is worth mentioning that based on Article 212 of the Criminal Code criminalising defamation, the terms: "demeanour" and "features" were used. Demeanour is the manner in which a person behaves – his performance (e.g. commission of a crime, immoral conduct); and features are certain inborn and acquired personal features (e.g. alcoholism, drug addiction, mental illness etc.). Thus, it should be thought that the concept of "information" is broader than demeanour and features because there is certain information that cannot be classified as the victim's demeanour or features that can have a negative (sometimes even shameful) effect (e.g. the fact that the victim was raped or that a wife threw a husband out)[65]. Defamatory information (that a perpetrator threatens to disseminate) may be either true or false; the truthfulness of a statement – as M. Surkont states – is less important because the assault consists in the aim to force[66]. The information must discredit the threatened person or his close relation. Thus, the victim can be a person threatened that information will be disseminated to discredit him or his close relation (in accordance with Article 115 § 11 of the Criminal Code). There seems to be a controversy whether that is applicable only to a living close relation or also to those who died. M. Surkont's opinion is adequate for this situation: "the end of natural personality stops the legal protection of the deceased but in many cases his defamation can damage

Kodeks karny. Komentarz [Criminal Code – Commentary], vol. I, O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, L. Tyszkiewicz, A. Wąsek (ed.), Gdańsk 2005, p. 845.

62 A. Marek, *Kodeks karny* [Criminal Code], p. 317–318.

63 M. Surkont, *Zapowiedź rozgłoszenia wiadomości uwłaczającej czci jako postać groźby bezprawnej* [Announcement of the intent to disseminate information affronting veneration as a form of a criminal threat], NP 1989, No. 5–6, p. 101 and next.

64 K. Daszkiewicz-Paluszyńska, *Groźba…* [Threat…], *op. cit.*, p. 103.

65 Compare comments by M. Surkont, *Przestępstwo…* [Crime…], *op. cit.*, pp. 111–112.

66 *Ibid.*, p. 112.

the reputation of his close relations who are still alive. And this can be the aim of the threatening person"[67].

In colloquial use, veneration means respect, esteem, appreciation but it is also associated with a cult and admiration (in the latter sense, it is not subject to legal-criminal protection). There is a dual perception of the term "veneration": its external (objective) and internal (subjective) comprehension. Speaking about external veneration, we mean the values the person has in the opinion of other people (it is a man's social importance), and speaking about internal veneration, we mean a man's feeling of personal dignity (it is a man's internal value). In the case of the provisions of Article 212 of the Criminal Code, the subject to protection is the external (objective) element, and in the case of defamation (Article 216 of the Criminal Code) – the internal (subjective) element, i.e. dignity[68].

It must be clearly emphasised that the provision of Article 115 § 12 of the Criminal Code speaks of a threat to disseminate information affronting the veneration of the threatened person or his close relation and compares it with a threat under Article 190 (and a threat to undertake steps to initiate criminal proceeding). Thus, while Article 190 of the Criminal Code speaks of a threat to commit a crime (any type of crime, i.e. also a crime against veneration), then, in the case of dissemination of information affronting the veneration (of the threatened person or his close relation) – in the course of making conclusion *a contrario*, it is not applicable to a threat that is within the scope of Article 190 (because these would be overlapping scopes). Thus, as a result, it concerns such a threat that is neither defamation nor an insult. It can be another demeanour that is not a crime but violates a man's personal rights (in accordance with Article 23 of the Criminal Code)[69]. In A. Zoll's opinion, it is not a criminal threat to announce the intent to disseminate information affronting veneration if the conditions for admissible criticism justification are fulfilled (under Article 213 § 2 of the Criminal Code)[70]. It seems that it can also be a situation provided for in Article 213 § 1 of the Criminal Code ("A crime specified in Article 212 § 1 does not take place if a non-public allegation is true"). In such a case there is no defamation at all under the condition that the allegation is true (it conforms with the real state of things) and is non-public[71]. A doubt arises, however, in the context of "trumpeting" referred to in Article 115 § 12 of the Criminal Code,

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[67] *Ibid.*, p. 114.

[68] M. Mozgawa [in:] *Kodeks karny. Komentarz* [Criminal Code – Commentary], M. Mozgawa (ed.), Warszawa 2012, p. 503; M. Mozgwa, *Przestępstwo zmuszania* [Crime of Forcing], p. 465.

[69] A. Marek, Kodeks karny… [Criminal Code…], *op. cit.*, p. 318.

[70] A. Zoll [in:] A. Barczak-Oplustil, M. Bielski, G. Bogdan, Z. Ćwiąkalski, P. Kardas, J. Raglewski, M. Szewczyk, W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz* [Criminal Code – Special Issues – Commentary], vol. II, Warszawa 2008, p. 518.

[71] Obviously, lack of crime in accordance with Article 212 § 2 is not applicable because of the fact that the classified type is carried out with the use of mass communication media (and this includes non-publicity of an allegation).

whether the term "trumpet" means "publicize, make everybody know, blab'[72]. According to W. Wolter, using the verb "trumpet" we mean "behave in a way that leads to a situation in which information reaches a wider circle of people, which can, although does not have to, have features of making things public"[73]. According to A. Marek, "'trumpeting' should be understood as letting things be known not to a single person only but to a bigger number of people"[74]. The announcement of the intent to pass the information affronting the veneration of one person to another one is not a criminal threat unless the third person is purposefully selected (is known for having an unbridled tongue) and is sure to pass the information further[75]. Summing up, it can be stated that it does not matter whether the announcement concerns making information known to the public (e.g. during a mass meeting) or in a non-public way (e.g. by letting more than one person know, informing them one by one[76]). Thus, it is clear that trumpeting may be performed in a non-public way.

Summing up, it must be stated that the concept of a criminal threat as defined in Article 115 § 12 of the Criminal Code was not formulated clearly enough. Although too broad concept of a threat was used in the Criminal Code of 1932, which was limited in Article 120 § 10 of the Criminal Code of 1969 and Article 115 § 12 of the Criminal Code in force (by including a reservation that "an announcement of an intent to undertake steps to initiate criminal proceeding is not a threat if it aims to protect the right violated by a crime"). It is a right solution but it is not fortunately formulated because an announcement included in the provision *in fine* constitutes a threat too, although it does not have the attributes of criminality. Thus, it is justifiable to support a postulate *de lege ferenda* that the phrase "is not a threat" should be supplied with a word "criminal"[77].

Another highlighted doubt is the fact that a threat to undertake steps to initiate criminal proceeding concerns a threat to initiate criminal proceeding in connection with a crime or a fiscal crime. The threat does not concern proceeding in a case in connection with an offence or a fiscal offence or the proceeding against minors. This kind of limitation raises doubts, especially in the context of the proceeding against minors (because of the reasons discussed above). Being outside the scope of the provision, cases of initiating proceeding against minors may turn out to be essential in social sense and it might be considered whether the statutory scope of a criminal threat should be broadened by these situations.

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[72] *Słownik języka polskiego PWN* [PWN Dictionary of the Polish Language], vol. III, (ed.) M. Szymczak, Warszawa 1984, p. 89.

[73] W. Wolter [in:] I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem* [Criminal Code with a Commentary], Warszawa 1973, p. 526.

[74] A. Marek, *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 318.

[75] Cit. M. Surkont, *Przestępstwo…* [Crime…], *op. cit.*, pp. 115–116.

[76] J. Majewski [in:] *Kodeks karny…* [Criminal Code…], *op. cit.*, p. 1451.

[77] M. Surkont, *Przestępstwo…* [Crime…], *op. cit.*, p. 100.

What has caused discrepancies between the doctrine and the judicature for a long time (and still does) is the issue whether the existence of the threatened person's justified fear that a threat can be carried out constitutes an essential element of an act in the case of the whole criminal threat or should be only associated with a crime of a punishable threat when is occurs as a feature and condition for its commission. It seems that while a punishable threat is a crime by itself and its essence consists in raising the threatened person's fear, the Criminal Code uses a concept of a criminal threat also for the statutory definition of a series of features of other crimes. In such a situation, a threat and its direct result constitute only a certain stage in the implementation of the perpetrator's another criminal intent. Raising fear is not the perpetrator's final aim but constitutes a means of obtaining another aim. That is why a threat should be objectively serious enough to the threatened person to make him convinced that he is endangered by the implementation of the announced wrong[78].

SCOPE OF THE CONCEPT OF A CRIMINAL THREAT IN ACCORDANCE WITH ARTICLE 115 § 12 OF THE CRIMINAL CODE

Summary

The article deals with the concept of a criminal threat in accordance with Article 115 § 12 of the Criminal Code in force. The statutory definition of a criminal threat contains three different types of a threat that are thoroughly analysed in the article: a punishable threat (as specified in Article 190 § 1 of the Criminal Code), a threat to undertake steps to initiate criminal proceeding and a threat to disseminate information affronting the veneration of the threatened person or his close relation. The authors believe that the concept of a criminal threat is not formulated clearly enough and suggest possible ways of amending the provision.

[78] K. Nazar-Gutowska, Groźba bezprawna… [Criminal Threat…], *op. cit.*, pp. 237–238.

ZAKRES POJĘCIA GROŹBY BEZPRAWNEJ W ROZUMIENIU ART. 115 § 12 KODEKSU KARNEGO

Streszczenie

Artykuł dotyczy zakresu pojęcia groźby bezprawnej w rozumieniu art. 115 § 12 obowiązującego kodeksu karnego. Stosownie do definicji ustawowej groźba bezprawna zawiera w swojej treści trzy różne rodzaje gróźb, które zostały w artykule poddane szczegółowej analizie: groźbę karalną (w rozumieniu art. 190 § 1 k.k.), groźbę spowodowania postępowania karnego oraz groźbę rozgłoszenia wiadomości uwłaczającej czci zagrożonego lub jego osoby najbliższej. Autorzy podnoszą, że pojęcie groźby bezprawnej nie jest dostatecznie jasno sformułowane i wskazują możliwe kierunki zmian tego przepisu.

LE CHAMP DE LA NOTION DE MENACE ILLÉGALE DANS LE CADRE DE L'ART. 115 §12 DU CODE PÉNAL

Résumé

L'article concerne le champ de la notion de menace illégale dans le cadre de l'art. 115 § 12 du Code pénal actuel. En expliquant la définition constitutionnelle la menace illégale comprend dans son contenu trois genres différents des menaces qui sont analysées d'une façon détaillé dans cet article: menace punissable (dans la compréhension de l'art. 190 § 1 du Code pénal), menace introduisant la procédure pénale et aussi menace de diffusion de l'information portant atteinte à l'honneur de la personne menacée ou ses proches. Les auteurs indiquent que la notion de menace illégale n'est pas assez clairement formulée et ils montrent les directions possibles de changement de ce règlement.

ОБЪЁМ ПОНЯТИЯ ПРОТИВОПРАВНОЙ УГРОЗЫ В СТАТЬЕ 115 § 12 УГОЛОВНОГО КОДЕКСА

Резюме

Статья касается определения объёма понятия противоправной угрозы, нашедшего отражение в статье 115 § 12 действующего Уголовного кодекса. Согласно установленному законом определению, противоправная угроза включает в себя три различных вида угроз, которые в статье были подвергнуты тщательному анализу: наказуемую угрозу (как определено в статье 190 § 1 УК), угрозу, влекущую за собой уголовную ответственность, а также угрозу разглашения информации, задевающую честь находящегося под угрозой лица либо его близких. Авторы утверждают, что понятие противоправной угрозы не является достаточно точно сформулированным, и указывают на возможные направления изменений этих положений.