

Committing a Crime while Intoxicated: The Basis of Liability and Legal Regulation

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Abstract: Alcohol and drugs have been known for a long time, and their purpose has changed in the course of history. Being part of the global culture, they have come down to us. With the development of mankind, drugs were limited. This article attempts to analyze the concept and types of intoxication. The authors also take into consideration the basis of criminal liability for committing a crime while intoxicated, as well as the role of intoxication in criminal law. This research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. In the end, it can be concluded that the state of intoxication can be included in the main corpus delict, used as a qualifying attribute, as well as circumstances aggravating liability. It is indicated that considering intoxication as an aggravating circumstance requires a connection between crime and intoxication.

Keywords: Aggravating circumstance, alcohol intoxication, crime, criminal liability, intoxication.

INTRODUCTION

The history of alcohol is also ambiguous and full of the facts of the struggle with its production and distribution (Gately 2008). But at the moment, alcohol is allowed in the vast majority of countries and is freely consumed even at official events.

Alcoholic, illicit substances and other types of intoxication are traditionally the subjects of study of narcology. However, intoxication and using illicit substances have become the subject of debate in legal research, in particular, criminal law (Lyubavina 2015).

Studies of the problems of accounting for the state of intoxication in criminal law are based both on a broad approach to the study of the problem (Quilter, McNamara, Seear, and Room, 2016) and affect individual aspects of the influence of alcohol on crime (Dingwall 2007).

The connection between alcohol and crime is actively being studied in science (Felson & Staff, 2010), even the degree of influence of alcohol on aggression in men and women is being investigated (Peter and Hoaken 2000).

There are also purely applied research (Do Canto-Pereira, David, Machado-Pinheiro, and Ranvaud, 2007; Modig, Fransson, Magnusson, and Patel, 2012) that

helps better understand the effect of alcohol on a person, and, accordingly, determine the significance of intoxication in criminal law.

With all the variety of approaches to studying the influence of alcohol intoxication on the commission of a crime, there are few works dealing specifically with a general theoretical understanding of this influence, establishing links between alcohol and crime, sometimes not entirely obvious (Puri and Treasaden, 2017).

A set of narcological, cultural, sociological, and legal aspects determines the relevance of studying the influence of alcohol intoxication on the commission of crimes and its legal regulation.

Overall, given the fact that the crime rate and also road fatalities due to misuse of drugs and also drink-driving is surging throughout the world, it is urgently needed to discuss this devastating phenomenon and attempt to devise practical measures to alleviate this increasingly worldwide issue.

METHODS

This research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. The latter include formal-legal and linguistic-legal, which were collectively used to study the grounds of responsibility for committing a crime by a person

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who is intoxicated, and the legal regulation of such a state. An analysis of the scientific literature allows us to conclude that there are ideas about the significance of the state of intoxication in criminal law, its effect on responsibility, but these ideas are heterogeneous. A comparison of theoretical ideas about the possible options for taking into account the state of intoxication in determining the measure of responsibility showed the absence of a unified approach to consider intoxication as an aggravating circumstance.

DISCUSSION AND RESULTS

The condition the person commits a crime in is of absolute significance. This condition makes it possible to distinguish between criminal and non-criminal, to identify motives, and also to determine the degree of danger of both the perfect and the individual himself. Of particular importance recently has been the study of the state of intoxication in criminal law, and, in particular, intoxication (Lyubavina 2015).

Alcohol intoxication (acute alcohol intoxication) is a set of symptoms of mental, autonomic, and neurological disorders caused by the psychotropic effect of alcohol (Poothakool, 2018). This definition causes the need to determine the degree of alcohol-induced mental and neurological disorders.

There are traditionally (Ivantsa 2002) three degrees of intoxication distinguished. Mild alcohol intoxication (blood alcohol concentration from 0.5 to 1.5 ppm) is usually characterized by improved mood, garrulity, accelerated association, decreased self-criticism, increased amplitude of emotional reactions, instability of attention, impatience and other signs of the predominance of mental excitement over inhibition. In this case, there is a loss of subtle coordination.

Moderate alcohol intoxication (blood alcohol concentration is from 1.5 to 2.5 ppm) is characterized by poor mental reactions, slow, unproductive thinking, trivial and flat judgments, perseverative and blurred speech (repetition of words, phrases, difficulty in selecting other words), poor attention, spatial disorientation. The understanding and correct assessment of what is happening around is hindered. Emotional reactions are coarsened, become brutal in nature, mood tends to be sullen, angry or dull indifference. Gross neurological disorders arise: lack of coordination of movements, unsteady gait, weakening of pain and temperature sensitivity (Ivantsa, 2002).

Severe alcohol intoxication (blood alcohol concentration from 2.5 to 4 ppm) is expressed by depression of consciousness - from doubtfulness to coma, passive body position, sometimes with aimless and chaotic movements, lack of reaction to pain stimuli, constricted pupils and their sluggish photoreaction. At higher blood alcohol concentrations, death from respiratory paralysis can occur (Lyubavina 2015).

Authors describing the symptoms of intoxication indicate that there are altered forms of simple alcoholic intoxication (Ivantsa 2002). In particular, a mild degree of intoxication may contain elements of a more serious condition.

To be criminally liable, a person must be sane. This feature is mandatory for the subject. In turn, a person who during the commission of a socially dangerous act was insane, that is, could not be aware of the actual nature and social danger of his/her actions (inaction) or manage them due to a chronic mental disorder, temporary mental disorder, dementia, or another painful state of the psyche, cannot be liable (Graham et al., 2012).

We believe that in the vast majority of cases of alcohol intoxication, a person remains able to be aware of his/her actions, and can also manage them. However, the above symptoms of intoxication shows a possible lack of a person's awareness of reality, the inability to manage their actions, etc. Science recognizes the possibility of a person's lack of awareness of the actual nature and social danger of his actions (inaction) or of the inability to manage them due to ordinary intoxication, but it is indicated that there are prerequisites for criminal liability, and in particular:

- an objective prerequisite for criminal liability of an intoxicated person is the public danger of the committed act;
- a subjective prerequisite is the absence of mental disorder, dementia or other abnormal mental condition (Lyubavina 2015).

This position seems absolutely justified. The use of the medical criterion in combination with the legal one in determining the insanity is an indisputable necessity. A person does not bring him-/herself into a state of insanity, but this makes it unnecessary and impossible to prosecute him. However, in the case of alcohol intoxication the opposite happens. A person specifically consumes alcohol in order to bring him-/herself to this

state, and we believe that he/she should understand the consequences of its use.

Persons committing crimes while intoxicated may refer to this condition as mitigating or exempting from liability because they do not remember the crime itself or did not understand what is happening.

The phenomenon of alcohol amnesia has been actively studied in science (Cimaa *et al.*, 2004), but, in our opinion, it relates more to procedural law. We do not claim that every intoxicated person should be held criminally liable. For example, there are a number of disorders that can be caused by alcohol - alcoholic psychosis, alcoholic hallucinosis, as well as other disorders (Puri&Treasaden, 2017; Klimenko, 2012). If available, a person may be treated as insane.

The effect of alcohol depends on many factors (the presence of traumatic brain injuries, infections, etc.), which determines the unpredictability of the body's reactions. We believe that the situation should be considered individually in each case. Even if the degree of intoxication was low, it is impossible to exclude the state of insanity or limited sanity, for the purposes of which a special examination should be appointed (Do Canto-Pereira *et al.*, 2007).

In contrast to the physiological intoxication discussed above, even an insignificant dose of alcohol can cause pathological intoxication. Pathological intoxication is a transient psychosis, and in the syndromological sense - a twilight state of consciousness (Puri and Treasaden, 2017; Ivantsa 2002). It usually develops after a few minutes, an hour, less often - at large intervals after taking alcohol (Poothakool, 2018). As a general rule, a person who commits a crime in a state of pathological intoxication is treated as insane.

The issue of determining the state of intoxication in criminal law is relevant. The problem is that each country determines its own standard for the norm of alcohol in exhaled air, blood. This is determined by the policy of a particular state and its cultural characteristics. Typically, these rules apply to drivers of vehicles. Is this rule applicable to other crimes? In most criminal law contexts, such rules are the exception rather than the rule (Quilter *et al.* 2016).

The scientific literature describes a variety of methodologies and doses of alcohol that are used to study the effects of intoxication on humans. It is important to note that the fact of drinking does not yet

indicate a state of intoxication (Quilter *et al.*, 2016). In our opinion, this problem requires large-scale interdisciplinary studies that could identify a conditional common standard.

Having considered the question of the possibility of bringing a person to criminal responsibility while intoxicated, one should proceed to the analysis of accounting for alcohol intoxication in cases where the criteria of insanity are absent and a person can be held responsible.

The relationship between alcohol and crime can be described in three broad categories (Poothakool, 2018):

- direct causal relationship;
- contributing factor;
- coexistence relations.

In accordance with the above categories, the possible legal regulation of the state of intoxication during a crime should be disclosed. However, for the present study, the above categories should be adapted, and only cases of the influence of the state of intoxication on the fact of the commission of a crime should be considered.

The legal regulation of the state of intoxication, in our opinion, can be expressed as follows:

1. The state of alcohol intoxication is a constructive sign of the main corpus delicti. In this case, there will be a direct causal link between intoxication and the fact of the crime. After all, if there is no fact of intoxication, then there is no fact of crime. Responsibility can be established for the repeated presence of a person in a state of intoxication under certain circumstances, for example, when driving a vehicle (Ray, Borkowski, Leal, and Bales, 2017).
2. The state of alcohol intoxication is a qualifying attribute of a specific corpus delicti. Responsibility is tightened, but intoxication itself is not the only reason that entails criminal liability. In this case, intoxication may be part of a set of causes or be a contributing factor. Such regulation, in our opinion, is applicable to crimes related to highly dangerous sources (driving a car, performing certain work, etc.). The symptomatology of intoxication determines the

undesirability and/or impossibility of a person to participate in a process that requires alertness, a quick reaction, etc. Moreover, modern studies illustrate the detrimental effect of acute alcohol intoxication on the spatial distribution of visual attention (do Canto-Pereira *et al.*, 2007), its effect on the deterioration of control of body movements (Modig *et al.*, 2012).

3. The state of alcoholic intoxication is an aggravating circumstance. In this context, we can consider alcohol intoxication as a contributing factor. Alcohol-related crime is associated with numerous social crimes, such as anti-social behavior that violates public order, vandalism, robbery, rape, murder (Graham *et al.*, 2012). This position is completely justified; some crimes are most often committed in a state of alcohol intoxication. Alcohol causes weakening of self-control, changes in the perception of the surrounding reality, which can lead to immoral, illegal or criminal behavior in a particular society. Thus, studies confirm that the state of intoxication plays a role in murders, rape, as well as burglaries and robberies (Felson & Staff, 2010).

However, simply being a drunk person cannot testify to the relation of such a state and the fact of the crime committed. Not every case of alcohol leads to violence and not all cases of violence are related to alcohol (Graham *et al.*, 2012).

The relation between intoxication and violent crimes is not so simple, and its development is influenced by many factors, in particular, situational factors, the factor of conflict initiation by the victim, etc. (Ann Deehan, 1999; Poothakool, 2018). This position is completely justified, intoxication should be considered very carefully. If the victim is the initiator of the conflict or the conflict comes from his immoral or illegal behavior, then how one can justify the use of aggravating circumstances?

We believe that each situation is individual, and only on the basis of certain circumstances we can conclude that alcohol is related to crime. For example, a violent crime is committed without reason or involves hooligan actions.

It should be noted that when regulating alcohol intoxication as an aggravating circumstance, it is important to consider the limited versatility of its use.

Some crimes can only be found in relation to coexistence with intoxication. For example, taking a bribe by an intoxicated person.

CONCLUSION

Overall, this article has investigated the concept and types of intoxication, considering the basis of criminal liability for committing a crime while intoxicated, and the role of intoxication in criminal law. This research conducted on the basis of a dialectical measure to the disclosure of legal phenomena and processes utilizing general scientific.

The basis of criminal liability while intoxicated is that a person commits a socially dangerous act in a state resulting from the intentional use of alcohol. In most cases, while intoxicated, a person is sane and subject to criminal liability on general grounds. In turn, a person may be treated as insane or partially sanctioned if, as a result of drinking alcohol (even a small dose) he develops mental disorders, dementia, or another abnormal mental condition, which are established by examination.

An important and relevant issue is the recognition of intoxication. Usually the law sets the standards for the inspection of drivers, but the application of these standards to persons who commit other crimes has not been well developed.

The legal regulation of the state of intoxication can be expressed in several variants.

The state of alcohol intoxication is a constructive sign of the main corpus delicti. Such regulation is applicable when establishing liability for the repeated intoxication under certain circumstances.

A state of intoxication is a qualifying symptom of a specific corpus delicti. Such regulation is applicable to crimes related to sources of increased danger or the performance of certain works.

A state of intoxication is an aggravating circumstance. Such regulation is applicable to criminal law in general. However, the state of intoxication should be considered as an aggravating circumstance only in the case of the connection of intoxication and crime. The fact that a person is intoxicated at the time the crime was committed does not indicate their connection. It should be noted that when regulating alcohol intoxication as an aggravating circumstance, it is important to consider the limited versatility of its use.

Some crimes can only be found in relation to coexistence with intoxication.

Moreover, one popular and politically feasible prohibition-type social control strategy is raising the minimum purchase age. A large body of research on the effect of the minimum purchase age on traffic fatalities shows that when the purchase age was lowered, more deaths occurred, and that when it was raised, fatalities declined.

Some of the provisions and conclusions of this work may also apply to the regulation of the state of intoxication caused by other substances or agents.

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