



Criminal Legal Means of Counteracting Crimes Committed under the Influence of Alcohol: A Comparative Legal Study of the Legislation of the CIS Countries

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Abstract: The article analyzes the criminal law means of counteracting crimes committed under the influence of alcohol according to the legislation of the CIS countries. The purpose of the work is to comprehensively analyze the criminal legal means of counteracting crimes committed under the influence of alcohol comprehensively, the options for their legal regulation, and the study of doctrinal provisions on the criminal significance of the alcohol intoxication. To achieve the goal, the authors set the main tasks that follow from the peculiarities of the criminal codes' norms of the CIS countries, namely: identification of typical approaches to the regulation of criminal legal means of counteracting crimes committed under alcohol intoxication, as well as consideration of alcoholic intoxication in three significant for criminal law aspects. The use of the method of comparative jurisprudence in combination with general scientific methods made it possible to identify common features of legal regulation, as well as to find discrepancies in the legal positions of legislators of the CIS countries. In the course of the study, it was revealed that there are typical forms of using the sign of intoxication of a subject in the Special Part of the Criminal Law, at the same time, quite specific approaches to the regulation of intoxication were found in both the General and the Special Parts of the Criminal Law. The results of the study make it possible to expand the knowledge of criminal law science, ensure the integration of scientific knowledge about the norms of foreign countries, and also contribute to the process of improving the criminal law, improving its quality and adequacy to modern realities.


1 INTRODUCTION


Alcohol and drugs have been known to mankind for a long time, and their assignment has changed in the course of history. Being part of the global culture, they have transited into our time. The history of the development of societies and states is replete with facts of combating both alcohol and drugs, but at present alcohol is allowed in the overwhelming majority of states.

The alcohol intoxication can be of decisive importance in the qualification of crimes and in the individualization of criminal responsibility. Common historical, cultural, political and legal origins within

the framework of the USSR determined the choice of a group of precisely the CIS countries, in whose criminal codes the authors identified general legislative solutions, as well as particular features characteristic only for specific countries.

Research devoted to alcohol intoxication and its effect on crime and specific crimes are currently very relevant. A number of studies are devoted to very narrow issues: the relationship between alcohol and subsequent dangerous behavior with weapons (Wintemute, Wright, Castillo-Carniglia, 2018), the interpretation of gender equality in the practice of sentencing in connection with alcohol intoxication (Lightowlers, 2019). Without such narrowly focused research, the development of science is impossible.

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It is important to point out that the modern science of criminal law analyzes issues related to the legal regulation of liability for crimes committed under alcohol intoxication and its characteristic features (Bezugly, Bazarov, Kostennikova, Lesnikov, Mironuk, 2020) as well as the issues of considering this state (Zenkin, 2019; Artemenko, Sargsyan, 2017). The science of criminal law is trying to develop approaches to improve the fight against intemperance in transport (Korobeev, Chuchaev, 2018), although this struggle has been going on for more than a dozen years. We believe that this is impossible without studying the experience of foreign legislation, which can be adopted by adapting it to the realities of a particular state.

With all the diversity of approaches to the study of the influence of alcohol intoxication on the commission of a crime, it should be stated that social relations are changing, and the norms of criminal law are changing, and this prompts constant scientific research that allows us to find, adapt and use positive solutions to important issues developed by foreign countries. Science has accumulated enough knowledge on the topic under consideration, but still there are unresolved issues related to the potential of legislative use of legal structures, including the state of alcoholic intoxication and their implementation in criminal law norms.

The hypothesis of the research is that in the CIS countries there are different approaches to the criminal law regulation of the means of counteracting crimes committed under the influence of alcohol, differing in terminological description, and prerequisites for interpretation.

The purpose of the study is to analyze the criminal legal means of counteracting crimes committed under the influence of alcohol comprehensively, the options for their legal regulation, and the study of doctrinal provisions on the criminal significance of the state of intoxication.

In accordance with the criminal laws norms regulating special issues of responsibility of persons who have committed a crime under the influence of alcohol, the authors set the following tasks: to identify typical approaches to the regulation of criminal legal means of counteracting crimes committed under the influence of alcohol in three aspects that are significant for criminal law: as a sign of the main corpus delicti, as a qualifying sign, as a circumstance, aggravating or mitigating responsibility.

The authors made an attempt to systematize the positive (according to the authors) legislative positions, explain them and thereby provide science

with their judgments, which, possibly, will be perceived in related studies.

2 MATERIALS AND METHODS

The study was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. Among the latter are formal legal, linguistic and legal, comparative legal, which were collectively used to study the texts of criminal laws of 10 CIS countries in order to identify the features of the legal regulation of the state of alcoholic intoxication in the criminal law. The choice of this group is due to the commonality of the previous historical development of criminal legislation within the USSR and the equal period of post-Soviet development. This makes it possible to predict, on the one hand, the presence of common features in the regulation of criminal legal means of counteracting crimes committed while intoxicated, on the other hand, the diversity in the positions of legislators on the responsibility of persons who have committed a crime under the influence of alcohol.

3 RESULTS AND DISCUSSION

When creating any criminal law, the author tries to provide for a balanced set of measures aimed at counteracting individual crimes and crime in general. In this vein, it can be noted that the entire set of norms of the criminal law is a set of criminal law means of combating crime, regulated by the legislator. Alcohol intoxication in the criminal legislation of the CIS countries can entail various legal consequences in connection with which it is necessary to determine the relationship between alcohol and crime, as well as the peculiarities of the legal regulation of this issue in the legislation.

The relationship between alcohol and crime can be described according three broad categories (Hayes, 1993):

- direct cause-and-effect relationship;
- contributing factor;
- a relationship of coexistence.

In accordance with the above categories, the legal regulation of the peculiarities of the liability of persons who are intoxicated when committing a crime should also be disclosed. However, for this study, the above categories should be adapted, and only the cases of the influence of the state of intoxication on

the fact of committing a crime should be taken into account.

Legal regulation of the person's responsibility who have committed a crime under the influence of alcohol, in our opinion, can be expressed in several varieties: 1. the state of intoxication is a design feature of the main corpus delicti; 2. the state of intoxication is a qualifying feature of a specific corpus delicti; 3. The state of intoxication is a circumstance aggravating (Bezugly, Bazarov, Kostennikova, Lesnikov, Mironuk, 2020) or mitigating liability. For the purposes of this study, the authors need to consider alcohol intoxication as a mitigating circumstance, although we have not previously considered such legal regulation

3.1 The State of Alcohol Intoxication Is a Design Feature of the Main Corpus Delicti

In this case, there will be a direct causal relationship between alcohol intoxication and the fact of a crime. After all, if there is no fact of alcohol intoxication, then there is no fact of a crime. Responsibility can be established for finding a person in a state of intoxication under certain circumstances or for repeated identical act. Such legal regulation of the influence of alcohol intoxication on liability is characteristic for motor vehicle crimes. Thus, the Criminal Code of the Russian Federation provides for liability for repeated driving under the influence of alcohol. In the Criminal Code of Turkmenistan, the alcohol intoxication is taken into account in a special norm "Driving while drunk". The Criminal Code of the Republic of Belarus establishes responsibility for driving a vehicle in a state of intoxication, and recognizes the repeated commission of this crime by a qualified staff. In general, it should be pointed out that most laws use the sign of alcohol when constructing traffic offenses.

The norm of the Criminal Code of the Republic of Moldova is quite interesting, where the legislator made an attempt to describe the states of mild and severe alcohol intoxication through the fixation of the concentration of alcohol in blood, as well as the concentration of alcohol vapors in the exhaled air. It should be noted that in the Criminal Code of the Republic of Moldova the state of severe alcoholic intoxication is a design feature of the crime. "Driving in a state of severe alcoholic intoxication or in a state of intoxication caused by other substances", driving in a state of mild intoxication does not entail criminal liability. In our opinion, the legislator wanted in this way to differentiate responsibility according to the

degree of intoxication, while dividing the public danger of mild and severe degrees. At the same time, researchers (Ballin, 1986) discuss on a direct relation between an increase in the concentration of alcohol in the blood of drivers and an increased risk of a car accident, and this confirms the correctness of the differentiation of criminal liability.

If we talk about drunkenness during the operation of vehicles, then there are studies in which it is unambiguously indicated that the changes in the driver's body deprive him of the opportunity to drive a motor vehicle efficiently with a high alcohol concentration in the blood above 0.5% (more than 0.21 mg/l in exhaled air) (Komarikova, 2020).

We believe it is reasonable to criminalize the driving a motor vehicle in a state of intoxication. In this case, there is no need to wait for the consequences in the form of harm to human health and a possible more serious crime will be prevented.

It should be recognized that the legislator criminalizes the most typical forms of behavior and determines where alcohol intoxication will be a design feature of a main corpus delicti, and where it will be a qualifying feature.

3.2 The State of Alcohol Intoxication Is a Qualifying Feature of a Specific Corpus Delicti

The responsibility is getting more severe, but alcohol intoxication itself is not the only reason entailing criminal liability. In this case, intoxication can be part of the causal complex or can be a contributing factor.

Thus, the Criminal Code of the Republic of Belarus, the Criminal Code of the Republic of Moldova, the Criminal Code of the Russian Federation and a number of other codes fix the state of alcohol intoxication as a qualifying feature of transport crimes and only transport crimes. However, the regulation of the state of alcohol intoxication only in motor transport crimes, in our opinion, is insufficient.

Such regulation is applicable to crimes related to the performance of certain work, the handling of sources of increased danger, etc. The symptomatology of alcohol intoxication determines the undesirability and (or) the impossibility of a person's participation in the process where concentration of attention, quick reaction, etc. is necessary.

Modern studies illustrate the detrimental effect of acute alcohol intoxication on the spatial distribution of visual attention (Do Canto-Pereira, De PA David., Machado-Pinheiro, Ranvaud, 2007.), its effect on the

deterioration of control of body movements (Modig, Fransson, Magnusson, Patel, 2012).

With regard to this part of the study, it is pertinent to say that intoxication, in particular alcohol intoxication, is associated with a sufficient number of crimes. Thus, any kind of "touching" a weapon by persons under the influence of alcohol is objectively dangerous. Nevertheless, none of the criminal codes of the CIS countries contains such a qualifying feature for weapons-related crimes. While regulating the carrying and use of firearms by severely intoxicated persons can provide public health opportunities to reduce gun-related injuries (Carr, Porat, Wiebe, Branas 2010).

It will be fair to note that the legislator of each state transforms the criminal law in accordance with public demand and it is possible that there is no need to attribute alcohol intoxication as a feature (design or qualifying) to crimes related to weapons or violation of safety measures. The legislators of the CIS countries still provide for the possibility of legal consideration of this circumstance.

3.3 The State of Alcohol Intoxication Is an Aggravating or Mitigating Feature

The state of intoxication is circumstance aggravating responsibility. In this context, alcohol intoxication can be considered as a contributing factor.

A number of criminal laws of the CIS countries oblige the law enforcement officer to assess the reasons, the degree of intoxication and its influence on the commission of a crime when imposing punishment (Criminal Code of the Republic of Moldova, Criminal Code of Turkmenistan). We believe that this approach to regulating the state of intoxication is very rational. If we talk about the Criminal Code of the Republic of Moldova, it is important to note that the legislator classifies the state of intoxication as both aggravating and mitigating circumstances. It can be concluded that such an order is reasonable and directs the law enforcement officer to a comprehensive consideration of the case.

In contrast, one can put the position of the legislation of Turkmenistan, which did not attribute the state of intoxication to either aggravating or mitigating circumstances. In turn, the list of mitigating circumstances is open and the court can recognize as such any circumstance, but the list of aggravating circumstances is closed and, accordingly, the court cannot legally use this circumstance to justify the appointment of a more severe punishment.

In the criminal legislation of the CIS countries, the regulation of the state of alcohol intoxication as an aggravating circumstance is quite common; this approach is used in the Criminal Codes of the Russian Federation, the Republic of Armenia, the Republic of Belarus, and the Kyrgyz Republic and in a number of other codes. Often, legislation does not oblige to always recognize the fact of intoxication as an aggravating one.

For example, in the Criminal Code of the Russian Federation, "the court, depending on the nature and degree of social danger of the crime, the circumstances of its commission and the personality of the perpetrator, may recognize the commission of a crime in a state of intoxication as an aggravating circumstance." And in the Criminal Code of the Republic of Tajikistan, "the court has the right, depending on the nature of the crime, not to recognize the commission of a crime under the influence of alcohol as an aggravating circumstance." The two above legal positions seem identical at first glance, but we believe that in the Russian Federation the court must argue for the recognition of the state of intoxication as an aggravating one, but in the Republic of Tajikistan the court must argue for the non-recognition of the state of intoxication as an aggravating one.

In any case, we have a positive attitude to the regulation of alcohol intoxication as an aggravating circumstance; however, we want to note that in no code is it described in which crimes (form of guilt, category and other characteristics of crimes) it can be recognized as such. It is absolutely obvious that the legislator cannot stipulate every life situation at the level of the criminal code, but guidelines are nevertheless necessary. Analyzing the literature on intoxication in criminal law (Ghossoub, Khoury, 2018; Quilter, 2017; Quilter, McNamara, Seear, Room, 2016; Sukhee, 2017), we can conclude that only a doctrine at the level of narrowly focused research can develop such reference points.

Alcohol-related crime is associated with numerous social crimes, such as anti-social behavior disturbing public order, vandalism, robbery, rape, and murder (Graham, Parkes, McAuley, Doi, 2013).

This position is completely justified; some crimes are most often committed in a state of intoxication. When drinking alcohol, self-control is weakened, there are changes in the perception of the surrounding reality, which can lead to behavior that is immoral, illegal or criminal in a particular society. For example, research confirms that drunkenness plays a role in murder, rape, and burglary and robbery (Felson, Staff, 2010). The destructive behavior of air

passengers in recent years has been very actively discussed in the media and science (Chuchayev, Gracheva, Malikov, 2020), and this behavior is often caused by alcohol intoxication.

However, the mere presence of a person in a state of intoxication cannot testify to the connection between such a state and the fact of a committed crime. Not all alcohol use leads to violence, and not all violence is alcohol-related (Graham, Parkes, McAuley, Doi 2013).

The connection between drunkenness and violent crime is not so simple, and its development is influenced by many factors, in particular: situational factors, the factor of initiating a conflict with the victim, and others (Deehan, 1999). This position is completely justified; accounting for the state of intoxication should be carried out very carefully. So, if the victim is the initiator of the conflict or the conflict is caused by her immoral or illegal behavior, how can the use of an aggravating circumstance be argued? We believe that each situation is individual, and only on the basis of some circumstances can one come to a conclusion about the connection between alcohol and crime. For example, a violent crime was committed without a pretext or associated with hooligan actions, systematic illegal behavior that manifested itself only under the influence of alcohol, etc.

It should be noted that when regulating intoxication as an aggravating circumstance, it is important to take into account the limited universality of its application. So, some crimes can only be found in relation to coexistence with intoxication. For example, taking a bribe by an intoxicated person.

The state of intoxication can also be recognized as a mitigating circumstance. The Criminal Code of the Republic of Moldova recognizes as a mitigating circumstance "the commission of a crime by a person in a state of intoxication caused by involuntary or forced consumption of substances or the consumption of such substances without realizing their consequences".

It should be pointed out that the recognition of intoxication as a mitigating circumstance or a circumstance due to which the punishment is reduced is very controversial in science. (손지선, 2018; 보해니안, 2016.). We believe that in the case of involuntary use of substances that cause intoxication, intoxication can be recognized as a mitigating circumstance. However, in the case of consumption of substances without awareness of their consequences, it cannot be considered mitigating. A person, consuming both alcohol and drugs, cannot

predict his exact state, and causes a state of intoxication without always guessing what may happen, and therefore he should be fully responsible in cases of voluntary intoxication. In general, we believe that there is no point in describing drunkenness as a mitigating circumstance. The list of mitigating circumstances is open, and therefore, the court may, in exceptional cases, recognize intoxication as mitigating.

4 CONCLUSIONS

The criminal legislation of all CIS countries contains criminal-legal means of counteracting crimes committed under the influence of alcohol, and they can be regulated in three legislative structures: 1. state of intoxication is a design feature of the main corpus delicti; 2. the state of intoxication is a qualifying feature of a specific corpus delicti; 3. state of intoxication is a feature that aggravates or mitigates responsibility.

In the criminal codes of the Russian Federation, Turkmenistan and other countries, the state of intoxication is a design feature of a crime. As a rule, this refers to driving under the influence of alcohol. In the Criminal Code of the Republic of Moldova, responsibility for driving under the influence of alcohol is differentiated depending on the degree of intoxication. We believe that this can be recognized as a positive experience.

Alcohol intoxication as a design feature of corpus delicti is contained in most of the criminal laws of the CIS countries and refers to transport crimes. But not a single code describes drunkenness as a qualifying feature for other crimes, either related to weapons or other sources of increased danger (except for transport).

The state of intoxication as an aggravating circumstance is enshrined in most codes of the CIS countries, and the legislation grants the court the right to recognize the intoxication as an aggravating circumstance or not. However, the rules governing this right are described in two variations: it is necessary to argue for the recognition of aggravated intoxication (Russian Federation); it is necessary to argue for non-recognition of aggravated intoxication (Republic of Tajikistan).

In the legislation of the CIS countries, one can find a legal position on the recognition of the state of intoxication as a mitigating circumstance, however, only in one code - the Republic of Moldova. The involuntary, forced use of substances that cause intoxication, or the consumption of such substances

without realizing their consequences is considered mitigating. Although this position, in our opinion, is generally controversial, however, we believe that there are social and cultural grounds for this.

Active counteraction to crimes, often committed in a state of intoxication, can lower the crime rate in general, and not by simply reducing “drunken crime”, but through a special legal status of intoxication in criminal law - this will allow the population to form a sense of responsibility for their behavior.

All the conclusions presented in this work can generally refer to the state of intoxication caused by various reasons (drugs, psychotropic substances, and so on).

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