

CRIMINAL LAW ON PROSECUTION OF CRIMINAL RESPONSIBILITY IN CASES OF CRIMES COMMITTED UNDER THE INFLUENCE OF ALCOHOL, BEER OR STIMULANTS - CURRENT STATUS AND DIRECTIONS FOR IMPROVEMENT

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Abstract - From the provisions of the 2015 Penal Code, amended and supplemented in 2017 (hereinafter referred to as BLHS) on the prosecution of criminal liability (hereinafter referred to as TNHS) and the sanctions imposed on offenders. Due to the use of alcohol, beer or other strong stimulants when committing crimes, the author focuses on analyzing the above regulations in the context of criminals being forced, incited and enticed to use alcohol. Beer and other stimulants lead to loss of cognitive ability and behavioral control. On that basis, point out unreasonable points when prosecuting criminal liability and framing penalties for offenders due to the use of alcohol, beer or other strong stimulants in the above case and provide solutions to perfect law.

Keywords: criminal liability; crime; alcohol; beer; strong stimulants

INTRODUCTION


Vietnam is considered a potential market for beer and alcohol production and consumption with the fastest growth rate in the world. A report by Euromonitor International shows that the growth of the middle class and young people has caused beer consumption in Vietnam to increase by nearly 3 times in the period 2004-2018. In 2019, Vietnam was the third largest beer consumer in Asia in terms of output, although its total population ranked only 15th in the world with 96.2 million people. The average beer consumption per household in Vietnam increased by 30% in the period 2013-2018, reaching 43 liters/household (INFOQ Vietnam, 2020).

According to statistics from the National Traffic Safety Committee, 68% of people drive after drinking alcohol, of which 40% are still driving while drunk. Faced with this situation, the State has issued regulations to adjust the prevention and control of the harms associated with alcohol and beer, including the application of TNHS as one of the strict measures in Vietnam (Nguyen Tien Hoan, 2021). According to the law, offenders who lose the ability to perceive or control their behavior due to the use of alcohol, beer or stimulants are still subject to criminal liability according to Article 13 of the 2015 Penal Code. In addition, in some specific crimes, the use of alcohol, stimulants, if the concentration of alcohol in the blood or breath exceeds the prescribed level or the use of drugs or other stimulants that are prohibited by law, then it is considered a circumstance for applying the increased penalty frame according to point b, clause 2, Article 260 and point b, clause 2, Article 267 of the 2015 Penal Code.

In this article, the authors focus on analyzing the issue of criminal liability for criminal acts committed under the influence of alcohol or stimulants, as well as the consideration of exemption, reduction of punishment, and application of increased penalty frames for offenders in each specific case. Based on that, the article proposes directions for improving the regulations on criminal liability for offenders who commit crimes due to the use of alcohol, beer or other strong stimulants, as well as setting out the legal responsibilities that must be borne by the person who coerces, incites, or entices others to use alcohol, beer, or other stimulants. The article also discusses the responsibilities of the perpetrators and related entities.

1. Criminal liability for criminal acts committed by a person who loses the ability to perceive due to pathological alcoholism

On the basis of Article 13 of the 2015 Penal Code, it is stipulated: "A person who commits a crime in a state of losing the ability to perceive or control his or her behavior due to the use of alcohol, beer or other strong stimulants is still subject to criminal liability". The law compels criminal liability for



those who use alcohol or beer to the point of losing their ability to perceive or control their behavior in the direction of *"having to bear it"*. This regulation aims to avoid the case of criminals using the factor of losing the ability to perceive or control behavior due to the influence of alcohol or beer to justify illegal acts, as well as to avoid legal responsibility. After all, those who fall into a state of losing the ability to perceive and control their behavior due to the use of alcohol or beer are initially all subjects who can perceive the consequences of using alcohol or beer. However, they decided to abandon their ability to perceive and control their behavior, leading to a state of loss of perception and committing crimes. Therefore, it can be concluded that the perpetrators in this case mostly have criminal responsibility capacity. To determine a subject that is subject to Article 13 of the Penal Code, it is necessary to clarify 3 factors: (i) this subject commits one or more acts that are defined as crimes by the Penal Code; (ii) the act is committed when the person is in a state of loss of perception or control of behavior; (iii), the cause of the subject falling into a state of loss of perception and control of behavior is due to the use of alcohol, beer or other strong stimulants. When considering the third factor, it is necessary to clarify the relationship between the act of "using alcohol and beer" and the consequence of "loss of perception and control of behavior" of the offender. Whether or not the offender is at fault for their state of loss of perception or control of behavior depends on the amount of alcohol or beer they have consumed. However, there are some special cases where this subject may not be considered at fault, if they suffer from "pathological intoxication" (Nguyen Ngoc Hoa, 2017).

Pathological intoxication is understood as a state of acute alcohol intoxication that can occur in people who drink a small amount of alcohol that is beyond their body's tolerance. It causes pathological symptoms of impaired consciousness such as blindness, accompanied by emotional tension caused by delusions and hallucinations leading to wrong and dangerous actions (Hai Yen, 2018). Pathological intoxication occurs after a person consumes fermented foods and drinks regardless of the amount, but the body has a strong reaction leading to difficulty or temporary loss of the ability to perceive and control behavior for a short period of time thereafter (Dinh Van Que, 2013). It can be concluded that a person in a state of pathological intoxication is a person who *"temporarily loses the ability to perceive and control behavior"*. Therefore, it raises the question of whether a person in a state of pathological intoxication who commits a violation is called a crime regulated by the Penal Code. In this case, does it raise legal responsibility for this subject? This is an issue that needs to be specifically defined by law.

According to the science of criminal law in Vietnam, a crime is understood as a unified entity between the objective and subjective aspects of the elements of a crime. Accordingly, *"a person can only bear criminal responsibility for what belongs to his or her subjective state of mind when that subjective state of mind is manifested in an actual act. Conversely, an act and the consequences of the act, even if they are dangerous to society, cannot become the basis for criminal responsibility if the act is not determined by the consciousness and mental attitude of the subject (intent or negligence)"* (Dao Tri Uc, 2000). When considering the fault element in the relationship between the act of "using alcohol and beer" and the consequence of "falling into a state of pathological intoxication", it can be seen that the user of alcohol and beer in this case is not entirely at fault. The body's reaction to alcohol and beer is beyond their control because the amount of alcohol and beer ingested can be very small, such as eating dishes and drinks that are processed with alcohol and beer ingredients. It can be seen that although the initial cause is the use of alcohol and beer or food and drinks containing alcohol and beer, leading to a state of loss of perception and control of behavior that causes criminal acts. However, the intermediate cause that amplifies the state of intoxication many times is due to the body's overreaction to the point of falling into a state of loss of perception and control of behavior. A person who is intoxicated in this case is not at fault for their loss of control that leads to the commission of an act that is considered a crime. The crime committed is beyond the person's ability to perceive and control, and is not determined by the person's consciousness and mental attitude. Therefore, the offender in this case belongs to the group of people who do not have criminal responsibility when committing the crime and therefore do not have to bear criminal responsibility for the act that has caused damage to society (Hanoi Law University, 2015).

Article 21 of the 2015 Penal Code stipulates: *"A person who commits a dangerous act for society while suffering from a mental illness, another disease that impairs his or her ability to perceive or control his or her behavior, shall not bear criminal responsibility"*. According to the above regulations, it can be seen that the subjective prerequisite for determining whether a person should bear criminal responsibility for a dangerous act they have committed is that they *"do not suffer from a mental illness or another disease that impairs their ability to perceive or control their behavior at the time"*




of the crime". In the case of a person who commits a crime while suffering from pathological intoxication, they can be classified as a "person who suffers from another disease that impairs their ability to perceive or control their behavior" at the time of the crime. This requires clarifying the "fault" factor in determining whether this person's use of alcohol and beer led to a loss of control, through parameters such as blood alcohol concentration and the amount of alcohol they have ingested. If there are signs of intentional use of alcohol and beer beyond the body's tolerance, they will be forced to bear criminal responsibility. Conversely, in the case where the amount of alcohol ingested is insignificant, but due to a medical condition, the spirit is strongly agitated, leading to impaired cognitive ability and inability to control behavior, resulting in the commission of a crime. In this case, it is necessary to consider exempting, reducing, or eliminating criminal responsibility depending on each case.

Based on the above analysis, the group of authors proposes to amend Article 13 of the 2015 Penal Code in the direction of excluding the criminal responsibility of the offender in the case of "*The offender suffers from diseases that when catalyzed by alcohol leads to a state of loss of perception and control of behavior*" leading to the commission of a crime. In addition, it is necessary to stipulate administrative sanctions for cases of crimes committed due to pathological intoxication to educate and raise awareness of the responsibility to avoid using alcohol and beer, even in small doses. In case they have been disciplined but still re-offend "*using alcohol and beer to trigger symptoms of pathological intoxication leading to a state of loss of perception, control of behavior and causing criminal acts*", then it is necessary to consider prosecuting criminal responsibility. Because, they know or should know the danger of the disease they are suffering from, know clearly that their responsibility is not to use alcohol and beer even in small doses but still drink, leading to loss of control of their behavior and commit crimes.

2. Criminal responsibility for criminal acts of people who lose the ability to perceive and control behavior due to being forced, incited, provoked, or enticed to use alcohol, beer and other stimulants

As analyzed above, it is reasonable to hold criminally liable a person who uses alcohol or beer to the point of losing the ability to perceive or control his or her behavior under Article 13 of the 2015 Penal Code. This is because they are aware of the consequences of using alcohol, beer, and stimulants, which leads to a limited ability to perceive and control behavior (Dang Van Thuy, 2020). However, the group of authors argues that in some cases, although the subject is aware of the danger of alcohol, beer, and stimulants, it is not the main cause leading to the state of loss of perception and control of behavior of the offender. Among them, many subjects use alcohol and beer against their will and desire, because they are forced into a situation, although initially voluntary, but when they reach a certain limit, they are forced and urged to continue drinking for some reason that makes them unable to refuse (Lawyer Dang Van Cuong, 2020). In other words, these are acts that aim to affect the spirit, cause emotions, or have acts such as enticing others to lose self-control, forcing others to drink alcohol and beer are understood as forcing others to reluctantly drink alcohol and beer (Truc Phuong, 2020). For example, in the case of forced alcohol and beer use is linked to the material and spiritual benefits of the person who is forced to use alcohol and beer, making them fall into a passive state, unable to refuse. Therefore, the issue of prosecuting criminal liability in some cases still exists. There are still some inconsistencies when considering the relationship between the offender and the subject who coerces, incites, or provokes others to use alcohol and beer, specifically:

Firstly, according to Clause 1, Article 5 of the Law on Prevention and Control of Alcohol and Beer Harm 2019, it strictly prohibits acts of inciting, provoking, enticing, or forcing others to drink alcohol and beer. In addition, the law also stipulates a fine of from 200,000 to 500,000 VND for people from 16 to under 18 years old who drink alcohol and beer; A fine of from 500,000 to 1,000,000 VND for acts of forcing others to drink alcohol and beer according to Article 30 of Decree 117/2020/ND-CP stipulating the use of alcohol, beer and places where alcohol and beer are not allowed. Thus, in the issue of preventing and controlling the harm of alcohol and beer, the law stipulates legal responsibility for subjects who have acts of forcing, inciting others to drink alcohol and beer. Accordingly, the time to prosecute the subjects who have the act of inciting and forcing is the time when the act of forcing and inciting actually occurs or the time when the person who is incited and forced to use alcohol and beer has committed an act. violating the law. It is realized that, in cases where the subject using alcohol, beer, and stimulants does not agree to use alcohol and beer but is forced, incited, or enticed, this act is the cause of the loss of perception of the person committing the crime. In other words, the person



who forces, incites, or entices the use of alcohol and beer has a part of the responsibility for the crime of the person who is forced, incited, or enticed to use alcohol and beer, leading to loss of perception and control of behavior. Thus, according to the authors' point of view in this case, if prosecuting criminal liability for the subject who is forced, incited, or enticed to use alcohol and beer after committing a crime under Article 13 of the Penal Code mentioned above is not appropriate when considering the aspect of the criminal's intention.

Sharing the same view, some scholars also argue that the issue of considering the fault element in the case of offenders who are intoxicated due to being forced or coerced by others to use alcohol or other strong stimulants is as follows: *"In cases where a person is forced or coerced by others to use alcohol or other strong stimulants, leading to the inability to perceive and control their behavior, and therefore has committed acts that cause harm to society, then clearly, they are not at fault (in the use, in the intoxication caused by the use of alcohol or other strong stimulants) so it is necessary to exclude criminal responsibility for them"* (Trinh Tien Viet, 2013).

Based on the above analysis, the group of authors proposes that legislators need to supplement the regulations on the prosecution of criminal liability for offenders who use alcohol, beer, or other strong stimulants, but in cases where there is sufficient evidence to prove that they fall into a state of inability to perceive and control their behavior due to being forced, enticed, or incited to use alcohol, beer, and stimulants, they should be considered for a mitigating circumstance of the penalty frame, because in fact, the offender has wanted to stop using alcohol, beer, and stimulants when reaching a certain limit (Lawyer Dang Van Cuong, 2020). This shows that the person who is forced, enticed, or incited to use alcohol and beer does not want to put himself or herself in a state of inability to perceive and control his or her behavior and has the will to stop using alcohol and beer before the blood alcohol concentration reaches the level of inhibition of the ability to perceive and control behavior according to Section 60 of Decision No. 320/QĐ-BYT stipulating the quantification of ethanol.

Secondly, regarding the issue of liability for compensation for damage caused by users of stimulants, it is specifically regulated in Article 596 of the Civil Code 2015, as follows: *"i) A person who, due to drinking alcohol or using other stimulants, falls into a state of inability to perceive and control his or her behavior, causing damage to others, must compensate. ii) When a person intentionally uses alcohol or other stimulants to cause another person to fall into a state of inability to perceive and control their behavior, causing damage, they must compensate the victim"*. Therefore, it can be seen that civil law also recognizes and binds the liability for compensation for those who intentionally use alcohol or other stimulants to cause others to fall into a state of inability to perceive and cause damage according to the regulations in Clause 2 of Article 596 of the Civil Code. However, when compared with the regulations on mitigating circumstances of the Penal Code, when prosecuted for criminal liability, the person who falls into a state of inability to perceive and control behavior due to being forced or incited to use alcohol, beer, and stimulants does not enjoy mitigating circumstances when the person who intentionally forces or incites others to use alcohol, beer, and stimulants has completed the compensation of damage to the victim because according to point b, clause 1, Article 51, the offender must voluntarily perform the obligation to compensate for the damage caused by him or her to be considered a mitigating circumstance of criminal liability. According to the authors, this regulation is unreasonable, because the obligation to compensate for the person who intentionally uses alcohol and stimulants to cause another person to fall into a state of inability to perceive and control behavior is the legal responsibility that the individuals who force, incite, provoke, and entice others to drink alcohol and beer must bear because they have violated the personal freedom of others. This is also the reason why the drafting committee included it in the above Law to protect the freedom of citizens when drinking alcohol and beer (According to Dan Viet newspaper, 2020). Thus, the issue of compensation of the person who forces or incites others to use alcohol and beer in the above case is not only an obligation to the victim but also an obligation to the person who is forced or incited to use alcohol and beer. stimulants that fall into a state of inability to perceive and control behavior.

Therefore, for those who force or incite others to use alcohol, beer, and stimulants, legislators should consider the obligation to compensate all damages for the victim caused by the actions of the offender according to the regulations. law, at the same time when there is an act of forcing or inciting others to use alcohol, beer, and stimulants, having completed the compensation for the victim, it is still considered a mitigating circumstance for the offender according to the law. regulations of law. In addition, the person who forces or incites others to use alcohol, beer, and other strong stimulants must be responsible for all costs related to criminal proceedings that the law the offender must bear.

Besides, it is necessary to bind the responsibility to the person who forces, incites, and entices others to use alcohol and beer to replace the offender to fulfill all civil obligations including the obligation to care for and support their relatives. during their imprisonment (if any).

3. Apply aggravating circumstances to criminal liability for offenders who use alcohol or beer with an alcohol concentration exceeding the prescribed level

Based on the fact that the offender, when falling into a state of inability to perceive and control behavior due to the use of alcohol and other stimulants, is fully aware of the consequences of alcohol, beer, and stimulants, it should be recognized that they are at fault for their intoxication. This is still considered to be a person with full capacity for criminal liability when they commit an act that is dangerous to society (Phạm Linh Trang, 2023). Committing a crime while losing cognitive ability due to the use of alcohol is also a basis for applying aggravated penalties for a number of crimes specified in the Penal Code, for example in Article 260 (crime of violating regulations. regulations on participating in road traffic), Article 267 (crime of violating regulations on driving railway vehicles)... all stipulate aggravating circumstances *"in the state of using alcohol or beer while in blood or breath has an alcohol concentration exceeding the prescribed level, with the use of drugs or other strong stimulants"* (Attorney Dinh Thi Hong Trang, 2020).

However, the group of authors argues that the regulation on aggravating circumstances needs to set out the issue of excluding cases where people are forced or incited to use alcohol and stimulants that cause them to lose the ability to perceive and control behavior. In fact, in some cases, the perpetrators are fully aware of the limits of using alcohol to anticipate the need to participate in traffic later. Although the above act is a violation of the law on road traffic according to Article 8 of the Law on Road Traffic 2008, but from a logical point of view, the subject does not completely lose the capacity to act to lead to an accident, because people who use alcohol and stimulants can lose their ability to perceive or control behavior at different levels: Some people lose complete ability, some people lose part of the ability (Phạm Linh Trang, 2023). This was mentioned at the discussion on the draft Law on Order and Safety of Road Traffic, specifically: *"drinking too much alcohol affects the capacity for action, but drinking little or tasting a little is still okay and maybe not affected"* (Trang Anh, 2023). Based on the above arguments, the group of authors argues that people who commit crimes according to the provisions of the Penal Code who use alcohol, beer, and stimulants and are forced to use them to the point of losing the ability to perceive and control behavior, although they still constitute a crime under the Penal Code. However, subjectively, they rationally recognize their own limits and know when to stop when they reach their limits, and they have the will to stop using alcohol and beer, so applying aggravating circumstances in this case is unreasonable.

In addition, according to the regulations in Articles 160 and 167 of the Penal Code 2015, it is stipulated that using alcohol or beer with a blood alcohol concentration or breath alcohol concentration exceeding the prescribed level or using drugs or other strong stimulants that are prohibited by law is considered an aggravating circumstance for the application of a heavier penalty. Accordingly, *"blood alcohol concentration exceeding the prescribed level"* is understood according to the regulations in Clause 8, Article 8 of the Road Traffic Law 2008 as *"exceeding 50 milligrams/100 milliliters of blood or 0.25 milligrams/1 liter of breath"*. Currently, in Clause 1, Article 35 of the Law on Prevention and Control of Alcohol and Beer Harm 2020, amending and supplementing Clause 8, Article 8 of the Road Traffic Law 2008, it stipulates: *"Driving a vehicle on the road while having a blood alcohol concentration or breath alcohol concentration"*. This means that all people with blood alcohol concentration or breath alcohol concentration causing accidents must be subject to TNHS according to point b, clause 2, Article 260 and point b, clause 2, Article 267 of the Penal Code (Nguyen Tien Hoan, 2021). The group of authors argues that this is unreasonable because in many cases, the driver uses alcohol or beer but not to the point of losing the ability to perceive and control behavior, meaning that the commission of the crime does not stem from the subject's loss of cognitive ability due to alcohol or beer use. This issue is also mentioned in the classification of alcohol concentration levels/thresholds corresponding to the level of manifestation affecting health and life according to medical expertise in Decision No. 320/QĐ-BYT dated January 23, 2014 of the Minister of Health. There are regulations on the quantification of ethanol (quantification of alcohol concentration) in the blood in Section 60, specifically in Point IV "Determination of results" of Section 60 clearly states: *"i) Normal value: <10.9 mmol/l; ii) Ethanol 10.9-21.7 mmol/l: Manifestations of facial redness, vomiting, slow reflexes, decreased sensitivity; iii) 21.7 mmol/l: Manifestation of central nervous system depression,..."* According to this, a blood alcohol concentration of 10.9 mmol/l will cause slow reflexes

and decreased sensitivity, and a blood alcohol concentration of 21.7 mmol/l is required for central nervous system depression to occur. Therefore, applying aggravating circumstances according to Point b, Clause 2, Article 260 and Point b, Clause 2, Article 267 of the Penal Code in this case is not consistent with the subject elements in the crime as well as the concentration values. alcohol according to Decision No. 320/QĐ-BYT dated January 23, 2014 of the Minister of Health. On that basis, the group of authors proposes that it is necessary to stipulate the blood alcohol concentration level in accordance with the values of the Ministry of Health to apply the aggravating circumstance to the offender in Article 160 and Article 167 of the Penal Code in the case of using alcohol or beer with a blood alcohol concentration or breath alcohol concentration exceeding the prescribed level or using drugs or other strong stimulants that are prohibited by law.


CONCLUSION

A person who commits a crime and loses the ability to perceive and control behavior due to the use of alcohol, beer, or other stimulants must bear the legal consequences according to the provisions of the Penal Code. Even then, those are also the grounds for applying a heavier penalty frame for offenders in some specific crimes. Accordingly, the offender is originally a person with full awareness and capacity for TNHS, but the subject himself has deprived himself of the ability to perceive and control his behavior, so he must be forced to bear all the legal consequences. caused by himself whether or not he is aware of his behavior.

However, it is not yet reasonable to prosecute TNHS as well as apply heavier penalties in the case of offenders who suffer from "pathological alcoholism" or are forced, incited, or enticed to use alcohol, beer and other stimulants leading to loss of capacity for action. In other words, people who use alcohol and stimulants do not put themselves in a situation of losing the ability to perceive and control behavior by specific expressions of refusing to drink alcohol, beer, but for some reason it has affected the spirit, will and forced them into a situation that cannot be refused leading to loss of the ability to perceive and control behavior causing criminal acts. Accordingly, in this case, lawmakers need to consider using the above circumstances as a basis for applying regulations on mitigating penalties or possibly excluding criminal liability in cases of pathological alcoholism for the subject who commits the crime, as well as excluding the application of increased penalties in some specific crimes for the above cases. In addition, it is necessary to establish legal responsibility that the person who coerces, incites, or entices another person to use alcohol or beer, leading to the loss of the ability to perceive and control behavior, causing criminal acts, must bear for the offender and related subjects. Thereby, it is necessary to improve the effectiveness of the work of preventing and combating the harms of alcohol and beer and to raise the responsibility of each subject in ensuring safety when using alcohol, beer and other stimulants.

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