

## Defense of Alcohol Dependence in Criminal Proceedings

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**Abstract:** China's criminal law provisions stipulate that drunk should bear criminal responsibility but cannot simply for all drunk implementation of the behavior are identified should bear criminal responsibility. In addition to the recognition of pathological intoxication, not criminal responsibility, for alcohol dependence before the implementation of the criminal behavior has been abnormal behavior, the judicial organs should be on the ability to conduct a review, when necessary to make judicial identification according to law. Differentiation does not conflict with the principle that drunkenness cannot be used as a mitigation, exemption, or exemption from punishment, but is more conducive to balanced sentencing.

### 1. Introduction

China is a big country with a wine culture. China has a long history of wine culture. Wine plays an important role in different social situations. Alcohol has always played an important role in the family, society, gatherings of friends, and business negotiations. Sometimes we can even say that without wine there would be no success. However, under the influence and stimulation of alcohol, people's judgment and reaction ability are reduced, which leads to frequent accidents and even criminal incidents. At the same time, the current pace of life is fast, in the face of housing, employment, and other pressures, some people choose to use alcohol to relieve pressure. Some people lack self-control ability, under the influence of alcohol, conflicts and frictions are intensified, and further escalated into criminal cases. In the criminal procedure, physiological drunkenness cannot be the defense reason of the defendant, and the defendant should bear the legal responsibility for his behavior. Pathological drunkenness can be used as a defense and can be mitigated. But there is no consensus on whether defendants with alcohol dependence can use this as a defense to get a lighter or mitigated punishment.

### 2. Overview of Alcohol Dependence

Alcohol dependence, also known as alcohol dependence, is when the patient develops a mental or physical dependence on alcoholic beverages, resulting in physical and mental disorders. People suffering from alcohol dependence will subjectively ignore the symptoms of mental and physical disequilibrium, resulting in mental and physical dependence on alcoholic beverages. Patients may consume large amounts of alcohol over a long period, regardless of their disorders. American psychiatric association [1] American psychiatric association, founded in 1844, is one of the world's largest mental institute, its members from the United States and around the world more than 30000 six former psychiatrists. The group gathered together many physicians is engaged in the research work, to ensure contains intellectual development disorders or substance use disorders, patients suffering from mental illness, Can get the humane care and effective treatment methods. do mental illness and the diagnostic statistical manual “the diagnostic and statistical manual of mental illness” is published by the American psychiatric association, is currently in the United States and other countries the most commonly used to diagnose mental illness of one of the guidelines alcohol problems can be divided into alcohol use disorders and alcohol-induced disorders. Alcohol Use Disorders were subdivided into Alcohol Use Disorders and Alcohol Dependence. Alcohol dependence refers to the pathological use of alcohol. When people do not drink alcohol, they will

have various physical and psychological symptoms. Therefore, they will drink more and more, which leads to tolerance and social and professional dysfunction.

According to the DSM, alcohol dependence is a pattern of maladjustment to alcohol use in which the sufferer will experience three or more of the following symptoms or behaviors over a continuous 12-month period of significant harm and distress. Clinical symptoms include: 1. Tolerance. This is mainly manifested by a significant increase in alcohol intake, resulting in poisoning or other desired effects, or by maintaining the same alcohol intake and significantly reducing the original effects. 2. Withdrawal, with characteristic withdrawal symptoms of alcohol use, or the need to consume alcohol and other closely related substances to reduce or avoid withdrawal symptoms. 3. In terms of alcohol intake, patients often need long-term or large amounts of intake. 4. Unsuccessful withdrawal. Patients have been subjectively abstinent or reduced their alcohol intake for a long time or have made several unsuccessful attempts to abstain. 5. Spend a lot of time looking for and consuming alcohol. 6. Abandoning or reducing participation in important social events because of alcohol consumption. 7. The patient has been aware of the physical harm or psychological problems caused by the consumption of alcohol but continues to consume alcohol. For example, people who are known to have cardiovascular disease continue to drink alcohol.

Analysis of the defense of alcohol dependence in criminal proceedings outside the territory

## **2.1 Civil Law System**

### **(1) Germany**

There is no special chapter in the general provisions of German criminal law on the division of criminal responsibility of the defendant due to alcohol dependence. The provisions of Article 20 and Article 21 on the in responsibility and limited liability of the person with criminal capacity strictly apply to the defendant suffering from alcohol dependence. The special provisions of the criminal law stipulate the capacity for criminal responsibility under intoxication [ ] Article 330A of the German Criminal Law stipulates that: (1) intentionally or negligently drinking alcohol or other drugs, to oneself in the French state of no responsibility, and implement the misfeasor in this state, a freedom penalty of not more than five years or a fine. (2) the place of punishment shall not be over deliberately made the punishment of the behavior. (3) the crime such as told is the sin of the theory of this crime not authorized by the tell or not prosecution.. In general, the defendant can use a blood alcohol concentration of more than 2% to defend his ability to limit criminal responsibility when the crime occurs; If the alcohol concentration exceeds 3%, the defense is incapable of criminal responsibility at the time the crime was committed. But this defense presupposes that the act's state of intoxication should not be blamed and that the judge has the discretion to reduce the punishment. Rather than having to reduce the penalty.

### **(2) Japan**

In 1974, Japan amended its draft penal code to provide for the liability of drunken perpetrators. Article 16 stipulates the punishment of persons who are indifferent capacities for criminal responsibility, and the behavior of persons who are unable to distinguish between right and wrong or unable to act according to their discrimination due to mental disorders shall not be punished. The act of a person whose capacity as prescribed in the preceding paragraph is reduced due to his mental disorder shall be given a mitigated punishment.

## **2.2 Common Law System**

### **(1) United Kingdom**

Britain makes a strict distinction between “voluntary drunkenness” and “involuntary drunkenness”: if the defendant is not involuntary drunkenness, the court should find him innocent because there is no subjective intention or intention of the crime. Because a crime cannot be recognized, the law cannot assume that a crime has occurred. At the same time, the actor who intentionally makes himself drunk or increases his criminal courage by ingesting alcohol should bear criminal legal responsibility.

### **(2) U.S.**

Both the United States and the United Kingdom belong to the case-law system, and the criminal

law of both countries has a deep origin. In criminal law, we also strictly distinguish the different situations of drunkenness to determine the criminal responsibility of the perpetrator. According to the theory of social interest, the criminal act committed voluntarily by the actor in the state of drunkenness cannot be used as a defense; if the actor is unconsciously in the state of drunkenness, this can usually be used as a defense to reduce or absolve criminal responsibility.

### **3. The Application of Alcohol Dependence and Related Intoxication in China's Specific Judicial Practice**

The criminal law of our country stipulates the criminal responsibility of the actor in the state of intoxication, and he should bear the criminal responsibility. However, in judicial practice, when the doer is in a state of drunkenness, he should strictly distinguish physiologic drunkenness from pathological drunkenness. Intoxicated state, also known as alcoholism in medicine, refers to the physiological state in which the central nervous system changes from excitement to inhibition due to the ingestion of excessive alcoholic beverages at one time. The main symptoms are mental disorders and damage to the vital organs of the human body, and death can be caused in severe cases. In theory, drunkenness can be divided into two categories, one is ordinary drunkenness, the other is pathological drunkenness. 1. Ordinary drunkenness. This type of drunkenness is the most common and is usually caused by the sudden ingestion of large amounts of alcohol, which acts directly on the central system. This kind of intoxication usually lasts for several hours or even a day, and after waking up, the recognition and control consciousness of the drunk actor completely returns to normal. The average drunk does not completely lose his ability to identify and control his behavior and could distinguish things. In many cases, the doer still could master the behavior and knows the consequences of his behavior, so he can completely avoid the occurrence of his behavior. Such drunkenness is also considered as drunkenness stipulated in the provisions of the criminal law. 2. Pathological drunkenness refers to the fact that the amount of alcohol drunk by normal people can make such people lead to different mentality and behaviors. Under normal circumstances, such drunkenness will be accompanied by excessive behavior and irritable temper, or even violent behavior for a period, causing injuries to others or causing injuries to themselves. Pathologically intoxicated people generally have a partial or complete loss of recognition and control over their actions. In practice, according to the symptoms of pathological drunkenness, the judicial appraisal department of our country generally judges it to be incapable of responsibility or capable of eliminating responsibility. However, if a person knows that he is a pathological drunk, indulges himself in drinking, and commits a behavior prohibited by the criminal law, then we should treat him as an ordinary drunk.

At present, the judicial practice circles reach a consensus on the criminal responsibility of the perpetrator in ordinary drunkenness and pathological drunkenness. For people with alcohol dependence, there is no clear legal provision. However, to accurately measure the sentence, the specific judicial practice should be considered.

In China, alcohol dependence syndrome is classified as a non-psychotic mental disorder in specific judicial practices. Individuals with alcohol dependence syndrome clearly know and are aware of the nature and consequences of their actions, and there is no lack of recognition and control. In the case of Lu Xiaomao's intentional homicide, the mental state of Lu Xiaomao was assessed as suffering from alcohol dependence syndrome, which fits the characteristics of the condition but is a non-psychotic mental disorder. When Lu Xiaomao committed the crime, there was no mental disorder, and he could identify and control as an ordinary rational person, and he had the complete ability of criminal responsibility, so he should be punished according to the criminal law. from the Chinese Judicial Document Network “Lu Xiaomao intentional homicide second instance criminal judgment”.

<http://wenshu.court.gov.cn/content/content?DocID=656bd59a-0d29-4bf7-9561-ccb2d7ffe922&KeyWord>

Alcohol dependence in Qian Jiu feng intentional injury, His mental condition was identified as consistent with the characteristics of alcohol dependence, but it did not affect his full capacity for

criminal responsibility at the time of the crime and he should bear criminal responsibility. from China Judicial Document Net “Qian Jiufeng Intentional Injury Second Trial Civil Order Attachment”

<http://wenshu.court.gov.cn/content/content?DocID=26db323b-ade2-467d-b1e1-a178ea72807b&KeyWord>

Alcohol dependence in dangerous driving, Wang Mou Counsel argued that the defendant was suffering from alcohol dependence accompanied by mental disorders, was not under mental control at the time of the crime, and was unfit for custody, suggesting that probation should be applied. However, the court did not accept this defense, believing that the accused should have known the nature of his conduct and not suspended the sentence. from China Judicial Document Network “Wang Dangerous Driving Crime First Instance Criminal Judgment”

<http://wenshu.court.gov.cn/content/content?DocID=b3d2931e-320d-46bf-986a-02758e7d87bb&KeyWord>

Alcohol dependence through the analysis of China with net written judgment about the offender Judicial documents of alcohol dependence syndrome. In China's specific judicial practice, defenders or defendants take alcohol dependence as the reason for leniency or mitigation of punishment, but the court does not take alcohol dependence as the defense reason for leniency or mitigation of punishment in specific cases. Even if the perpetrator is identified as suffering from alcohol dependence, he is still identified as having full behavioral capacity, clearly understanding the nature and consequences of his behavior, and should bear criminal responsibility for his behavior.

#### **4. Conclusion**

In our country, when we identify the criminal responsibility ability of the actor in the state of drunkenness, we first judge his biological drunkenness or pathological drunkenness, and at the same time identify whether he is suffering from alcohol dependence. To achieve the purpose of accurate sentencing, the drunk state of the perpetrator is analyzed concretely. At present, in judicial practice, alcohol dependence is classified as a non-psychotic mental disorder. However, there is still a need for the judiciary to conduct specific investigations into the mental status of perpetrators who fit the profile of alcohol dependence. Only then can we truly achieve accurate sentencing and ensure fairness and justice in every case.

#### **References**

- [1] Chong wang: The Theory of Free Causes in Japanese Criminal Law, Legal and Business Studies, 2004 edition.
- [2] Ke Chang ma, Principles of Comparative Criminal Law: General Introduction to Foreign Criminal Law, Wuhan University Press, 2002.
- [3] Jikun huang, A Study on the Act of Freedom of Cause -- Centering on the Crime of Drunken People, Law Press, 2014.
- [4] [US] Joshua Dressler, An Explanation of American Criminal Law, translated by Wu Hongyao, Peking University Press, 2009.
- [5] Wen Yuan Qi, Daihua Liu, On Free Actions on Causes, The Jurist, No.4, 1998.