

The offence of intoxication - article § 360 of the criminal code

Resumé

This final thesis deals with the offence of intoxication, possible approaches on to how to punish such offenders whose insanity causes their intoxication. This thesis points out some of the difficulties that could occur while interpreting and applying the law, and is trying to suggest a solution that better corresponds with modern legislation and legal principles.

The offence of intoxication – article § 360 of the Criminal Code is actually a special offence based on a construction of the facts of the case, concept of Rauschdelikt. It was restored into our Criminal Code with the amendment of an Act in 1991, which replaced the previous full criminal liability of individuals who caused their insanity voluntarily.

The offence of intoxication is an important criminal law theory for its attitude to a “liability for fault” principle, which the criminal offence of intoxication "breaks through" and extends conditions of criminal liability itself. Insanity is generally considered a condition that relieves the perpetrator of criminal liability, but not in the case of the offence of intoxication. From society’s point of view it is considered enough to distinguish between the insanity caused by an inborn mental disease and insanity caused by another accidental way, which is opposite to insanity caused voluntarily while intoxicated. This situation is not accepted within society, it is denounced and therefore it cannot hold without being prosecuted.

The Rauschdelikt concept is considered a compromise that is accepted within society between methods of regulation possible. These are to lay down full criminal liability of an offender and on the other hand to release an offender of criminal liability for the crime committed in a state of voluntary insanity.

We have to distinguish between an offence of intoxication from ‘actio libera in causa’, and acting of your own free will as stated in the second paragraph of article § 360 of the Criminal Code. It affects situations when the offender intends to cause a state of insanity so that he can commit a crime. It is known as “drink to encourage one’s self”, then it affects the situation when the offender has caused his insanity neglectfully and this negligence is just causing the state of insanity. That reflects on the cases of individuals who are conscious they are going to carry out an activity where care and vigilance is necessary and to which they are aware of. We can see a causal relationship here between causing a state of insanity and committing a crime. It is missing when exploring an offence of intoxication and this is what is legitimately criticised by some theorists.

Society should focus on preventive measures and battle against addictive substance abuse and against the potential danger of criminal offences being committed under the influence of these substances. Therefore people would be aware of the fact that an individual can commit a crime while intoxicated and being insane. The ideal situation would be that individuals avoid alcohol and other addictive substances because of this fact.