

Criminalization of Alcohol Concentration Violations in Traffic Participation in Vietnam

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ABSTRACT: This article will summarize the provisions of criminal law on handling alcohol concentration violations currently in Vietnam. In which, the author analyzes the current application and practice of these provisions in fact. The author also points out the limitations and disadvantages in the implementation process of these provisions. From there, the author makes proposals on the necessity of criminalizing the violation of alcohol concentration exceeding the prescribed threshold even when there are no consequences and some recommendations requesting competent authorities to criminalize this behavior in the Penal Code.

KEYWORDS: criminalization, alcohol concentration, traffic violations, Penal Code, Vietnam.

1. INTRODUCTION

Restricting violations of concentration when participating in traffic is an issue that has received great attention from competent State agencies in Vietnam in recent years. On December 30, 2024, the Government issued Decree No. 168/2024/ND-CP regulating administrative sanctions for violations in the field of road and railway traffic, with fines many times heavier than before. Accordingly, every year, the number of traffic accidents in the following year is lower than in previous years in all three criteria. Number of cases, number of deaths and number of injuries are all reduced. Although traffic accidents have decreased, accidents due to alcohol concentration violations have increased, which raises the hypothesis that it is necessary to criminalize violations of alcohol concentration exceeding the regulations but not yet having consequences in the Penal Code.

2. PROVISIONS OF CRIMINAL LAW ON HANDLING VIOLATIONS OF ALCOHOL CONCENTRATION WHEN PARTICIPATING IN TRAFFIC

In recent years, the issue of handling violations of the act of using alcohol and beer when participating in traffic has been given great attention and specified in many different legal documents in Vietnam, including regulations on handling administrative violations including: Law on Prevention of Alcohol Harm 2020; Penal Code 2015, amended and supplemented in 2017; Decree 168/2024/ND-CP issued on December 30, 2024 (replacing Decree 100/2019/ND-CP), Decree 123/2021/ND-CP amending and supplementing a number of articles of Decree 100/2019/ND-CP; Joint Circular No. 26/2014/TT-BCA-BYT dated July 23, 2014 of the Ministry of Public Security - Ministry of Health regulating the testing of blood alcohol concentration of drivers of road motor vehicles. Regarding criminal handling of violations of alcohol concentration, it is stipulated in Article 260 of the Penal Code 2015, amended and supplemented in 2017. Specifically as following details:

(i) Frame 1: Anyone who participates in road traffic and violates regulations on road traffic safety, causing damage to others in one of the following cases, shall be fined from VND 30,000,000 to VND 100,000,000, be subject to non-custodial reform for up to 03 years or be imprisoned from 01 year to 05 years:

- Causing death;
- Causing injury or damage to the health of 01 person with a body injury rate of 61% or more;
- Causing injury or damage to the health of 02 people or more with a total body injury rate of these people from 61% to 121%;
- Causing property damage from VND 100,000,000 to under VND 500,000,000.

(ii) Frame 2: the following cases shall be punished with imprisonment sentence from 03 years to 10 years:

- Have no a driving license as prescribed;
- In a state of using alcohol or beer with the alcohol concentration in the blood or breath exceeding the prescribed level, using drugs or other strong stimulants;

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- Running away to evade responsibility or intentionally not rescuing the victim;
- Not obeying the orders of the driver or traffic guide;
- Causing the death of 02 people;
- Causing injury or damage to the health of 02 or more people with the total rate of bodily injury of these people from 122% to 200%;
- Causing property damage from VND 500,000,000 to under VND 1,500,000,000.

(iii) Frame 3: Committing a crime in one of the following cases shall be punished with imprisonment from 07 years to 15 years:

- Causing the death of 03 or more people;
- Causing injury or damage to the health of 03 or more people with the total rate of bodily injury of these people being 201% or more;
- Causing property damage of VND 1,500,000,000 or more.

* Violations in cases where there is a real possibility of leading to consequences:

Violation of regulations on road traffic participation in cases where there is a real possibility of leading to consequences specified in frame 1, frame 2, frame 3, if not prevented in time, shall be subject to a fine of VND 10,000,000 to VND 50,000,000, non-custodial reform for up to 01 year or imprisonment from 03 months to 01 year.

* Additional penalties: Offenders may also be banned from holding positions, practicing a profession or doing certain jobs from 01 year to 05 years.

Thus, the Penal Code raises 2 issues in criminal handling of alcohol concentration violations:

In a state of using alcohol, beer, the alcohol concentration in the blood or breath exceeds the prescribed level. In practice, to determine what is "exceeding the prescribed level", the prosecuting agency relies on as stipulated in Clause 1, Article 35, Law on Prevention and Control of Alcohol and Beer Harms 2020: "Amending and supplementing Clause 8, Article 8 of the 2008 Road Traffic Law, amending and supplementing a number of articles according to Law No. 35/2018/QH14 as follows: 8. Driving a vehicle on the road while having alcohol concentration in the blood or breath". All people with alcohol concentration in the blood or breath causing an accident must bear criminal responsibility according to Point b, Clause 2, Article 260 of the Penal Code.

Violations of alcohol concentration are committed while participating in traffic and must cause consequences in frame 1, frame 2, frame 3 to have enough signs to prosecute criminally. Violations of very high alcohol concentration, exceeding 80 milligrams/100 milliliters of blood or exceeding 0.4 milligrams/1 liter of breath but causing no consequences are not subject to criminal prosecution.

2. The Need to Criminalize Alcohol Concentration Violations in Vietnam

Vietnam's efforts to reduce the consequences of drinking and driving have achieved some success over the past decade. However, despite tougher laws, increased enforcement and better public awareness, the presence of persistent drink-driving on Vietnam's roads continues to be a major public health and safety issue. Meanwhile, Vietnam's criminal law only prosecutes traffic participants who violate alcohol concentration and cause consequences as prescribed in Article 260 of the Penal Code. This has raised many recent debates as some experts have argued that drivers with high alcohol concentrations should be criminally prosecuted, even if there are no consequences, due to the dangers caused by drinking alcohol while participating in traffic. From a practical perspective, it is necessary to criminalize violations of concentration even when there are no consequences, specifically: Firstly, alcohol is one of the top 3 causes of increased traffic accidents in Vietnam. It is estimated that about 40% of traffic accidents and 11% of deaths due to traffic accidents are related to alcohol. That is, on average, every day, the whole country has about 700 people violating alcohol concentration while driving at different levels. In 2023, the national traffic police force focused on handling violations that lead to traffic accidents, specifically: 3,403,625 violations were handled, of which 770,679 cases of alcohol concentration were handled (accounting for 26.4%), an increase of 462,028 cases compared to 2022; Of these, 814 were serious accidents, killing 400 people and injuring 619 people. In the first quarter of 2024, the Traffic Police force was determined to handle violations of traffic order and safety. Notably, there were 275,130 cases of alcohol concentration violations, accounting for nearly 30% of the total number of violations. According to statistics from the National Traffic Safety Committee, about 40% of traffic accidents and 11% of deaths due to accidents related to alcohol. In 2018 - 2023, the total number of victims needing emergency care and treatment at medical examination and treatment facilities due to road traffic accidents was 2,742,395, the number of victims diagnosed with traumatic brain injury was 381,269 (accounting for 13.9%); the number of victims related to alcohol and beer was 425,619 people, the number of victims with traumatic brain injury was 70,522 people (accounting for 16.6%). The number of traffic violations over the years accounts for about 1/3 of the total number of traffic violations nationwide. The numbers may fluctuate but are still at a high level of violations, although the administrative penalty for the act of using alcohol and beer while participating in traffic is already high. This shows that increasing sanctions is not the core issue in reducing the level of violations. In fact, violations of alcohol concentration exceeding 0.4 milligrams/liter of breath are fined from 6-8 million VND for

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motorbikes, and driving license revocation for 22-24 months. This fine is not commensurate with the violation because current law stipulates that people with alcohol concentration above 0.4 mg/liter of breath, no matter how high, still have the same penalty, for example, people who drink 5 glasses of beer or 30 glasses can be administratively punished at the same level. That means that a person can drink so much that he is unable to perceive and control his behavior, if there are no consequences while driving, he will still only be administratively punished, this is considered not enough of a deterrent, according to some experts, "if it exceeds level 3, it can be completely separated for administrative or criminal handling, even if there are no consequences."

Secondly, driving a vehicle is a privilege, not a right. Many countries around the world consider driving a privilege, such as the United States. All 50 states and the District of Columbia have laws that make it a crime to drive with a blood alcohol level of 0.08% or higher, because states consider driving a privilege rather than a right, so a person can have their license revoked, or be arrested for driving while intoxicated. Considering driving a privilege, some countries have laws that make it a crime to drive while intoxicated. Driving under the influence of alcohol is a criminal offence, Thailand's Road Traffic Act 2022, amended No. 13, stipulate that drunk drivers will be fined between 5,000-20,000 baht (VND 3.5-14 million) and/or imprisoned for up to 1 year for the first offence. In the UK, the Road Traffic Act stipulates penalties for both drinking and non-driving, according to the UK government website. In England, Wales and Northern Ireland, the alcohol limit for drivers is: 0.35 mg/litre of breath, 80 mg/100 ml of blood and 107 mg of alcohol/100 ml of urine. Driving over the limit will result in an unlimited fine and/or 6 months in prison, and a 1-year suspension of the driving licence (3 years if violated twice within 10 years). The court reduced the penalty if the driver completed a drink driving course (DDRS). China also considers drunk driving a crime when the driver's blood alcohol concentration is higher than 80 mg/100 ml of breath. In Vietnam, the Civil Code stipulates that means of transport are a source of high danger, and alcohol and beer are products subject to special consumption tax due to their unsafe nature. An adult must be aware that drinking alcohol while participating in traffic is a dangerous issue and that the alcohol concentration is at a very high threshold, when exceeded, the driver will completely lose control and can cause a catastrophic traffic accident for anyone on the road. Because driving a vehicle is a privilege and the impact of this right on public health, the law needs to have specific regulations for drivers with alcohol levels exceeding level 3, an uncontrollable level.

Thirdly, alcohol use is part of Vietnamese culture. Many opinions say that it is impossible to criminalize alcohol concentration violations in cases where the driver has an alcohol concentration exceeding the threshold of 3 (over 0.4 milligrams/liter of breath) because alcohol concentration violations or behaviors such as weaving, swerving... are all dangerous behaviors for society and must be handled criminally. However, unlike other traffic violations, alcohol use is a habit of Vietnamese people. Wine and beer are used in daily meals, entertaining guests, parties, etc. Vietnam is one of the countries with the highest consumption of wine, beer and alcoholic beverages in the world (WHO, 2024). Meanwhile, Vietnam's culinary culture has many unique features, with a tendency to be lenient. If the concentration is set at zero, then no drinking is allowed. But if there is a limit, drivers may be forced to drink. In addition, alcoholic beverages are addictive and not easy to give up. The characteristics of drivers after drinking wine and beer are often high speed, weaving, not being able to control the steering wheel, and poor judgment and handling of situations. That is the cause of accidents. Another problem comes from the subjectivity of the driver. A study on the harmful effects of alcohol violations on drivers in the US announced that a person can drive drunk from 200 to 2000 times before being caught once and the general perception of people who violate alcohol concentrations below 80 milligrams/liter of breath is that they are not alcoholics. This may be a common mentality, because not everyone who uses alcohol while participating in traffic is prosecuted and usually people who use alcohol do not consider themselves alcoholics. This creates a subjective mentality when participating in traffic.

3. RECOMMENDATIONS

As analyzed above, it is necessary to criminalize the violation of alcohol concentration exceeding level 3 that is exceeding 0.4 mg/liter of breath or 80 mg/100ml of blood even when there are no consequences. However, to ensure reasonableness, criminalizing this behavior needs to be convincing and feasible.

First, there needs to be research from the Ministry of Health to determine the average alcohol concentration level of a normal person at a certain age is excessive or uncontrollable, thereby providing a basis for considering the seriousness of this behavior. For example, in England, Wales and Northern Ireland, the alcohol concentration limit for criminal prosecution for drivers is above 0.35 mg/liter of breath or 80 mg/100 ml of blood and 107 mg of alcohol/100 ml of urine.

Second, the authority agency allows convicted drivers to participating in an alcohol education program, alcohol rehabilitation or, after the offender is prosecuted, diversion programs that allow for a deferred judgment or prosecution. Diversion programs can be applied in the case of a first-time offense. Offenders who successfully complete the diversion program will have their

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convictions dismissed. For repeat offenses or failure to implement a diversion program will result in criminal sanctions being imposed and the alcohol-related driving record will not be expunged or separated from the driving record.

Third, prosecuted alcohol violations must be permanently recorded on the driving record, as a risk factor for future recidivism. In Maryland, USA, a conviction that results in a training program (i.e., probation before judgment) is recorded in a separate (i.e., isolated) record that is not available to the public or insurance companies as part of the person's driving record. However, any violation, not just a conviction, must be considered by the judicial and motor vehicle authorities as a sign of a violation and a risk of recidivism. Permanent recording in driving records is necessary because early identification of criminal behavior and appropriate sanctions can reduce violations among drivers at high risk of driving while drunk in the future.

4. CONCLUSION

A study on alcohol use behavior when participating in traffic shows that drivers who violate any type of alcohol-related violation are at high risk of re-offending and a person who has been administratively sanctioned is at risk of re-offending the same behavior in the future. In Vietnam, the sanctions for handling administrative violations compared to other countries are relatively high, but the number of accidents due to alcohol concentration violations when participating in traffic shows no sign of decreasing, this is one of the factors proving that administrative sanctions are not the core measure to reduce traffic violations due to alcohol concentration, especially with the culture of drinking and beer ingrained in the Vietnamese lifestyle. Research on criminal handling of violations of alcohol concentration exceeding the prescribed limit when participating in traffic can be directed towards considering first-time violations and implementing a diversion program instead of criminal sanctions. In Vietnam, in recent times, many catastrophic accidents have occurred, especially during holidays and Tet, leaving extremely serious consequences. Human life is precious, considering criminalizing the act of excessive use of alcohol and beer when participating in traffic is both a punitive measure but above all, it is a deterrent measure, preventing violations and unfortunate accidents that may occur in the future.

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