
Comparative Overview of “Committing a Criminal Offense while Intoxicated”, between Albanian and Italian Criminal Legislation

ANDI PËRMETI

University of Tirana, Albania

Abstract

Criminal law is that branch of law, which deals with the study and treatment of the meaning of the criminal offense and its acts, the constituent elements of the acts of the criminal offense, which are the main factors that serve as the basis for putting a person before criminal liability.

Making a definition of a criminal offense, as a socially dangerous act or omission, provided by law and committed with guilt, in each of the two forms of the latter (intentionally or negligently), this branch of law, in this way, lays the foundations for an effective fight against crime. It aims to bring to justice only those persons who commit criminal offenses, provided as such by criminal legislation, punishable and such that create the conditions for taking the person into criminal responsibility and at the same time guaranteeing the legality of the criminal process. One of the institutes of criminal law, which is treated respectively in Chapter II of the General Part of the Code of Criminal Procedure, is criminal liability with its constituent elements and with cases that exclude it such as the age under fourteen for juveniles who have committed a crime and age under sixteen for criminal offenses; such mental incapacity that has completely disrupted the mental balance of the person; necessary protection and extreme need; cases that do not exclude criminal liability are also included, specifically the commission of a criminal offense while intoxicated, which this paper aims to address.

Liability is an element or condition of criminal liability. As we will see below, without (the person's) responsibility there can be no criminal liability.

Since the essence of this paper is the study and analysis of the criminal offense committed while intoxicated, ie under the effect of alcohol, narcotics, psychotropic substances and other stimulants, it is important to deal with this criminal offense first, according to legislation and the Albanian Code of Criminal Procedure. Knowing the key points of the offense, in a state of intoxication according to our Code of Criminal Procedure, we have it easier to make the necessary comparisons to find the connection with the Italian Code of Criminal Procedure, better understanding the differences and similarities between these two codes always in relation to the commission of the criminal offense while intoxicated.

Keywords: Code of Criminal Procedure, Criminal Law Institute, intoxication

1. Committing a criminal offense while intoxicated according to the Code of Criminal Procedure of the Republic of Albania. What is meant by the term intoxication in Criminal Law?

A person shall not be excluded from criminal liability if he commits the offence while intoxicated. Where intoxication was caused due to accidental circumstances and it has lowered the mental capacity, this circumstance shall be taken into account for mitigating the sentence. Where intoxication was caused with intent to commit a criminal offence, this circumstance shall be taken into account for aggravating the sentence. The above-mentioned rules are also applied when the criminal offence is committed under the effect of narcotics or other substances.¹

The doctrine of criminal law adheres to the principle that intoxication is not a reason for exclusion from criminal liability. Intoxication means not only cases of mental imbalance from the consumption of alcoholic beverages but also the condition created by the use of stimulants or narcotics, under the influence of which the person has committed a criminal

¹ Article 18 Code of Criminal Procedure of the Republic of Albania

offense. Intoxication according to its degree, creates disorders in the psyche of the person and decreases mental balance but does not cause the loss of his ability to understand the importance of the work he commits nor the loss of the ability to control and curb his behavior. Consequently, intoxication caused either by alcohol or by narcotics or various stimulants, does not make the person irresponsible and thus does not constitute a cause to exclude the person from criminal liability. The criminal law classifies intoxication as occasional intoxication and deliberate intoxication, holding different positions in law enforcement in each of its forms.

The commission of a criminal offense in a state of occasional intoxication is considered a mitigating circumstance in the sentencing, while its commission in a state of intentional intoxication constitutes an aggravating circumstance. However, in order for intoxication to be considered as a mitigating or aggravating circumstance, it is not enough to just find that the person has drunk or is drunk and the intoxication is accidental or intentional to commit the criminal offense, but it is required that as a consequence the person has had a decrease in mental balance.² Whether intoxication is accidental or deliberate, this is a matter of fact which the court assesses in the context of the analysis and evaluation of all evidence and other circumstances of the case under consideration. Whether or not intoxication has brought about a decrease in the mental balance of the person, among other circumstances, the court relies on the conclusions of the psychiatric-legal expert. Exception from the general rule is made for pathological intoxication which completely disrupts the mental balance of the person. Because of it, the person loses consciousness and is unable to understand and control his behavior, which can be ascertained by forensic experts.

With regard to the punishment of a person who commits a criminal offense while intoxicated, the Code of Criminal Procedure in this case makes a distinction that must be taken into account by the court in determining the type and extent of punishment, both for mitigation and aggravation of punishment, depending on whether the intoxication is accidental or intentional.

² Shëfëqet MuShëfëqet Muçi, “Criminal Law, general part “, Tirana 2006, p. 147

2. Committing a criminal offense in a state of intoxication according to Italian criminal legislation, types of intoxication

The notion of intoxication in the Italian Code of Criminal Procedure and criminal legislation means that condition caused by alcohol or narcotic substances or psychotropic substances, which affects a person's ability to understand and allow, which is a possible cause of exclusion or not of his from criminal liability. We refer to the case in which the subject has committed a criminal offense while intoxicated, but it should be borne in mind that this is not about punishing intoxication or drug addiction as a phenomenon, but about punishing or not punishing the subject who has committed the criminal offense while intoxicated. Depending on whether the state of intoxication burdens the person or not with criminal liability, a distinction is made between several types of intoxication which are as follows:³

1. Accidental intoxication (Article 91 of Italian Code of Criminal Procedure) - In this case intoxication is caused by a circumstantial circumstance or by force majeure, by an unforeseen occurrence or by an invincible external force, exercised by another person or by the action of nature itself, and consequently the subject who accidentally gets drunk is innocent and has no criminal liability. In this case, characterized by the subject's unwillingness to get drunk, criminal liability has no place if accidental intoxication has resulted in a total lack of the subject's ability to understand and allow. On the other hand, if the accidental intoxication was not complete but such that it significantly reduced the ability to understand and allow, then the subject will have criminal liability but the sentence will be reduced to 1/3.
2. Voluntary or guilty intoxication (Article 92 of Italian Code of Criminal Procedure) - In the Italian Code of Criminal Procedure voluntary intoxication, which consists in the existence of the subject's will to get drunk, is placed on the same plane with guilty intoxication. It is voluntary intoxication if the consumption of alcohol by the subject is

³ Salvatore Ardizzone. Codice penale ipertestuale commentario con banca dati di giurisprudenza. 2007 f.935

committed with the intention of getting drunk so the person is drunk voluntarily. Guilty intoxication exists when the subject consumes alcohol, not intending to bring about the intoxicated state, however he has caused this state by ignoring and underestimating the effects that alcohol consumption may cause beyond his ability to tolerate it.

3. Intentional intoxication (Article 92/2 of Italian Code of Criminal Procedure) - Here we are dealing with the case in which the person gets drunk in order to commit a criminal offense. For this reason, the subject, not only has criminal liability but the sentence is aggravated. The same treatment is provided in the case when the criminal offense was committed under the influence of drugs.
4. Ordinary intoxication (Article 94 of Italian Code of Criminal Procedure) - This is characteristic of those persons (ordinary drunkards) who are systematically addicted to alcohol and are in a state of constant intoxication. Ordinary drunks have criminal responsibilities and the punishment for them is aggravated by 1/3. The same treatment is provided for persons who commit a criminal offense committed under the influence of drugs and who are addicts or regular users of them.
5. State of intoxication or chronic poisoning from alcohol or drugs (Article 95 of Italian Code of Criminal Procedure) - This condition is perceived as a permanent pathological change that affects the nervous system thus being equated with the mental defect/disorder (*vizio di mente*). Therefore, for crimes committed in a state of chronic intoxication by alcohol or drugs, the provisions of Articles 88 and 89 of the Italian Code of Criminal Procedure shall apply.

3. Comparative overview between the provisions of Article 18 Code of Criminal Procedure of the Republic of Albania and analogous provisions of the Italian Code of Criminal Procedure (Articles 91, 92, 93, 94, and 95)

1. Provisions from the Albanian Code of Criminal Procedure and the Italian Code of Criminal Procedure regarding the impact of the commission of a criminal offense while intoxicated on criminal liability.

We analyzed in the third part of this paper, the commission of a criminal offense while intoxicated provided by the provisions of Article 13 of the Code of Criminal Procedure of the Republic of Albania, citing what is explicitly stated in the first paragraph of this article that: the person who has committed a criminal offense while intoxicated is not exempt from criminal liability.

So there is in this case a quasi-absolute assertion of non-exclusion from criminal liability of the person who committed the crime under the influence of alcohol, narcotics or other stimulants, this is due to the fact that the person in a state of intoxication (ordinary intoxication), was able to understand the importance of the criminal offense or in other words, the illegal act he is committing and had the ability to control his actions. In this case we say that the person had the criteria of liability which means the existence of will and awareness of the criminal offense he would commit during the moment he consumed alcohol or narcotic or psychotropic substances.⁴ In the case of intoxication (accidental and / or intentional), we are not dealing with irresponsibility but with reduced responsibility of the person who is in such a state and therefore there can be no question of exemption from criminal liability.

The Italian Code of Criminal Procedure and criminal law also provide for the exclusion from criminal liability of a person who commits a criminal offense while intoxicated or under the influence of narcotic substances.

2. There is a noticeable approximation between our criminal legislation and the Italian one in the treatment of criminal liability in the case of committing a criminal offense while intoxicated, excluding it. However, the Italian Code of Criminal Procedure, in contrast to the Albanian Code of Criminal Procedure, stipulates cases of exclusion from criminal liability.

The only case in which the person who committed the criminal offense while intoxicated is exempted from criminal liability, in the Italian Code of Criminal Procedure, is the case provided for in Article 91, first paragraph, which justifies this exemption from liability, with

⁴Prof.Dr.Skënder Kaçupi, Prof.Dr.Ismet Elezi, Prof.Assoc.Dr.Maksim Haxhia. Commentary on the Code of Criminal Procedure of the Republic of Albania (General Part), Tirana 2006, p. 126

the complete lack in the person of the ability to understand and allow thanks to the complete intoxication derived from the circumstance of the case or force majeure as well as the case of chronic intoxication from alcohol or narcotics,⁵ when it has brought about the loss of the ability to understand and allow.

In all other cases of intoxication from alcohol or narcotics, there is an exemption from criminal liability, for the fact that the person does not lose the ability to understand and allow but intoxication has only caused a decrease in this ability and, as a result, the person possesses the ability to control his actions and understand the importance of the work he is committing.

3. Regarding the division of types of intoxication or states of intoxication, from our Code of Criminal Procedure and from the Italian Code of Criminal Procedure we have the following divisions:

In Albanian Code of Criminal Procedure, there are two types of intoxication:

- occasional intoxication
- intentional intoxication

Occasional intoxication, caused by occasional circumstances and which leads to a decrease in mental balance, does not exclude from criminal liability the person who commits a criminal offense in this state. This is due to the fact that occasional intoxication has provoked only the reduction of the mental balance of the person and not the disturbance of this balance, consequently the latter has even in reduced quantities, the ability to control his actions and to understand the importance of the criminal offense he has committed or will commit. This constitutes a mitigating circumstance, which is taken into account by the court in sentencing.

When intoxication is committed with intent to commit a criminal offense, not only is there no exception to criminal liability in this case, but it constitutes an aggravating circumstance, which is taken into account by the court in sentencing. The person who commits the criminal offense in this state, has intentionally caused and provoked with full will the state of intoxication, in order to commit the criminal offense intended by him.

⁵ Article 95 Italian Code of Criminal Procedure

There is also pathological intoxication caused by consuming alcohol in excessive amounts as well as by strong doses of narcotics, leading to the loss of control of the person over the actions he performs and making him irresponsible.

The Italian Code of Criminal Procedure provides for these types of intoxication:

- accidental intoxication
- voluntary or guilty intoxication
- intentional (deliberate) intoxication
- ordinary intoxication

4. Occasional intoxication provided in our Code of Criminal Procedure is very similar to accidental intoxication provided in the provisions of Article 91 of the Italian Code of Criminal Procedure.

The similarity appears in the fact that in both cases of intoxication mentioned above, the state of intoxication is not intentionally caused by the person, so there is no intention of the latter to bring himself into this state. Occasional intoxication⁶ implies a special state, unusual intoxication but a detached case, which has brought about a decrease in mental balance, in parallel with this, the state of accidental intoxication,⁷ is that state which is caused by the circumstances of the case or by the force majeure, which causes the loss of the ability to understand and allow. So, in both cases, occasional intoxication, provided by our Code of Criminal Procedure and accidental intoxication, provided by the Italian Code of Criminal Procedure, there is a lack of intention and / or premeditation of the person to provoke this situation or to bring himself deliberately into such a situation in order to commit a criminal offense.

Intoxication caused by occasional circumstances (accidental intoxication) and which has led to a decrease in mental balance, according to Article 18/2 of the Code of Criminal Procedure of the Republic of Albania constitutes a mitigating circumstance and is taken into account by the court for the application of the sentence against him. Similarly, is the treatment in Article 91/2 of the Italian Code of Criminal Procedure, according to which, if the (accidental) intoxication

⁶ Article 18/2 Criminal Procedure Code of the Republic of Albania.

⁷ Article 91 of the Italian Code of Criminal Procedure

was not complete but such that it has greatly reduced the ability to understand and allow, without excluding it, the sentence is reduced.

This is the aspect that shows the similarity of article 18/1 of the Code of Criminal Procedure of the Republic of Albania and article 91 of the Italian Code of Criminal Procedure, respectively between occasional and accidental intoxication, but there are significant differences between them. Complete (accidental) intoxication caused by the circumstance of the case or by force majeure according to Italian legislation, which has resulted in the loss of the ability to understand and allow the person who committed the criminal offense in this condition, exempts the latter from criminal liability and considers him unpunished.

In this respect, this provision made by article 91/1 Italian Code of Criminal Procedure reminds us of the pathological intoxication which makes the person irresponsible for the criminal offense he may have committed and causes the loss of control over the actions he commits.

Whereas, the criminal offense committed by the person who was in a state of intoxication caused by occasional circumstances or as we have defined above as occasional intoxication, which has led to a decrease in the mental balance of the person, does not exclude the latter from criminal liability.

5. Another case, which is worth analyzing and comparing, is the comparison between the third paragraph of Article 18 Code of Criminal Procedure of the Republic of Albania, which deals with deliberate intoxication, and Article 92, especially its second paragraph, which deals with voluntary intoxication or culpable or intentional intoxication.

Provisions of article 18/3 Code of Criminal Procedure of the Republic of Albania regulate intentional intoxication according to which “*When intoxication is committed intentionally to commit a criminal offense, this circumstance is taken into account for the application of the sentence against him*”. Intentional intoxication is considered an aggravating circumstance and this will be taken into account by the court in sentencing.

In parallel, we see Article 92 Italian Code of Criminal Procedure, which does not exempt the person from criminal liability and does not make him impunity if he has committed a criminal offense

in a state of voluntary or guilty intoxication. What is of the greatest importance in this comparative view is the second paragraph of Article 92 Italian Code of Criminal Procedure which stipulates that if the intoxication was deliberate for the purpose of committing a criminal offense or to prepare a justification, the sentence shall be increased.

In both cases of intentional intoxication treated by the Albanian Code of Criminal Procedure, on the one hand and by the Italian Code of Criminal Procedure, on the other hand, it is noticed that in both cases there is the intention of the person to bring himself intoxicated, intentionally, to commit the criminal offense. Consequently, this constitutes an aggravating circumstance, explicitly stated in Albanian Code of Criminal Procedure and implied in the Italian Code of Criminal Procedure, which also defines an increase in sentence.

6. The similarity also exists in the fact that the provisions that apply in the case of the commission of a criminal offense in a state of intoxication (from alcohol) also apply in the case when the criminal offense is committed under the influence of narcotics. This is defined in Article 18 of the Albanian Code of Criminal Procedure in its fourth paragraph as well as in the provisions of Articles 93 and 95 of the Italian Code of Criminal Procedure.

The effects of alcohol on the human psyche are the same as those caused by narcotics, psychotropic substances, and other stimulants. Both excessive consumption of alcoholic beverages and the use of narcotics or other stimulants can cause a decrease or disruption of a person's mental balance. In any particular case, the reduction or disruption of this balance must be confirmed by the report of the psychiatrist. In the case when the consumption of alcohol or narcotics or other stimulants has caused the loss of mental balance of the person, before or at the moment he commits the crime, we say that the person is irresponsible and does not have the ability to control his actions and to understand the importance of the act he has committed or will commit. This actually happens in the case when we are dealing with the state of pathological intoxication or taking strong doses of narcotics. If we refer to the Italian Penal Code for this aspect, we would say that when the consumption of alcohol or narcotics causes the loss of the ability to understand and allow then it makes him irresponsible and impunity. In the event that the use of alcohol or narcotics has caused the reduction and not the exclusion of the ability to understand and

allow, this does not make the person irresponsible and, in any case constitutes a mitigating or aggravating circumstance and the punishment will be reduced or increased accordingly.

4. Comparative overview of the relationship intoxication-criminal liability in Albanian Code of Criminal Procedure and the same report in the Italian Code of Criminal Procedure.

The first paragraph of Article 18 of Albanian Code of Criminal Procedure explicitly states: “A person who has committed a criminal offense while intoxicated is not exempt from criminal liability”.

The non-exclusion from criminal liability of the person who has committed the criminal offense while intoxicated constitutes a *quasi-absolute* assertion since this exclusion applies to all cases of intoxication, whether accidental or intentional. The Italian Code of Criminal Procedure, unlike the Albanian Code of Criminal Procedure, does not contain any provision that stipulates from the beginning the exclusion from criminal liability of a person who has committed a criminal offense while intoxicated or in the influence of narcotics or other stimulants.

It is noticed that in the criminal legislation and in the Italian Code of Criminal Procedure there is no almost absolute provision as in article 18/1 of Albanian Code of Criminal Procedure to show the non-exclusion from liability of the person who has committed a criminal offense while intoxicated.

The Italian Code of Criminal Procedure divides the state of intoxication into these categories:

- accidental intoxication
- voluntary or guilty intoxication
- intentional or deliberate intoxication
- ordinary intoxication

For each of them, the criminal liability and consequently the punishment of the person who committed the criminal offense while intoxicated is different. This varies due to whether the state of intoxication has affected the person’s ability to understand and allow. We will analyze each of the types of intoxication provided by the Italian Code of Criminal Procedure to make a comparison with the Albanian Code of Criminal Procedure.

In the case of committing a criminal offense in a state of accidental intoxication, when this state has caused the loss of the ability to understand and allow due to complete intoxication, by the person who has committed the criminal offense in this state, excludes the latter from criminal liability and makes him unpunished for the offense committed.

This is stipulated in the first paragraph of Article 91 of the Italian Code of Criminal Procedure, while the second paragraph of the same article provides for the case when accidental intoxication was not complete and caused only the reduction and not the exclusion of the ability to understand and allow, where the person who has committed the criminal offense in this condition is not exempt from criminal liability, and as a consequence will be subject to a court-imposed sentence which will be reduced. Thus, in the first provisions dealing with the commission of a criminal offense while intoxicated in the Italian Code of Criminal Procedure, it is noted that a clear and distinct distinction is made regarding the exclusion or non-exclusion from criminal liability of the person who committed the offense criminal while intoxicated (accidental intoxication), according to the effects or consequences that this condition has brought on the person's ability to understand and allow.

The Albanian Code of Criminal Procedure does not make a division or differentiation of this nature according to the case, if intoxication has led to the responsibility or irresponsibility of the person who committed the criminal offense, excluding from the beginning of Article 18 the fact that the person who committed the criminal offense while intoxicated could be exempt from criminal liability.

We continue the comparative analysis by examining Article 92 of the Italian Code of Criminal Procedure and subsequent articles to reinforce what we just mentioned.

The provisions of Article 92 of the Italian Code of Criminal Procedure provide that the commission of a criminal offense in a state of voluntary, guilty or intentional intoxication not only does not exclude from criminal liability and consequently from punishment the person who committed the criminal offense in this state, but in the case of intentional intoxication, it even provides for an increase in the sentence. Intentional or deliberate intoxication treated by Article 92/2 of the Italian Code of Criminal Procedure is very similar to deliberate

intoxication provided by Article 18/3 of the Albanian Code of Criminal Procedure. In the latter, premeditated intoxication means the intent to commit a certain criminal offense), not only does not exclude the person from criminal liability (referring to the first paragraph of Article 18), but even constitutes an aggravating circumstance which is taken into account by the court in sentencing. The fact of intentional intoxication is an aggravating circumstance, constitutes the meeting point between article 18/3 of the Albanian Code of Criminal Procedure and article 92/2 of the Italian Code of Criminal Procedure. The difference that is made in the case of comparing the provisions of these two articles, respectively article 18/3 and article 92/2, lies in the fact that the Italian Code of Criminal Procedure (referring to article 92/2) stipulates: “*if intoxication was deliberate to commit a criminal offense*” (at this point it is almost identical to Article 18/3 Albanian Code of Criminal Procedure which deals with deliberate intoxication) or for preparing an acquittal or justification, the sentence will be increased. The Albanian Code of Criminal Procedure, in article 18/3, does not contain this provision in the case of deliberate intoxication, ie it is not about preparing an acquittal or justification, but only the premeditation to commit the criminal offense, which is the point of connection with Italian Code of Criminal Procedure respectively with Article 92/2.

Regarding the usual intoxication provided by the Article 94 of the Italian Code of Criminal Procedure, it provides not only non-exclusion from criminal liability and consequently the punishment of the person who commits the criminal offense in this condition, but it is explicitly stated that the sentence is aggravated in this case. The Albanian Code of Criminal Procedure does not provide for the commission of a criminal offense in a state of ordinary intoxication, but the similarity lies in the fact that the commission of a criminal offense in this state does not constitute a reason for exclusion of the person from criminal liability.

A very interesting provision is that of the Article 95 of the Italian Code of Criminal Procedure, which provides for the exclusion of criminal liability and consequently the punishment, on the one hand, and the non-exclusion of this liability, on the other hand, against the person who committed the criminal offense in the chronic intoxication state, caused by alcohol or narcotics. The provisions of the Article 95 of the Italian Code of Criminal Procedure refer to the Articles 88 and 89 of the Italian Code of Criminal Procedure, which deal respectively with

full mental defect as well as partial mental defect, in the sense of exclusion from responsibility and impunity of the person who at the time of commission of the criminal offense suffered from a complete defect of the mind and non-exclusion from criminal liability in the case where he suffered from a partial mental defect.

Thus, in analogy with the Articles 88 and 89 of the Italian Code of Criminal Procedure, the commission of a criminal offense in a state of chronic intoxication by alcohol or narcotics does not exempt the person from criminal liability and punishment, if this condition has caused the loss or exclusion of the ability to understand and allow. If the state of chronic intoxication from alcohol or drugs has led to non-exclusion but a reduction in the person’s ability to understand and allow at the time of the commission of the crime, then he is not exempt from criminal liability and punishment, which will be reduced.

From what we treated and compared above, we come to the conclusion that the Albanian Code of Criminal Procedure does not exclude in any case criminal liability, even in the case when we are dealing with the commission of a criminal offense in a state of pathological intoxication, which makes the person irresponsible and who fails to be aware and control the actions he commits, we have no exception from criminal liability because the person has brought himself into this state.

On the other hand, the Italian Code of Criminal Procedure provides for the exclusion as well as non-exclusion from criminal liability of the person who committed the criminal offense in the state of intoxication, depending on whether this condition has led to the exclusion or reduction of the person’s ability to understand and allow. Thus, the Italian Code of Criminal Procedure, in contrast to the Albanian Code of Criminal Procedure, does not bring the exemption from criminal liability and consequently the exemption from punishment of the person for any case of intoxication (accidental, voluntary, guilty, intentional (deliberate) and ordinary), under the effect of whose criminal offense was committed.

5. Comparison between the impact of accountability on criminal liability under the Albanian Code of Criminal Procedure and the ability to understand and allow criminal liability under the Italian Code of Criminal Procedure to commit a criminal offense while intoxicated.

Accountability is an element of criminal liability and will be considered responsible that person who possesses those qualities or intellectual (mental) and favorable abilities that enable him to think, judge, decide and control his behaviors and actions. In other words, a person is considered responsible when he is mentally able to understand, is aware of the importance and consequences of the crime he commits and is able to control his behavior.

We said that responsibility is an element of criminal liability; it is a premise and a condition of it. When the person who commits a criminal offense is responsible and aware of the actions he commits, he bears criminal liability and is not excluded from it. However, since the Albanian Code of Criminal Procedure provides that the person who committed the criminal offense in an intoxication state is not exempted from criminal liability, then we conclude that the person who committed the criminal offense in this state will not be exempted from criminal liability even if he is irresponsible. Irresponsibility in this case applies to the commission of a criminal offense in a state of pathological intoxication or consumption of strong doses of narcotics, which make the person irresponsible for the criminal offense he may have committed.

The Italian Code of Criminal Procedure provides “*the ability to understand and allow*”, the existence of which is a condition for taking the person who has committed the crime into criminal liability. The ability to understand and allow, consists in the ability of the person to be able to effectively assess the dangerousness and importance of the action performed by him. The Italian Code of Criminal Procedure provides the ability to understand and allow in the Article 85, which states that: “No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed”, continuing further with the second part of the Article 85 according to which: “It is punishable that person who has the ability to understand and allow”. According to the provisions of the Article 85 of the Italian Code of Criminal Procedure, it is noted that the ability to understand and allow constitutes a condition of the conviction of the person. In other words, the person who committed a criminal offense will be punished and held criminally liable if at the time of the commission of this offense he had the ability to understand and allow and consequently was able to control and understand the action its

illegal and be aware of the dangerousness of this act. Thus, unlike the legislation and the Albanian Code of Criminal Procedure which extends criminal liability for all cases of intoxication and the responsibility or irresponsibility of the person who committed the criminal offense at the time of its commission, the Italian Code of Criminal Procedure does not provide for liability criminal case by the person for any case but only in the case when he has the ability to understand and allow at the time of committing the criminal offense in the state of intoxication.

An interesting moment in which it is worth stopping is the case of pushing other persons in a state of inability to understand and allow and treated in the Article 86 of the Italian Code of Criminal Procedure as well as the premeditated state of inability to understand and allow and regulated by the Article 87 of the Italian Code of Criminal Procedure.

The provisions of Articles 86 and 87 of the Italian Code of Criminal Procedure deal with cases of inability to understand and allow and consequently of the conviction and taking of the person criminally liable. These are the cases when the person who has pushed other persons towards the state of inability to understand and allow in order for them to commit the criminal offense, will be held criminally liable the one who provoked or caused the inability to understand and allow in these persons ⁸

In the Albanian Code of Criminal Procedure, we do not find such a provision to be related to the encouragement of some persons or provoking the state of their irresponsibility in order to commit the criminal offense, where these persons do not hold criminal liability but the one who provoked and caused this state of their irresponsibility.

The provisions of Article 87 of the Italian Code of Criminal Procedure provide for the state of inability to understand and allow intentionally and deliberately caused by the person to commit the criminal offense or to prepare an excuse or justification, considering this person punishable and criminally liable.

Here we are dealing with an exceptional case for the fact that we are dealing with the punishment and holding of criminal liability of the person who is in a state of inability to understand and allow. The exception is made for the fact that the person has intentionally and deliberately caused his inability to understand and allow committing

⁸Article 86 of Italian Code of Criminal Procedure

the criminal offense and consequently he can never be excluded from criminal liability.

In this case, we are dealing with *actiones liberae in causa*⁹, where the person has indeed committed the criminal offense in an irresponsible state, but he has caused this state himself, intentionally and with intent and as a result he will bear criminal liability for the committed act.

Analogously with this, we mention the commitment of a criminal offense in a state of pathological intoxication according to our criminal legislation, where the person, although irresponsible at the time of the commitment of the criminal offense, bears criminal liability as he has brought himself into this situation, has caused it intentionally before committing the offense, consuming alcohol in such quantities as to be subject to complete intoxication or consumption of strong doses of narcotics. The institute of *actiones liberae in causa* is the point of connection and similarity between the Article 97 of the Italian Code of Criminal Procedure which consists in holding the criminal liability of the person who intentionally and intentionally caused the state of inability to understand and allow the commission of the criminal offense and the case of committing a criminal offense in a state of pathological intoxication according to our criminal legislation.

In conclusion, from the analysis and comparison between the impact of liability on criminal liability under our criminal legislation, on the one hand, and the impact of the ability to understand and allow criminal liability under Italian legislation, on the other hand, on the commission of a criminal offense drunk, we draw these conclusions:

1. According to the Albanian Code of Criminal Procedure, a person who commits a criminal offense while intoxicated is not exempt from criminal liability because he meets the criteria of responsibility (he is responsible) and has the awareness and ability to control and understand the actions he commits, while according to the Code Italian Criminal, a person who at the time of the commission of the criminal offense did not have the ability to understand and allow due to complete intoxication caused by the circumstance of the case or force majeure, chronic intoxication from alcohol or narcotics (when this has brought about the loss of the ability to understand and allow), is not punishable and consequently does not bear criminal liability.

⁹Actions that are free in decision making but not in execution

2. Non-exemption from criminal liability in our Code of Criminal Procedure extends to all cases of criminal offense, both in cases where the person was responsible and in the case where the person was irresponsible at the time of the criminal offense but intentionally caused this situation, through fault (intentionally or negligently), while in the Italian Code of Criminal Procedure non-exclusion from criminal liability does not extend to all cases of criminal offense but only to cases where the person has had the ability to understand and allow. In case of lack of this ability, the person does not respond criminally.

3. According to the Albanian Code of Criminal Procedure, the person who has committed the criminal offense in a state of pathological intoxication where he is irresponsible, is not exempt from criminal liability while according to the Italian Code of Criminal Procedure, similar to our Code of Criminal Procedure, is not exempt from criminal liability the person who does not have the ability to understand and allow, but in contrast to the Albanian Code of Criminal Procedure, the inability to understand and allow here is intentionally and deliberately caused by the person, in order to commit the criminal offense (*actiones liberae in causa*).

6. Comparative overview of the application of the sentence for the commission of a criminal offense in a state of intoxication between the Albanian and Italian criminal legislation.

The Albanian Code of Criminal Procedure differentiates between the application of a sentence for a criminal offense committed in a state of occasional intoxication and that committed in a state of intentional intoxication. When intoxication is caused in occasional circumstances and has brought about a decrease in mental balance, this circumstance is taken into account for the application of the sentence against him.

In this case, it is about committing a criminal offense in the state of ordinary intoxication, which is a mitigating circumstance to mitigate the sentence against the person who has committed the criminal offense in this state. When intoxication is committed intentionally to commit a criminal offense, this circumstance will be taken into account by the court in sentencing. In this case, we are dealing with an aggravating circumstance.

The Italian Code of Criminal Procedure also differentiates the application of the sentence for cases of committing a criminal offense while intoxicated.

In the case of committing a criminal offense in a state of intoxication caused by the circumstances of the case or by force majeure¹⁰, when intoxication has been such that it has reduced the ability to understand and allow, the punishment is mitigated / reduced. When the offense is committed by a person who has been in a state of intentional or deliberate intoxication, the sentence is increased. The same goes for ordinary intoxication, which, like deliberate intoxication, increases punishment.

Committing a criminal offense in a state of chronic intoxication from alcohol or narcotics, when this state has caused a decrease in the ability to understand and allow, brings about the mitigation / reduction of the sentence.

Looking at them from a comparative point of view, it is obvious the similarity in the provision of the application of the punishment for committing the criminal offense while intoxicated (for each of the types of intoxication) between the Albanian and the Italian Code of Criminal Procedure.

Thus, in the case of committing a criminal offense, when we are dealing with a mitigating or aggravating circumstance, this is taken into account by the court, respectively for the mitigation of the sentence and its aggravation¹¹, the Italian Code of Criminal Procedure defines the cases of those criminal offenses where the sentence is reduced or increased.

CONCLUSIONS

Understanding criminal liability and not excluding it during the commission of a criminal offense while intoxicated, is of special interest both in theoretical and practical terms.

The commission of a criminal offense while intoxicated has been dealt with in the Code of Criminal Procedure s of the period before World War I and World War II as well as in the Code of Criminal Procedure s of the post-liberation period, continuing with its treatment

¹⁰ Accidental intoxication, article 91/2 Italian Code of Criminal Procedure

¹¹ Albanian legislation and Code of Criminal Procedure

in the Code of Criminal Procedure of 1995, which is still in force today. In addition, given the comparative aspect of the provisions relating to the commission of a criminal offense in a state of intoxication in our legislation and Code of Criminal Procedure, with the relevant provisions provided in the Italian legislation and Code of Criminal Procedure, we say that she has found adjustment in the previous Italian codes where we can mention: The Zanardelli Code (1889), the Rocco Code (1930) and the Code of Criminal Procedure in force in the Italian Republic in which the commission of a criminal offense while intoxicated or under the influence of narcotics has been regulated in 5 articles (Articles 91, 92, 93, 94, 95).

Given the historical aspect addressed in the above chapters, in relation to the commission of a criminal offense while intoxicated (with alcohol, drugs, psychotropic substances or any other type of stimulant), we can say that the person who committed the criminal offense while intoxicated is not exempt from criminal liability, both for the case of occasional intoxication and for intentional intoxication.

This is due to the fact that in both cases of intoxication expressed in Article 18 of our Code of Criminal Procedure, the person is responsible and his mental balance is not disturbed, consequently he is able to control the actions he commits and understand the danger of the crime that has committed.

Even in the case of pathological intoxication, which is an exceptional case because the person in this condition is irresponsible, but in this case we are dealing with *actiones liberae in causa*, where although the person is irresponsible at the time of the crime, he will bear criminal liability after bringing himself intoxicated.

Italian criminal law and the Italian Code of Criminal Procedure, in particular, exempt from criminal liability the person who committed the criminal offense in a state of accidental intoxication (caused by the circumstances of the case or by force majeure), as he does not possess the ability to understand and allow, whose existence is an important condition for having criminal liability.

In all other cases of intoxication such as voluntary, guilty, intentional and ordinary, the person who commits the criminal offense in these conditions has the ability to understand and allow, although this to a reduced extent, is not exempt from criminal liability.

In conclusion, no one can be justified by the fact that when he committed the criminal offense while intoxicated to be released from

criminal liability. Article 18, paragraph 1 of Albanian Code of Criminal Procedure stipulates that “A person who has committed a criminal offense while intoxicated is not excluded from criminal liability” and this constitutes an absolute quasi-assertion.

BIBLIOGRAPHY

1. Law no.7895, dated 27.01.1995 “Code of Criminal Procedure of the Republic of Albania”
2. “Legge in materia di stupefacenti” no. 162, dated 26.06.1990; no.272, dated 30.12.2005; nr.49, dated 21.02.2006
3. Prof.Dr.Ismet Elezi, Prof.Dr.Skënder Kaçupi, Prof.Assoc.Dr.Maksim Haxhia, “Commentary on the Code of Criminal Procedure of the Republic of Albania. (General Part) “GEER Publications, Tirana 2006
4. Dr Dr.Shefket Muçi. “Criminal law (General part)”, ORA Publications, Tirana 2006
5. F.Mantovani. “Diritto penale”. Padova 2001
6. Salvatore Ardizzone. “Codice penale ipertestuale con banca dati di giurisprudenza” 2007
7. M.Ronco, S.Ardizzone, “Codice penale annotato con la giurisprudenza” 2007
- 14.I.Bucchieri, “L'imputabilità del tossicodipendente, Tesi di laurea”. 2003-2004
8. Judgments of the Italian Constitutional Court
9. Judgments of the Italian Criminal Court of Cassation