

Original Article

# On the Drunk Driving Offence of Dangerous Driving Conviction from the Perspective of Actio Libera in Causa

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**Abstract** - *Actio Libera in causa* (Latin words for: the cause of free behavior) is that the perpetrator falls into the state of no responsibility or limited responsibility due to negligence or misconduct and implements the behavior that meets the constitutive elements of the crime. Of course, the separation of responsibility ability and implementation behavior in *actio Libera in causa* is controversial, which needs to be effectively analyzed around its punishability, conflict, and reconciliation of the principle of responsibility. At first, this paper discusses the relevant concepts and theories of *actio Libera in causa*, followed by the punishment principles of the drunk driving offense of dangerous driving conviction, which demonstrates the relevant responsibility basis and relevant basis of the crime from the theoretical level of *actio Libera in causa*, and finally effectively improves the responsibility basis strategy of the drunk driving offense of dangerous driving conviction in China.

**Keywords** - *actio Libera in causa*, the drunk driving offense of dangerous driving conviction, punishment principle

## I. INTRODUCTION

In recent years, China's national living standards are showing a development trend of continuous improvement. The era of national private cars has come, but there are frequent traffic accidents, and the death toll is increasing year by year. Take the first half of 2021 as an example, and there were more than 5000 traffic accidents caused by drunk driving in China, of which 2000 people died. In view of this, China's criminal law amendment specifically includes drunk driving into the scope of criminal law regulation, which is defined as the crime of dangerous driving. It seems that the basis of criminal responsibility for the drunk driving offense of dangerous driving conviction has been ignored, which shows that China's criminal law still needs to analyze and study problems more at the scientific and theoretical levels in practice, such as the theory of *actio Libera in causa*.

## II. LITERATURE REVIEW

### A. Related concepts and theories of *actio Libera in causa*

#### a) The basic concept of *actio Libera in causa*

The basic concept of *actio Libera in causa* is set as the result of harmful behavior in the state of physical and mental disorder. Generally speaking, the ability of responsibility and the act of implementation are easy to be separated in *actio Libera in causa*, which also become the biggest feature of *actio Libera in causa*, which is also the key point where the conflict of principles of accountability will occur.

#### b) The punishable connotation of *actio Libera in causa*

As for the punishability and non-punishability of *actio Libera in causa*, it is not punishable if this act realizes the organic expansion process of the scope of crime. But in fact, it is unreasonable to deny the punishability of *actio Libera in causa*, mainly because some people have the intention to murder but have not been punished because they are drunk. It is unreasonable to commute or exempt them from punishment based on this mental disorder. From the perspective of jurisprudence, *actio Libera in causa* directly causes the fact of infringement of legal interests, which is harmful to society. In addition, the perpetrator's subjective guilt objectively reflects a strong antisocial character, and it is a personal danger. Combined with the above points, it can be concluded that from the perspective of social defense, the punishability of *actio Libera in causa* is inevitable.

#### c) The problem of will domination and its harmful characteristics in *actio Libera in causa*

Combined with the relevant concepts of *actio Libera in causa*, it is necessary to redefine the concept content, that is, from abandoning the subjective factors of will control on the basis of the behavior concept to changing the subject application mechanism of control or should control, and optimizing the actual state of control ability, which is very helpful to deal with the criminal problems caused by *actio Libera in causa*. From the perspective of free behavior at the cause level, the perpetrator will lose and weaken the ability



to identify and control his own behavior in the process of implementing the constitutive elements. If we refer to the traditional concept of behavior in China's criminal law theory, we should make it clear that free behavior in reason is difficult to act as a harmful behavior and pursue its relevant criminal responsibility. For example, China's relevant provisions on the crime of drunken people, the freedom of cause must be investigated for relevant criminal responsibility, and it is necessary to put forward relevant, flexible principles in the ability to deal with behavior and responsibility. Therefore, the perpetrator can make free decisions in this process, which belongs to the effective behavior in the sense of criminal law. It can optimize and adjust the factual state by redefining the concept of behavior and establishing the mechanism of controlling or should control and solve problems.

On the other hand, in terms of the concept of the act in China's criminal law, the act of freedom of cause belongs to the act in the general sense, and its harmfulness is not unique to the act in the criminal law. If the behavior is defined by feature attributes, it does not conform to the corresponding logical content. In the process of understanding the objective factual state of people or things under objective conditions, we need to study its harmful connotation in accordance with the provisions of China's criminal law, understand the objective elements and behavior content composed of crime and understand the possible confusion at the level of the conceptual boundary of criminal behavior.

### III. RESULTS AND DISCUSSION

#### ***A. Analysis on the punishment principle of the drunk driving offense of dangerous driving conviction***

In the process of punishing the crime, we must clarify the relevant punishment principles. First, we must ensure that the procuratorial organ participates in the governance of crimes endangering road traffic safety, give full play to the procuratorial function, accurately exercise fair, just, and efficient authority, and ensure deep participation in the governance of crimes endangering road traffic safety. In order to maximize the legal effect, it is necessary to clarify two points in the punishment principle: first, prosecute drunk driving, zero tolerance for drunk driving, and leave no room for fluke for drunk driving personnel. Second, at the same time, the behavior of drunk driving motor vehicles should also be treated differently, so as to be lenient and strict, when leniency is lenient, effectively punish and educate criminals, reduce or even prevent crime, which is the fundamental purpose of punishment. In terms of the leniency system for confession and punishment added by the amendment of the criminal procedure law in 2018, it is necessary to deal with the relative non-prosecution and exemption from criminal punishment in combination with the judgment of quick adjudication procedure and simple procedure judgment, and clarify the degree of harm, types of punishment and intensity of punishment to ensure a lower sentence. Therefore, the drunk driving offense of dangerous driving conviction must

be handled properly so as to ensure relatively good social and legal effects. Specific to the detail level, we should analyze the cases of drunk driving dangerous driving crime in combination with a variety of circumstances. If necessary, we should make a relatively non-prosecution treatment. For example, if the blood alcohol content does not reach 150mg, we can generally make a relatively non-prosecution treatment. In addition, if there is no bad record in the first offender, accidental offender, and personal credit investigation system, it can be applied to non-prosecution.

#### ***B. Analysis on the drunk driving offense of dangerous driving conviction based on actio Libera in causa***

After drunk driving was officially punished, the number of drunk driving behaviors in China has also decreased significantly, but its responsibility basis has been ignored.

Therefore, it is very necessary to analyze the problem of the drunk driving offense of dangerous driving conviction based on the level of cause-free behavior.

#### ***a) Analysis on the responsibility basis and content of domestic the drunk driving offense of dangerous driving conviction***

The main responsibility basis of the domestic drunk driving offense of dangerous driving conviction is to design and form the responsibility basis based on practical needs and relevant policy considerations. The specific basic content analysis should include the following three points:

Firstly, the responsibility premise of the drunk driving offense of dangerous driving conviction is not realistic. According to modern medical research, people have a physiological drunken period, which is generally divided into three periods: excitement period, ataxia period, and lethargy period. In the three periods, people's control ability, identification ability, and consciousness ability will be weakened or even have obstacles. According to the one size fits all presumption of criminal responsibility adopted in domestic criminal law, it needs to be judged according to the general situation to avoid inconsistency with the actual situation.

Secondly, the responsibility premise of the drunk driving offense of dangerous driving conviction may violate the basic principle of accountability, because according to China's traditional criminal law theory, the drunken state is caused by the perpetrator himself, it can not arbitrarily reduce the punishment, and it lacks accountability. Combined with the responsibility ability, it is essential to analyze and carry out targeted punishment on the drunken driving behavior.

Finally, some scholars put forward that drunk driving offense of dangerous driving conviction is a kind of strict responsibility in the performance of criminal responsibility, which is also a conceptual performance in British and American criminal law. As far as the content of criminal law in Anglo American law system is concerned, it is quite different from that in China. Its substantive criminal law and

procedural law are often integrated. Among them, Anglo American law system insists on the principle of voluntary drunkenness and no defense and analyzes the relevant content of criminal procedure law on the basis of the separation of substantive criminal law and procedural law. Drunken people's fault for drunkenness itself is different from the crime in criminal law.

**b) Analysis on the responsible basis of the drunk driving offense of dangerous driving conviction in China**

This paper analyzes the responsible basis of the domestic driving offense of dangerous driving conviction, specifically referring to the relevant contents of German criminal law textbooks, and analyzes the decisive behavior of the perpetrator in the state of ability under the background of free cause behavior because this state is completely predictable, that is, the free cause behavior is different from the general criminal behavior, and it should include the behavior content of two stages: cause behavior and result behavior. As for the analysis of the cause behavior stage, it is necessary to analyze the actor with the ability of responsibility, the resulting behavior, intentional negligence, and the problem of intention or negligence, which lead to the related criminal problems falling into the state of mental disorder, and the elements have the problem of illegality. If we analyze from the result behavior stage, we should analyze the actor's irresponsible capacity, which will infringe on certain legal interests, resulting in the non-compliance of the constituent elements and the characteristics of illegality.

**IV. CONCLUSION**

To sum up, in order to effectively eliminate the conflicts of the drunk driving offense of dangerous driving conviction in China, it is also necessary to constantly find the theoretical basis, analyze the correction and innovation strategies, and ensure that the foreign criminal law circles correct and innovate the basic content of the freedom of cause and punishability. Based on the positive attitude analysis of the punishability of cause freedom in foreign criminal law academic circles, it is essential to clarify the content of drunk driving offense of dangerous driving conviction, incorporate it into the theory of actio Libera in causa, and analyze the loss of responsibility ability and the limitation of responsibility ability caused by drinking. It is necessary to analyze the effective amendment and innovation of relevant theories based on the result behavior level, understand its positive attitude in combination with the punishability of cause freedom in criminal law academic circles, mainly analyze the inclusion of drunk driving offense of dangerous driving conviction into the theory of actio Libera in causa, and understand its basic mode. In the process of analyzing the causal behavior, it is mainly based on the complete loss of responsibility and limitation of responsibility caused by drinking negligence and analyzes the resulting behavior and abstract danger, which may endanger public safety. In foreign criminal law, it is necessary to analyze this theory and effectively solve the possible problem of criminal

responsibility, and ensure that the drunk driving offense of dangerous driving conviction under the background of actio Libera in causa is legitimate and punishable.

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