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Temulency as the distraction of mental actions

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Preamble

The notion “other distractions of mental actions”, despite the fact that it has been present in Polish criminal law since 1932, it has not been described in the literature on the subject. In spite of attempts taken, does not define what the group of other distractions is and what states are included in them. According to the art. 31 of the Penal Code, mental disorder and mental impairment are included in the group of mental illnesses, however as the legislator used the word “other”, it may mean that all what results in inability of recognition of deed or directing proceedings, is not any of states mentioned above, it is included in the different group. What is more, it appears in only one negative definition – contradiction. A situation mentioned, presents the problem of the categorization of the notion. So if these are all states included in the group of mental disorder and mental impairment what can be understood under the expression “other distractions of mental disorder”? Much more important seems to be the dilemma of complete description of states present in the psychiatric and judicial practice than the creation of general definitions.

It can be assumed that the amount of knowledge on the subject is limited and otherness together with the only one characteristic of the described notion with reference to the rest of biological-psychiatric aspects of the institution included in the art. 31 of the Penal Code and it is called “other”.

The attempt to present that alcohol inebriation can be included in the term “other distractions of mental disorders” which decrease or even excludes penalty responsibility of a perpetrator, is the main aim of the paper. Considerations below are made taking into account that ordinary alcohol inebriation can be included in “other distractions of mental disorders”, however, because of the regulation art. 31 § 3 of the Penal Code it does not have legal and penal nature.

Dispute on the nature of “other distractions of mental disorders”

On the basis of the Penal Code 1932 a dilemma connected with nature of other disruption appeared – whether they are psychopathological states or they should be considered as physiologic phenomenon, not related with pathological changes in human’s psyche. In the doctrine and judicature many views which were completely diverse and not consistent appeared. In the initial stage of being in force the norms of mental incompetence, the first view dominated, however in the middle of 70s, when the next Penal Code was in force, such views were present. Łuniewski is one of those who are the supporters of the narrow definition of the issue: “»other distractions of mental disorders« include only pathological disruptions of mental actions, not all quantitative deviations from average mental processes. Only in states of pathological distraction of mental actions lack of possibility to understand the act or the reasons of certain behavior”¹. Malinowski, Wdowiak and Dreszer are also supporters of the same point of view.

Supreme Court also is for the attitude described above, which was included in the sentence from 11th July 1973 explicitly claiming: “states described in the art. 25 § 1 or § 2 of Penal Code (now art. 31 § 1 and § 2 of Penal Code) are pathological”². However, we cannot agree with such arguments. Currently, the dominant view is the one according to which we can include in this category both states – pathological and non-pathological. Daszkiewicz is the one who agrees with the wider aspect of this notion. He claims that the view with the double – sided base of distraction has been present since a long time in the theory and practice of criminal law, that is why it should be considered as the most important. Such an attitude was presented during work of Codification Commission on Penal Code 1932, where it was highlighted that “[...] those special and unusual expressions of mental lives of healthy people”³.

Crucial is that the Supreme Court in 30s’ was for the wide aspect of the notion described (judgment 6th February 1935 I K 1075/2, ZO 1935, no 11)⁴. The judgment dated 7th February 1963 is the next one on the subject. Its validation is as follows: “[...] views of some psychiatrics, according to whom the base for the usage of extraordinary mitigation of punishment [...] can be only pathological criteria cannot be assumed as the correct ones. The source of these distractions can be also causes which are not connected with the mental underdevelopment or mental disorder, these can be, e.g. poisoning, sexual maturation, period, pregnancy, and emotions such as anger, terror, despair, etc. [...]. The judicature was directed into widening of the interpretation art. 18 § 1 of Penal Code (now 31 § 2 of Penal Code) introducing

¹ M. Tarnawski, *Silne wzburzenie jako „inne zakłócenie czynności psychicznych”*, „Wojskowy Przegląd Prawniczy” 1975, no. 2.

² Supreme Court sentence 11th July 1973, II KR 52/73, OSP 1974, no. 7–8.

³ K. Daszkiewicz, *Glosa do wyroku SN z dn. 11 lipca 1973 r.*, OSP 1974, no. 7–8.

⁴ J.K. Gierowski, *Rola biegłego psychologa w opiniowaniu o poczytalności – problemy diagnostyczne i kompetencyjne*, „Palestra” 1995, no. 5–6.

notion »partially relating to illness the state of distraction of mental actions«, resigning from categorical criteria of pathological in nature”⁵. According to the mentioned judicature and the doctrine’s views it can be assumed that decreasing the bases for “other distractions of mental disorders” has been developing for years from belief in its pathological nature, through the view on the partially related to illness states, till the claim in its dual origin. Linguistic interpretation is also for the wide aspect of the term as if a legislator intended to limit the problematic meaning, they would use the term *explicite* in the codification, however this does not result from the current Penal Code. Batawia points out that the basis to apply for narrowing the meaning of this notion could be the usage of the term “disturbance” instead of “distraction” as the one which has plenty of pathological features or simple addition of adjective “related to illness”⁶. The next argument which approves the wide interpretation of the notion in dispute is the art. 31 § 3 of Penal Code which orders to exclude from the institution of mental incompetence and diminished capacity, states caused by alcohol and other substances which lead to stupor. Logically, if these states are exceptional, however they definitely are physiological, so the general rule which includes such states in the expression of “other distractions of mental disorders” appears. What is more, many criminal law specialists such as Śliwiński, Gubiński, Daszkiewicz, Bojarski, Lernell, Wolter, Andrejew, Mioduski, Sawicki and Wąsek are those who consider both aspects – physiological and pathological. It should be highlighted that the dispute on the nature of this part of mental incompetence and diminished capacity is actually the dispute on the two environments: legal and psychiatric.

The first one advocates the wide view and the second one the narrow. Psychiatrists’ tendencies are based on their lack of confidence on giving opinions on physiological states and the necessity of the usage in this regard the solutions and psychological knowledge. In the literature on the subject providing a definition “other distractions of mental disorders” the explanation is limited to automatic repetition of formulaic schemes. Marek understood it as pathological mental state, inebriation, poisoning disorders, stupor, states after coma, meningitis, and sometimes even hypnosis⁷. Rejman claims “to other causes of mental incompetence forensic psychiatry includes pathological mental states, short term stupor states which appear after epilepsy, serious injury, toxic poisoning, both alcoholic and drug”⁸. The next comment is as follows: “other distractions of mental disorders, are disturbances on the bases of which there are no inborn defects and illness related processes, but those which are the results of short and fading reactions of organism on certain inside and outside stimuli (e.g. alcohol, drug, medicine poisoning, strong affections,

⁵ Supreme Court sentence dated 7th February 1963, V K 423/62, OSPiKA 1963, no. 11, item 290.

⁶ S. Batawia, *Uwagi o przepisach dotyczących niepoczytalności i poczytalności zmniejszonej w projekcie kodeksu karnego*, „Nowe Prawo” 1995, no 5.

⁷ A. Marek, *Prawo karne*, Warszawa 2006, p. 156.

⁸ Red. G. Rejman, *Kodeks karny – część ogólna – komentarz*, Warszawa 1999, p. 820.

period, pregnancy, labor, puberty and menopause, hypnosis”⁹. Actually, the same phenomena are enumerated in books by Gardocki, Cieślak and Andrejew. In the further part of the paper, the attention will be paid to the processes in order to claim what states are included in the enumerated names, what the causes, course and consequences can be, and, what is crucial here, whether their influence on one’s psyche is as required by art. 31 § 1 or § 2 of Penal Code.

Temulency as the distraction of mental actions

Poisonings are “other distractions of mental disorders”. Alcohol is definitely a poison, it disables the functioning of human body, mainly brain. What is more, it also disables central nervous system, at the same time influencing human’s intellect and moral limitations. Temulency limits or even gets rid of consciousness and has an influence on the one’s will. It can lead to insanity or diminished capacity. However, such a claim is generalization. This issue is partially regulated by the art. 31 § 3 of Penal Code, in which “regulations § 1 and 2 are not in power, when the perpetrator became intoxicated or stupor causing exclusively or the limitation of insanity, which they predicted or could have predicted”. Basically, in case of intoxication, excluded is the possibility of using the benefits provided by the usage of insanity or diminished capacity. In such a case, following conditions must be fulfilled:

1. The perpetrator must become intoxicated. In literature, this term includes, three types of intoxication: unassisted, conscious or deliberate. However, the correct should be the one connected with voluntariness, acting without any compulsion. This is the way in which the circumstance will be presented in the paper.

2. The consequence of the stupor is the state of insanity or diminished capacity. Such a claim provided by a legislator, leads to the conclusion that biologically insane person or not totally sane, is treated according to the law, as completely sane. In this case legal fiction is introduced.

3. The above consequences must be predicted or possible to predict by the perpetrator.

The regulation described above is the example of the conflict between on guilt rule and the rule of social protection. Severe attitude towards the political – criminal issue presented in the paper is intentional sign of the fight against more and more common alcoholism among society. There is an anxiety connected with the doctrine whether such an attitude is not the complete abandonment of the on guilt rule and come back to an old strict liability. Wolter was one of those who supported this opinion. Andrejew, Filar and Pławski are against this statement. The art. 31 § 3 of Penal Code, requires in its construction, the appearance of unintentional guilt, which is described in mentioned item 3, which definitely supports the tendency of subjecti-

⁹ Red. O. Górniok, *Kodeks karny – komentarz*, Warszawa 2004, p. 96.

ve responsibility. On the other hand, practice focuses on completely different aspects of the issue. It accepts a priori, the fact that every adult is aware of consequences of drinking alcohol and is aware of all effects of drinking, which actually means the presumption of guilt in this case. An example of this issue can be the ruling of the Supreme Court dated 5th of June 2013, in which it was proved that according to the art. 31 § 3 of Penal Code, insobriety does not exclude criminal liability, and even does not license to extraordinary mitigation of punishment, however even if it would lead to the exclusion or significant diminishing of capacity – the one which, according to the rule will be considered as culpable by a perpetrator (so-called: the guilt on the foreground of prohibited act)¹⁰.

The contradiction of the rule of guilt with the rule of security is not only a dilemma of Polish legislation. In foreign legal systems, attempts to reconcile both aspects of law, were made. The first concept is known as *action libera in causa*. The idea was included in the 1932 Polish Penal Code and it was based on the assumption that a stunned perpetrator as sane, if they got intoxicated in order to commit a prohibited act (fault on the foreground of act). However, it includes a mistake. It claims that a person is able to realize his or her aims which appeared before intoxication in the state of doping¹¹. The attempt to mitigate the concept was the acceptance of its presuppositions in a bit modified form as *action libera in causa* is unintentional. In this case, it is understood as a situation in which, a perpetrator should predict that in case of intoxication he or she will commit a prohibited act. Despite this fact, if he or she decides to drink alcohol, at the moment of drinking the person is guilty of carelessness or recklessness. If he or she commits a crime in this state, a person will be judged as for an unintentionally committed crime. Imperfection of the concept is easily noticeable in case of crimes, which can be considered only as intentional. Which is why they were beyond the interest of criminal law. The next available concept is so-called *Rauschdelikt*, which clue is based on the creation of *sui generis* crime, in which a person gets intoxicated and commits in this state a prohibited act. It is an extreme form of responsibility based on the objective conditions towards subjectivity, which means that the guilt refers only to the act neutral in terms of the criminal law – the consumption of alcoholic substance. All these aspects cause that even traditional bastions and cradles, resign from its standardizing¹². The legislation of ZSRR proposed other solutions. The rule of security was the basic one, totally compromising the influence of the rule of guilt, which resulted in the acceptance of full sanity of the perpetrator being in the state described and it was even considered as exacerbation of circumstances¹³. Current Polish Penal Code, uses some kind of type of this concept, however it is modified by the usage of elements of fault.

¹⁰ The provision of Supreme Court 5th June 2013, III KK 443/12, publ. LEX no. 1331337.

¹¹ A. Zoll (ed.), *Komentarz. Kodeks karny – część ogólna*, Kraków 2004, p. 566–567.

¹² M. Filar, *Odurzenia alkoholem a zagadnienie uznania niepoczytalności*, „Palestra” 1970, no. 1.

¹³ A. Zoll (ed.), op. cit., p. 567.

Discussed paragraph of art. 31 of Penal Code, concerns only one field of relations between alcohol and crime. Supreme Court in sentence dated 28th September 1978 (II KR 193/78) announced: "relation between crime and compulsive intoxication or the usage of other dope by the addicted perpetrator, and in situation when the perpetrator's addiction is the cause of the commitment"¹⁴. During the investigation of perpetrator's sanity in terms of alcohol, not only the states of daze caused by drinking alcohol should be taken into account, but also situations, when the perpetrator *tempore criminis* was not under the influence of the discussed substance, but in the state of desire to drink indicating the addiction and also when long lasting taking of substances, caused mental illness.

What is more, the last of discussed situations has a significant meaning for the assessment of person's sanity, however it is not so important in context of the paper, that is why we can enumerate the states having an influence on sanity and included in the group of mental disorders. These are as follows, psychosis: dipsomania (periodical), delirium (*delirium tremens*) alcoholic hallucinosis (*hallucinosis potatorum*), morbid jealousy (*paranoia alcoholica*) Korsakoff's syndrome¹⁵. All of presented psychotic disorders appear in the course of alcoholism. However, not every addiction causes such serious changes. Alcoholism, as every addiction, develops gradually, that is why also other situations should be taken into account.

The state of "hunger" is the first one to be considered, it appears together with addictions, in psychiatry called "absence syndrome" or "withdrawal syndrome", as it appears at the phase of break from taking or the significant decrease in consuming the substance. It is the state of physical addiction caused by multiple intoxication causing serious symptoms in both body and mind. Among mental, we can enumerate: angst, anxiety, distraction, irritation or apathy. However, among physical effects there are: headaches, painful muscle pangs, vomiting, anorexia, chills. As it has been already mentioned, it is an addiction connected with the physical sphere. However, it always goes together with mental aspects, determined as need or sometimes even necessity of introducing to the organism addictive substance. According to the psychiatrists, the mental necessity is a significant reason of considering the sanity of perpetrator, because it is a factor having a significant influence on person's willingness, paralyzing his or her free leading of behavior. According to Liszowska, addiction is included in the term "other distractions of mental actions", if it doesn't lead to fixed organic damages, then it would be included in the term of mental illness¹⁶. The view is to be agreed. There are no bases in order to reject the view that one state can be classified as "other distractions of mental actions" and after the reaching certain intensity and changes in body and mind, in this case organic changes to qualify it as mental illness. So, if a person acts as a result of withdrawal

¹⁴ J. Kocur, S. Duszyk, *Uzależnienia a poczytalność*, „Psychiatria Polska” 1990, vol. XXIV, no. 3.

¹⁵ M. Cieślak, K. Spett, W. Wolter, *Psychiatria w procesie karnym*, Warszawa 1991, p. 315–319.

¹⁶ A. Liszowska, *Problem odpowiedzialności karnej osób zażywających środki odurzające*, „Pa-lestra” 1992, no. 5–6.

syndrome, and the addiction does not have the final character, causing the prohibited act together with simultaneous lack of the state of stupor his or her mental incompetence or diminished capacity because of “other distractions of mental actions”, it is similar situation when the perpetrator being in the state described above, is stupored and being in this state, committed a prohibited act. As one of three basic conditions was not fulfilled – voluntary intoxication, because of the action of irresistible constraint, the act. 31 § 3 cannot be used.

Moreover, the most important in this case are situations in which the perpetrator is and takes actions under the influence of alcohol. Described art. 31 § 3 refers to the ordinary inebriation, which symptoms are commonly known: decrease of criticism, increase of mood, carelessness, stress release, and decrease of angst, increase of sexual excitability, jabber, lurching, decrease of dexterity, and the accuracy of perception. Among some people – especially egocentrics – instead of euphoria, belligerence and despondency appear¹⁷. However, not every alcohol stupor proceeds in the same, typical way which does not cause any judicature difficulties. There is also a range of other types of inebriations, which are in the field of interested of forensic psychiatry. In older judicature only ordinary and pathological inebriations were present. This dichotomous division has been questioned by psychiatry. From the doctor’s point of view, such cases appear as were not adequate to any of mentioned forms. According to this the doctrine created different classifications. Binder presented the one which distinguishes ordinary, pathological and complicated (*komplizirte*) inebriation. Fiutowski, using the divisions created by other theoreticians, proposes the usage of following forms: typical (ordinary), and “atypical” (complicated, pathological, pathologically based, abnormal reaction on alcohol, called Hoff’s reaction and hysterical reaction on alcohol). In Polish forensic literature and judicature the rule of classification is based on 3 forms: ordinary, pathological inebriation, and pathologically based inebriation¹⁸.

Types of inebriation

There is a wide range of types of inebriation which are distinguished in judicature and psychiatry at the same time included in “other distractions of mental actions”. They are divided according to the criteria of atypicality and symptoms. That is why, the norm included in art. 31 § 3 of Penal Code cannot be used. They do not fulfil the requirement of the prediction or the possibility of predicting the resulting in mental incompetence or diminished capacity.

Pathological inebriation (*ebrietas pathologica*) as the one which is most commonly listed as “other distraction of mental actions” is present in judicature. Despite

¹⁷ M. Cieślak, K. Spett, W. Wolter, op. cit., p. 298–299.

¹⁸ M. Tamawski, *Zmniejszona poczytalność sprawcy przestępstwa*, Warszawa 1976, p. 108–109.

the fact the name of the phenomenon is well known, it is not correct, as it assumes that there is a phenomenon called proper inebriation, which is untrue, as every inebriation is poisoning, which is a kind of anomaly. Because of the fact that any other different term which would refer to the state of art was not assigned to the phenomenon, it is necessary to use this one. Classically, it is described as intoxication psychosis with quality distraction of consciousness, improper thinking and perception. It appears after the consumption of little amount of alcohol, suddenly and without typical for simple inebriation increase of irritability and anger. However, it can appear in the course of simple inebriation, billowing into pathological state. That is why, detailed and thorough psychiatric opinion. In the course of pathological inebriation, aggression and excitement increase, there is also total break up with the reality, and the loss of orientation. A person does not know where he or she is, he or she is also not able to provide personal data, does not recognize family and close friends. Strong angst, delusion and sometimes even hallucinations appear. Person's action in this state are difficult to understand for the environment. "It is said to be »alien actions of perpetrator«, which characterizes otherness and peculiarity of behavior. T. Bilikiewicz describes it as »transposition into split personality«"¹⁹ it is short – term state, it usually lasts a few minutes, seldom prolonged to few hours. It finishes suddenly, usually as terminal sleep, lasting several dozen minutes and even a few hours, in a totally random place. However, after waking up, a person is totally sober. It should be highlighted that in this type of inebriation there is a lack of symptoms typical for normal inebriation, such as: jabber or unstable walk. The lack of pupils' reaction on light is an important symptom, it usually lasts longer than other symptoms mentioned mental disorders. In psychiatry, factors intensifying and eliciting described state have been searched for many years. However, any independent cause has been found. Its appearance cannot also be excluded even in a person who does not show any deviations from mental order. Moreover, it is only known that there are both permanent and temporary factors which further the creation of this state. Organic changes in brain are the main causes of the pathological inebriation. It is also often connected with epilepsy, highlighting the fact that influence on its appearance have exhaustion, weakness after illness, malnutrition, or not having good sleep. A vast number of authors of theses on the subject, claims that condition sine qua non are changes of personality. There are two types of pathological inebriation. The first one is called epileptic which is based on the sudden appearance of deep changes in one's consciousness, in the form of stupor with strong motion agitation and the attacks of aggression. This form of agitation stops gradually, finishing with deep sleep, after which the memories of a state are single, and in 1/3 of cases, it finishes with complete oblivion. The second form – delusion, is more seldom in practice than the previous one. In this state, the person's behavior seems to be normal or even purposeful. He or she can omit the stumbling blocks, doing

¹⁹ J. Przybysz, *Psychiatria sądowa. Opiniowanie w procesie karnym*, Toruń 2000, p. 203.

complicated activities, ask questions. However, out of touch with reality and delusion are visible. Anxiety, angst, aggression together with hallucinations and delusions appear. In comparison to the first form – it also finishes with sleep. However, in this case, memories are always patchy. Controversial is the fact that pathological inebriation can appear only once in a lifetime, or repeatedly. Independently on the discussion, it should be stated that as the excluding or diminishing mental incompetence circumstance, should be taken into account only within the first appearance. An adult should be aware, that if alcohol caused such a pathological reaction, the next drinking, can lead once again to such a result and often to tragic results, also in the field of criminal law. Pathological inebriation is a very rare phenomenon in court and psychiatric practice and known mostly from statements of witnesses. The diagnosis of the state needs to be based on the general analysis of all symptoms, as none of them present separately does not denote pathological inebriation²⁰. Pathological inebriation, introduced to Polish science by Batawia, who noticed controversial cases, not possible to include in neither in proper inebriation nor in pathological one, is the one which arises controversy. Its core is based on the significant narrowing of consciousness, strong psycho – motion excitement with elements of unsupported aggression, which is beyond the state of ordinary intoxication. It is caused by the consumed alcohol mixed with the pathological factors of a person, to which we can include: skull – brain injuries, atherosclerosis, epilepsy, psychopathy, or neurosis. Also syphilis, encephalitis, strong physical and mental illnesses, and oligophrenia. In these cases alcohol cause, despite ordinary symptoms of intoxication, intensification of psychotic symptoms, or other, previously existed mental distractions, alternatively, psychotic symptoms such as: consciousness distraction, hallucinations, delusions, which were not present in the time straight before the consumption of alcohol. The amount of alcohol needed to get intoxicated is usually quite small, which is the sign of decreased alcohol tolerance. According to the described intoxication a problem appeared: does the exclusion of art. 31 § 3 of Penal Code causes only pathological inebriation, or also on the pathological ground, so on the basis of human's psyche anomalies, which separately or in combination with alcohol, cause states completely different from the ordinary intoxication. All these aspects cause the necessity to treat the phenomenon in a different way. The range of discrepancies appeared in the dilemma. In justification to the previous Penal Code, it was written: "difficult and complicated issue resulting when exclusion or limitation of sanity of the perpetrator was caused only by illness and daze, leaves the project for judicature and doctrine"²¹. The judicature expressed their opinion on the subject many times. In sentence

²⁰ M. Cieślak, K. Spett, W. Wolter, op. cit., p. 302–304; Z. Falicki, L. Wandzel, *Psychiatria sądowa dla studentów wydziału prawa*, Białystok 1990, p. 92–95; K. Krauze, B. Spisła, *Upojenie patologiczne jako zagadnienie kliniczne i sądowo-psychiatryczne*, „Problemy Alkoholizmu” 1968, no. 3–4; J. Przybysz, *Psychiatria sądowa. Opiniowanie w procesie karnym*, Toruń 2000, p. 202–203; L. Uszkiewicz, *Zarys psychiatrii sądowej*, Warszawa 1979, p. 108–110.

²¹ M. Tarnawski, *Zmniejszona poczytalność...*, p. 112.

dated 25th June 1973 Supreme Court maintained the sentence issued in 1968, stating: “if the perpetrator’s act is in close relation with its pathological state, made more intensive by the overuse of alcohol, it is not elicited only by being intoxicated, and that is why art. 25 § 3 of Penal Code (currently 31 § 3), should be eliminated, however the case should be researched according to the art. 25 § 2 of Penal Code (currently 31 § 2 of Penal Code)”²². On the field of doctrine, a problem appeared: is the intoxication on the pathological bases, of the same importance, in terms of law – criminal consequences as pathological intoxication. It seems that both states should be considered separately, because of the fact that pathological intoxication is always caused by consumed alcohol, however in case of pathological intoxication, psyche distractions and anomalies can result in mental incompetence, or diminished capacity, or only with the joining with alcohol, they can lead to such results. The judicature mentioned above, seems to have one flaw, it is that it does not differentiate states in which pathological changes cause diminished capacity/mental incompetence and alcohol has only an influence on increase of limitations in the ability of recognition of the meaning of the act or directing of behavior and states, in which in correlation with alcohol, diminished capacity/mental incompetence appear. Linguistic interpretation supports the Supreme’s Court view as in the art. 31 § 3 of Penal Code, we can read: “set oneself in the state of daze causing the exclusion or limitation of sanity, and in the discussed case, these results are caused not only by the consumption of alcohol but also, as it is required by the norm, but also the state of daze and pathological distractions”. However, such an attitude arises controversy. Accepting such a point of view, all cases of pathological intoxication should be considered according to art. 31 § 1 or § 2 of Penal Code, joining states, in which mental distraction only leads to diminished capacity/ mental incompetence, and alcohol makes this state only deeper (intensification of pathological state by alcohol), same as those in which the result appears after the consumption of alcohol (abnormal state as a result of alcohol consumption). In case of pathological intoxication, the basic issue is to determine by experts and court, what was the influence of pathology and alcohol daze on the appearance of diminished capacity/ mental incompetence. Malinowski raises this issue: “it can happen that the pathological base played an insignificant role in the drunk perpetrator’s behavior, that is the reason why we can treat daze as the state of ordinary intoxication”²³. In terms of those possibilities, Tarnawski suggests following solutions:

1. If the influence of pathological base was not significant, which means independently, does not lead to diminished capacity/ mental incompetence, then art. 31 § 1 or § 2 of Penal Code are forbidden to be used, and all states of alcohol intoxication should be considered in terms of § 3 of this article.

²² Supreme Court sentence dated 25 June 1973, II KR 111/73, OSNKW 1973, no. 12; Supreme Court sentence dated 22 August 1968, V KR 442/68, OSNKW 1969, no. 2.

²³ M. Tarnawski *Zmniejszona poczytalność...*, p. 115.

2. When pathological base together with alcohol, cause diminished capacity/ mental incompetence, art. 31 § 1 or § 2 of Penal Code should be used, unless the person could predict or predicted, that setting oneself in the state of daze, will lead to the diminished capacity/ mental incompetence.

3. When pathological base independently caused diminished capacity/ mental incompetence and alcohol only intensified this state, also the usage of art. 31 § 1 lub § 2 will be possible²⁴.

Przybysz claims that the distinction of such type of intoxication has currently no sense and justification. There is a range of arguments which stand for the resigning from the usage of this notion in terms of judicature. These are as follows: that the above phenomenon refuses the symptoms criteria of classification and it is impossible to specify it in the limited clinical view. Serious doubts arise from the term “pathological base”, as not well specified and not predestinating on the person’s sanity, it leads to many distractions and dilemmas when it comes to its usage. All the states described by now classified as pathological intoxications are possible to categorize in four clearer and easier to practical usage forms. Firstly, in situations of in which people function in society without any deviations, and just specialist and precise research show disruptions in functioning of central nervous system, which is a problematic “pathological base”. In such situations, influence and the amount of alcohol consumed is omitted in terms of the course of intoxication and recognized “pathological base” is emphasized. In terms of a priori, that the appearance of such a factor with illness characteristics, is connected with the appearance of pathologically based intoxication, predestinating on the diminished capacity of the perpetrator of prohibited act. In such a case, ordinary intoxication should be taken into account, however the fact, e.g. of mental disorder, does not mean that every intoxication of such a person is connected with his or her pathological state. Secondly, some of the states classified as so-called “Hoff’s abnormal reaction on alcohol”, which is explained below. In some other cases “pathological base” has such an important meaning that it should be considered as separate circumstance of sanity towards consumed alcohol intensifying only pathological state, is not so important here. Lastly, intoxications which can be considered in terms of being atypical, which similar as atypical reaction on alcohol, is described further²⁵. The above statement seems to be justified, as in doctrine states known as clinical, e.g. “atypical reaction on alcohol” have been distinguished or atypical intoxication, which clinical images are precise and more simple to use in practice, there is no sense to insist on the old institutions worked out by jurisprudence. It should be remembered that the described issue is not only lawyer’s domain, however it is also based on close cooperation with psychiatric and psychological specialists. Proper fulfillment of the assigned tasks requires the dates and construction bases present in both fields of study, were common and

²⁴ Ibidem, p. 112–116.

²⁵ J. Przybysz, op. cit., p. 205–207.

coherent. As it cannot be properly judged, if the same problems are described differently. It seems that working out of these terms connected with the subject is psychiatry and experts' domain. Court in this case is obliged to assess whether in this particular case the situation is similar to the clinical view presented by specialists and predicates the person's sanity. It cannot be that each of these fields has its theoretical assumptions, which are not compatible. It is not possible to judge the same, taking into consideration different theoretical constructions. Solutions which are present in law, cannot be much different than those include in the current psychiatry. Of course, law should be certain, however it cannot be based on anachronistic solutions, as then it will not fulfill its roles and it will be inadequate to the current needs.

Hoff's atypical reaction on alcohol is based on the intensification of aggression and outburst of anger directed on both companions of drinking alcohol and random people. It is often displayed by the demolishing of rooms, in which alcohol consumption takes place. Many factors distinguish this reaction from pathological intoxication. The first difference is frequent and repeated reacting on alcohol in such a way, while, as it has been stated discussing pathological intoxication, it is not clear whether is it possible to repeat, however the majority of researchers, claims that it is a single phenomenon. In anomalous reaction on alcohol, bodily distractions appear, e.g. jabber or psychomotor hyperactivity which are typical for ordinary intoxication, oblivion is also not recognized, or even single memories from the state, and memory is only blurred, behavior is not completely foreign for person's personality, however in electroencephalography deviations are not detected before and after the consumption of alcohol²⁶.

Binder was the one who in 1935 distinguished atypical intoxication as an indirect form between ordinary intoxication and pathological one. In these states personality, thinking and perception disorders are not ascertain. However, bodily disorders of ordinary intoxication appear. By contrast, the distinction from ordinary intoxication is not so clear. It is characterized by the intensification of symptoms in psyche as in "typical" intoxication, quantitative mental disorders, which results in decreasing of orientation, disabling the acts of perception, the ability to concentrate. On the other hand there is no break off with environment, however it is reduced. Behavior of the person being in this state is inadequate to the situation, and an attempt taken to guess his or her motifs, makes troubles. A human being is over impulsive, aggressive, irritated, and hyperactive. Aggression is not only directed in strangers, but also towards herself on himself, appearing by the complex tendencies and in extreme cases – suicide. Such a behavior is suddenly appears, without typical for ordinary intoxication, mounting of moods. What is more, strong reduction of moral limitations and emotionalism appear. Often, after such strong and expressive actions, hysterical state arises (standtillness, flouncing). Similar as in case of patho-

²⁶ M. Cieślak, K. Spett, W. Wolter, *op. cit.*, p. 309.

logical intoxication, this state finishes with terminal sleep. The memory from this state is blurred and patchy. Many dogmatic people try to assess causes and factors which have an influence on such reaction. In such predispositions we can include all kinds of mental and physical workload, depletion of resistance, strong emotional experience. To be honest, it is not possible to state whether any of these phenomena has any relation with this type of intoxication. Not possible is an explanation that why a person in one of described states once “gets drunk” typically, and next time atypical form of intoxication will take place. Not out of the question is the appearance of such a state in people not having such symptoms. In the course of such intoxications there are crimes against health and life committed. In this case it is not possible to use art. 31 § 3 of Penal Code, because these are not intoxications the course of which is possible to predict. Dependently on the level of intensification of symptoms, it is possible to predicate both diminished capacity or insanity²⁷.

Exclusion of the usage of art. 31 § 3 of Penal Code, is justified in the situation of reaction which takes place in human’s body as a result of combination of some medicines with alcohol. Intensified disorder of brain functions takes place then. Such a situation appears especially while taking psychotropic drugs, which drastically decrease the level of alcohol tolerance, at the same time increasing disorders of consciousness and motility. More plentiful consumption of alcohol can even lead to death, despite that previously the same amount of alcohol did not cause such a damage for organism. The course of getting drunk is not also “typical” while using some anti-tubercular medicines, which in opposition to the previously described group of medicaments, have a stimulating influence on brain, intensifying psychomotorial actions and abrasiveness, often aggression, and reaction inadequate to the amount of drunk alcohol and not connected with person’s personality. There is also a group of medicaments, mostly anti-rheumatic changing metabolism of burning alcohol by accumulation of metabolites in blood, e.g. aldehyde or acetic acid. In described cases, the exclusion of art. 31 § 3 of Penal Code appears because of atypicality of reaction on consumed alcohol.

It should be a rule, that a patient is informed about the possibility of atypical reaction on consumed alcohol can take place²⁸.

Conclusions

In conclusion, all states of alcohol intoxication described in the paper can lead to the judgment on diminished capacity or insanity, at the same time excluding the possibility of usage of exception which is included in art. 31 § 3 of Penal Code.

²⁷ J. Przybysz, op. cit., p. 195–198; L. Uszkiewicz, op. cit., p. 113–114.

²⁸ A. Wasik, *Wpływ niektórych leków na przebieg upicia alkoholowego*, „Problemy Alkoholizmu” 1968, no 3.

The criterion prejudging about impossibility of its usage is impossibility of prediction of its effects, described previously, in terms of atypical course of intoxication. However, automatism and assumption that listed states mean at the same time the exclusion of prediction of effects after consumption of alcohol. Solving the meaning of alcohol intoxication, every time their course should be confronted with previously existed forms of intoxications and life experience.

Summing up, it should be emphasized that to “other distractions of mental actions” in terms of consumed alcohol we can include such states which can have an influence on perpetrator’s sanity, these are: addiction, excluding its extreme cases, which can be considered as mental disorders, alcoholism, pathological intoxication, Hoff’s atypical reaction on alcohol, atypical intoxication, and alcohol intoxication, connected with interaction with certain types of medicaments. Ordinary alcohol intoxication is also included in the group of “other distractions of mental actions”, however, because of the regulation art. 31 § 3 of Penal Code, it does not have legal and penal overtone.

Streszczenie

Upojenie alkoholowe jako inne zakłócenie czynności psychicznych

Słowa kluczowe: poczytalność, niepoczytalność, upojenie, czynności psychiczne.

Opracowanie jest próbą wykazania, że stan upojenia alkoholowego może wchodzić w zakres pojęcia „inne zakłócenie czynności psychicznych” i pociągać za sobą orzeczenie poczytalności zmniejszonej bądź niepoczytalności, tym samym wyłączając możliwość zastosowania wyjątku przewidzianego w art. 31 § 3 k.k. Do „innych zakłóceń czynności psychicznych” w zakresie dotyczącym alkoholu zalicza się następujące stany mogące wpływać na poczytalność sprawcy: uzależnienie, wyłączając jego skrajne przypadki stanowiące chorobę psychiczną, zespół absencyjny, upojenie patologiczne, nietypową reakcję na alkohol Hoffa, upojenie atypowe, zatrucie alkoholem w związku z interakcją określonych środków farmakologicznych. Rozstrzygając znaczenie intoksykacji alkoholowej, należy każdorazowo skonfrontować ich przebieg z występującymi postaciami upojen i doświadczeniem życiowym.