

LEGAL INCENTIVES: THEORETICAL AND LEGAL BASIS

**Baran Anastasiia - Lviv Polytechnic National University Institute of Law,
Psychology and Innovative Education Assistant of the Department of Theory, History
and Philosophy of Law**

ORCID ID: <https://orcid.org/0000-0002-3105-295X>

В соответствии с общепризнанными теоретическими представлениями о правовых стимулах и их значении в праве выделены основные признаки реализации правовых стимулов. Отмечено, что цель и объективная необходимость в использовании правовых стимулов заключается в том, что у общества и государства существует потребность в социально-полезном и активном поведении субъектов права в различных сферах жизнедеятельности. Выделены и проанализированы социальные функции правовых стимулов (мотивационная, организационная, прогностическая, гарантирующая, коммуникативная, оценочная, социального контроля, воспитательная) и специально-юридические функции правовых стимулов (праворегулятивная, правосдерживающая).

Ключевые слова: стимул, правовой стимул, правовое стимулирование.

Conform ideilor teoretice general acceptate despre stimulentele legale și importanța acestora în alegerea corectă sunt principalele caracteristici ale implementării stimulentei legale. Se subliniază faptul că scopul și nevoia obiectivă a utilizării stimulentei legale este că societatea și statul au nevoie de un comportament social benefic și activ al subiecților de drept în diferite sfere ale vieții. Pe lângă obiectiv, categoriile definitorii în teoria stimulentei juridice care determină natura și conținutul efectului stimulant al legii asupra relațiilor publice sunt funcții. Selectarea și analiza funcțiilor sociale generale ale stimulentei juridice (motivaționale, organizaționale, prognostice, garantante, comunicative, evaluative, control social, educaționale) și funcțiile special-juridice ale stimulentei juridice (juridice, de dreapta).

Cuvinte cheie: stimulent, stimulent legal, stimulent legal.

According to generally accepted theoretical ideas about legal incentives and its importance in the right selection are the main features of the implementation of legal incentives. It is emphasized that the purpose and objective need for the use of legal incentives is that the society and the state have a need for socially beneficial and active behavior of the subjects of law in different spheres of life. In addition to the goal, the defining categories in the theory of legal incentives that determine the nature and content of the incentive effect of law on public relations are functions. Selection and analysis of general social functions of legal incentives (motivational, organizational, prognostic, guaranteeing, communicative, evaluative, social control, educational) and special-legal functions of legal incentives (legal, right-wing).

Key words: incentive, legal incentive, legal incentive.

Formulation of the problem. Changes in Ukraine's socio-economic and political conditions, the expansion of human freedom, in particular, in the exercise of professional activity, have become

prerequisites for finding ways to increase the effective motivation of appropriate lawful behavior of people and their initiative in legal relations. Also, the reform of the legal system of modern Ukraine

has led to the growing role of law as the main regulator of social relations, as well as a means of influencing human behavior, which is characterized not only by coercive methods of achieving socially useful activity, but also by persuasion means. The assertion of the idea of mostly encouraging rather than repressive nature of law allows us to characterize the value component of the latter as a social institution. Stimulation by legal means involves, above all, the perception in the minds of people of certain phenomena as values, through which the appropriate lawful behavior can be increased. Legal incentives are one of the means of regulating social relations on the basis of law. They allow to exert a positive influence on the will and consciousness of a person, encourage him to socially active lawful behavior.

The state of the study. The problem of legal incentives in law has interested a number of foreign and Ukrainian scholars, including: R. Kalyuzhny, O. Lapka, T. Pikulya, V. Krasovska, I. Lutsenko, O. Malko, S. Ogiruk and others.

Some problems of the topic were sufficiently reflected in the works of representatives of general theoretical and branch legal sciences: O. Kiselyova (concepts, signs, goals and functions of incentives and restrictions as a special method of legal regulation); V. Dyachenko (incentives as the main legal tool of incentive and legal policy); O. Levin, O. Malko, S. Miroshnyk (general theoretical characteristics of incentives and restrictions in law and their concepts and features); V. Baranova, N. Gushchina (concepts, functions, implementation mechanism, effectiveness of stimulating norms); V. Nyrkova (incentives and advancement as paired legal categories); L. Ukhova (incentives and restrictions in the field of labor relations); H. Alikperov (incentives and restrictions in criminal and criminal-executive law), N. Laichenko (incentives in tax law) and other Ukrainian and foreign scholars.

The purpose of the study is the general theoretical characterization of legal incentives as a legal means of influencing the behavior of legal entities.

Presenting main material. The state, enshrining the rule of law, allows a person to act in their own interests and to meet their own needs. In forming the rule of law, the state, taking into account socio-economic and political conditions, determines the rules of conduct of the person,

which become its goal. When choosing a behavior option, a person usually chooses the one that best meets his needs and leads to the achievement of goals. With this in mind, the state tries to encourage the person to lawful behavior, to direct its activities in the right direction without interfering with the public interest [1, p. 25].

In recent years, interest in the problems of legal incentives has grown significantly. All researchers in one way or another link legal incentives with the process of encouragement, motivation. The encouraging role of stimulation is that it expresses the public recognition of the scenario of behavior that is chosen by the person and implemented by him. Experiencing a sense of satisfaction, a person feels a surge of vigor and energy, self-confidence and further progress. Thus, stimulation promotes the development and consolidation of positive traits not only in behavior but also in character. Skillfully applied stimulus not only lift the mood, stimulate positive actions, but also develop a sense of human dignity. Legal incentives include opportunities to fully satisfy the interests of the subjects [3, p. 56].

When conducting research, first of all, it is worth paying attention to the definition of such a legal category as «legal incentive». According to some researchers, this definition means a legal incentive to law-abiding act, which creates to meet the interests of the subject regime of assistance. O.V. Malko's term «legal incentives» refers to the extent and form of legal approval of deserved behavior, as a result of which the subject of such behavior is rewarded, for him there are favorable consequences [6, p. 60].

Thus, incentives as a means of legal influence on the behavior of legal entities is a type of legal incentive aimed at encouraging legal entities to consciously perform their duties in good faith and achieve socially useful results that exceed the usual requirements.

Having provided a definition of legal incentives, in order to fully understand the essence of this legal phenomenon, in our opinion, it is necessary to consider the signs of this process. The most common features of the implementation of legal incentives are that they are:

- report on the expansion of opportunities, freedom, because the forms of manifestation of

legal incentives are subjective rights, legitimate interests, benefits, privileges, immunities, allowances, surcharges, compensation, incentives, recommendations;

- aimed at meeting the needs and interests;
- encourage active action, interest in the achievement of a stimulating result;
- express themselves and provide positive legal motivation;
- give the opportunity to choose the option of lawful behavior;
- act as a subjective (internal) and objective (external) factor that motivates action and affects the interests of the person;
- can be expressed in both positive and negative legal means of influence;
- associated with favorable conditions for the self-interest of the individual, as expressed in the promise or provision of values, and sometimes in the abolition or reduction of deprivation of values (for example, the abolition or reduction of punishment is an incentive);
- aimed at orderly change of social relations, perform the function of developing social ties;
- serve as an effective means of influencing the behavior of a person by others, society, the state;
- inform about the consequences of lawful behavior.
- suggest an increase in positive activity.

Having defined the concepts and basic features of legal incentives, we can determine its main purpose. In a general sense, the goal is what they strive for, what needs to be achieved. Based on this general understanding of the purpose, we can say that legal incentives, as a motivating factor for action, ultimately involve the receipt of appropriate benefits. Thus, the purpose of legal incentives is determined by the needs and interests of both the individual and society. It is the goal that becomes the stimulus to action, acts as a cause of appropriate behavior of the person [1, p. 25].

The purpose of legal incentives is to provoke motivation aimed at socially active behavior, the high result of action, to ensure independence, individual freedom, to show initiative, creativity, entrepreneurship.

The purpose and objective necessity in the use of legal incentives, - according to O.V. Malko - is

that in society and the state there is a need for socially useful and active behavior of legal entities in various spheres of life:

- 1) socio-economic (business, labor, competition, investment, implementation of scientific and technological progress in production, improving product quality, etc.);
- 2) spiritual and creative (scientific, educational, pedagogical, cultural activities, etc.);
- 3) political and legal (electoral, legal activity, public participation in the management of civil society and the state, law enforcement, preventive activities, correction and re-education of convicts, etc.)

Such needs create preconditions for the establishment in the legislation of appropriate legal incentives, the purpose of which is to influence the behavior of subjects in the direction necessary for society and the state, to motivate a person to act properly [6, p. 84].

In the case of legal incentives, there is a direct purposeful legal influence on the behavior of the person by the incentive subject. In this process, the latter uses all possible legal means (legal incentives) that motivate a person to a certain act. All actions of the stimulating subject, according to S.S. Ogirok, aimed at obtaining the desired result in the process of the object of stimulation [8, p. 10, 12].

As for the question: «Who exactly can be the incentive in the process of legal incentives?». These include any legal entity: the state, its bodies and officials, as well as individuals and non-state legal entities.

The state as a subject of incentives has a stimulating effect on other subjects of law, primarily through legal norms, which, taking into account socio-economic and political factors, enshrines the desired and acceptable from the point of view of the interests of the state and civil society rights. In turn, a person, in order to meet their own needs and interests, within the established rules of law, chooses the behavior that best meets its needs and interests and at the same time (undoubtedly) the will of the state [1, p. 99].

Given the above, it is necessary to agree with scholars, who emphasize that legal incentives, above all, come from the goal set by the state and society. In particular, O.V. Malko points out: «the

system of legal incentives should reflect, above all, social trends» [6, p. 219].

In addition to the purpose, the defining categories in the theory of legal incentives, which determine the nature and content of the stimulating effect of law on public relations are functions.

The category «function», like many other social science concepts, is not actually legal. It is borrowed from other sciences, although it has a specific purpose and meaning. This term has Latin origins and translates as performance, realization, accomplishment; direction of activity, the mode of action of the object, aimed at achieving a certain effect [7, p. 24].

From a general philosophical point of view, a function is understood as a ratio of two groups of objects in which the change of one of them leads to a change of the other, or as a mode of action of a category, an element of the system aimed at achieving a certain effect [9, p. 72].

In the theory of law does not cause discussion of the division of legal functions into general social and special legal functions.

General social functions of law are the directions of interaction of law and other social phenomena as the unity of form and content [2, p. 167].

Under the special legal functions of law, most theorists understand the effect of law on public relations, which is provided by specific legal means [4, p. 136].

Legal incentives are a category of law, and therefore perform a wide range of functions. In particular, in our opinion, we can distinguish the following functions of legal incentives:

- general social functions: motivational, organizational, prognostic, guaranteeing, communicative, evaluative, social control, educational;
- special legal functions: right-regulating, right-restraining.

Let us now consider them in more detail.

One of the main functions of legal incentives is the motivational function. It, according to O.V. Malka, the fact is that the incentive encourages the «overfulfillment» of responsibilities and the implementation of socially valuable creative acts that exceed the usual requirements, develops labor and socio-political activity. Motivation to achieve a useful result is based on attractiveness

and the promised favorable consequences [6, p. 170].

The expediency of allocating the organizational function of legal incentives, in our opinion, is manifested in the fact that it allows to establish and regulate the close relationship between the stimulating and the stimulated subjects.

In our opinion, the prognostic function also plays a significant role in legal incentives. Prediction itself makes it possible not only to objectively assess all behaviors of the stimulated, but also to stimulate his actions so that it was the most effective and led to the desired result.

An important function of legal incentives, in our opinion, is the guarantee. Stimulating subjects, by influencing the stimulated subjects, not only create positive conditions for their social and legal activity, but also guarantee them to receive certain benefits as a result of such activity. Accordingly, we can say that the legislator, enshrining in the rule of law legal incentives thereby guarantees their receipt [1, p. 103].

Given that legal incentives act in society as a means of social interaction, i.e. a means of communication, it is natural to allocate the communicative function of legal incentives. O.V. Malko sees in them certain legal information, which contains specific messages that come from the subject of management to the object (person) and serve as a way of communication between them. [6, p. 170]. Purposeful awareness of a person about the existing legal incentives by the state and society is a strong stimulus that affects his consciousness.

In modern science, a number of scientists distinguish the evaluative function [2, p. 291]. They indicate that this function allows, as an evaluation criterion, to determine the legitimacy or illegality of certain decisions and actions, as well as the usefulness and effectiveness. At the same time, the evaluation is performed by both the stimulating and the stimulated subjects.

According to M.S. Kelman, O.G. Murashin, N.M. Khoma, a special role in the implementation of the evaluation function is played by protective and incentive (stimulating) norms, which generally contain a negative and positive assessment of certain possible actions. In the process of application of these norms the normative assessment of

actions is specified, the individual measure of legal responsibility or encouragement is defined [2, p. 291]. Thus, the evaluative function of legal incentives allows you to publicly recognize, approve the behavior of the subjects of legal incentives, as well as to emphasize the shortcomings and gaps in the process of its legal impact or draws attention to possible negative consequences.

In our opinion, the function of social control plays a significant role in legal incentives, due to the influence of encouraging legal norms on the behavior of legal entities, social control is reduced to the possibility of applying various types of incentives for deserved behavior beneficial to individuals and society. Incentives allow the individual to exercise self-control, which is an integral part of social control. Each individual builds his line of conduct, focusing on generally accepted values, embodied, in particular, in the encouraging rules of law.

Legal incentives create favorable conditions for discipline and order, guarantee the implementation of regulations, especially binding.

The ideological (educational) function of legal incentives is manifested in the formation of legal awareness and legal culture. Legal stimulation, creating a positive psychological attitude in a person for deserved behavior and evoking a sense of satisfaction, demonstrates a pattern of conscientious activity, inspires people to creativity, initiative. In this, according to O.V. Malko, is the educational function of legal incentives [6, p. 171].

It is necessary to agree with those scientists who among the special legal functions of legal incentives allocate a regulatory function. In the theory of law, the regulatory function is aimed at streamlining social relations by establishing rules of conduct for their participants [4, p. 136].

The regulatory function of law is carried out on the basis of legal orders and permits. This function is divided into:

- regulatory-static function, which consists in the legal consolidation of stable, developed social relations, thus guaranteeing their inviolability;
- regulatory-dynamic function, which is manifested in the encouragement and stimulation of the development of those social relations that reflect certain social values, but are at the stage of their formation [5, p. 99].

Highlighting the functions of legal incentives, in our opinion, should be allocated and law enforcement function. In the process of legal incentives, along with positive ones, negative incentives (mitigation of punishment, removal of previously imposed penalties, etc.) can be used, which are primarily aimed at preventing socially dangerous behavior of a person.

There is also a position in the scientific literature that legal incentives, along with coercion, are a special legal means of ensuring legality, i.e. they perform a security (law enforcement) function. It is manifested not only in relation to the rule of conduct provided by the incentive norm, but also to other norms. This is possible due to the relationship between the content of the rules of conduct of the relevant incentive regulations and other legal norms.

Conclusions. Incentives as a means of legal influence on the behavior of legal entities is a type of legal incentive aimed at encouraging legal entities to consciously perform their duties and achieve socially useful results that exceed the usual requirements. The purpose of legal incentives is to provoke motivation aimed at socially active behavior, the high result of action, to ensure independence, individual freedom, to show initiative, creativity, entrepreneurship. As for the question: «Who exactly can be the incentive in the process of legal incentives?». These include any legal entity: the state, its bodies and officials, as well as individuals and non-state legal entities. Legal incentives are a category of law, and therefore perform a wide range of functions. The functions of legal incentives include: general social functions (motivational, organizational, prognostic, guaranteeing, communicative, evaluative, social control, educational) and special legal functions (regulatory, restraining). One of the main functions of legal incentives is the motivational function.

So, in conclusion, we note that legal incentives have a wide range of functional applications in order to influence the behavior of legal entities. Both general and special-social functions of legal incentives are aimed at creating conditions for the development of initiative, creativity of the encouraged subjects of law, as well as to prevent their misconduct and ensure the effectiveness of legal norms.

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