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ENCOURAGING LEGAL NORMS AS A TOOL FOR THE REALIZATION OF HUMAN RIGHTS: A THEORETICAL AND LEGAL ANALYSIS

Abstract. Purpose. The purpose of this study is to provide a comprehensive theoretical and legal analysis of encouraging legal norms as a tool for the realization of human rights, to clarify their nature and place within the mechanism of legal regulation, to develop a cross-sectoral classification and criteria of effectiveness, as well as to formulate proposals for improving legislation and the practice of their application. **Research methods.** The research methodology is based on a systematic review of scientific sources and conceptual approaches, which made it possible to formulate well-grounded conclusions and develop practical recommendations. **Results.** The study identifies and distinguishes encouraging norms from other legal prescriptions, proposes a cross-sectoral classification, and outlines mechanisms of their influence. Examples of application in constitutional, criminal, administrative, and civil law are systematized. Criteria of quality and a methodology for evaluating effectiveness are formulated, along with practical recommendations for improving regulation. **Scientific novelty.** The novelty of this research lies in refining the definition of an “encouraging norm,” developing a cross-sectoral classification and a model of its influence on the realization of rights; substantiating the “stimulating function” of the Constitution and systematizing sectoral incentives (criminal, administrative, civil); introducing quality criteria and a methodology for evaluating effectiveness with proposals for harmonization with the standards of the European Court of Human Rights and the EU acquis, as well as transparent monitoring of their application. **Conclusions.** It is concluded that encouraging legal norms constitute an important element of the legal system, linking individual interests of the person with public interests of society and the state. They not only secure opportunities for the realization of human rights but also foster positive motivation for lawful and socially beneficial behavior. At the constitutional level, encouraging norms are aimed at supporting personal development, guaranteeing social and economic rights, and stimulating civic activity, thereby creating a balance between individual freedom and responsibility to society. In sectoral legislation, encouraging norms manifest themselves in criminal, administrative, and civil law, performing humanistic, preventive, and stimulating functions. In criminal law, they ensure conditions for resocialization and cooperation with the state; in administrative law, they motivate both civil servants and citizens to participate actively in public life; in civil law, they support the freedom of contract, good faith of the parties, and the protection of intellectual creativity results.

Key words: encouraging legal norms, human rights, realization of rights, Constitution of Ukraine, criminal-law incentives, administrative-law incentives, civil law, freedom of contract, good faith, intellectual property, legal consciousness and legal culture, resocialization, proportionality.

1. Introduction

Traditionally, legal regulation is associated with prohibitions, restrictions, and coercive measures. However, such an approach is one-sided and does not fully reflect the potential of law as a means of harmonizing relations between the individual, society, and the state.

The problem lies in the insufficient theoretical elaboration and practical application

of encouraging norms within the domestic legal system. Despite their existence in the Constitution of Ukraine and in sectoral legislation (criminal, administrative, and civil law), there is no clear concept of their place and role in the mechanism of human rights realization. Their interaction with traditional regulative and protective norms, as well as their influence on the formation of legal consciousness, legal

culture, and social activity of citizens, remains insufficiently studied.

Thus, the relevance of the problem is determined by the need for an in-depth theoretical and legal analysis of encouraging norms as a tool for the realization of human rights, their systematization, and the improvement of mechanisms of their application in the context of democratic transformation of Ukrainian society.

The issue of encouraging legal norms is widely reflected in the works of Ukrainian and foreign scholars, who consider them in the context of general theory of law and sectoral regulation—constitutional, criminal, administrative, and civil law—as well as through the prism of the psychology of legal behavior and the formation of legal consciousness. At the same time, there is still a lack of theoretical and legal analysis of encouraging norms as a tool for the realization of human rights, clarification of their nature, and determination of their place within the mechanism of legal regulation.

2. The Concept and Characteristics of Legal Encouragement

In the context of this study, legal encouragement can be defined as forms of positive assessment by the state of voluntary and socially beneficial behavior of an individual, enshrined in legal norms and accompanied by the granting of certain material or moral benefits. They serve as a specific instrument for stimulating lawful activity, combining the individual interests of a person with the interests of society and the state (Barabash, Kotukha, 2023).

The key features of legal encouragement are: the positive assessment by the state of conduct that complies with legal norms and contributes to social welfare; the voluntary nature of actions that constitute the grounds for encouragement; merit as a criterion for receiving encouragement; and a strong psychological impact that fosters stable internal motivation for lawful actions (Kozachuk, 2010).

Due to these characteristics, encouraging norms become an effective legal mechanism for the realization of human rights. They not only contribute to the actual enforcement of constitutional rights and freedoms but also to the active involvement of citizens in socially significant activities. In this context, legal encouragement creates positive motivation through the prospect of obtaining legislatively defined advantages – ranging from additional social guarantees and benefits to moral recognition.

It is important to emphasize that encouragement has not only an individual but also a social dimension. It influences the environment, creating an effect of emulation: examples of encouraged actions become a reference point for other members of society. This fosters a favorable psy-

chological climate in which an individual develops an internal need to act actively, lawfully, and responsibly.

The Constitution of Ukraine enshrines a set of both traditional and modern guarantees of human and citizen's rights and freedoms, which provide everyone with the opportunity to choose their own model of behavior, to enjoy economic, socio-political freedoms, and social benefits in personal and collective interests. In this context, encouraging legal norms play an important role, as they not only secure rights but also stimulate their active realization by granting additional opportunities, benefits, or preferences.

In our view, encouraging norms at the constitutional level are manifested in several directions. First, they support and stimulate personal development. For instance, Article 23 of the Constitution of Ukraine (Constitution of Ukraine, 1996) proclaims the right of everyone to the free development of their personality, provided that in doing so they do not violate the rights and freedoms of others. Such a provision has not only a declarative but also a stimulating character, as it creates conditions for the harmonious self-expression of an individual. It encourages a person to realize their potential, securing their freedom in choosing life orientations, professional or creative paths. Thanks to such a stimulus, constitutional provisions are transformed into a real instrument of legal and social development. At the same time, this constitutional guarantee reflects the balance between individual freedom and social responsibility: a person is free in their self-development, yet their activities must not harm others or restrict their rights. Thus, Article 23 demonstrates a distinctive feature of encouraging legal norms – the creation of a favorable space for personal growth under conditions of mutual respect and rule of law. This provision also performs an important educational function: it motivates citizens to lawful behavior, fosters legal culture, and strengthens social integration, since through individual self-realization society as a whole is enriched. In this context, legal encouragement appears not only as an individual good but also as a factor of social development that reinforces democratic values and contributes to the building of a rule-of-law state.

Second, these are guarantees of social and economic rights. The Constitution of Ukraine enshrines the right to work (Art. 43), education (Art. 53), social protection (Art. 46), and health care (Art. 49) (Constitution of Ukraine, 1996). These provisions not only establish legal guarantees but also perform an encouraging function: the state motivates citizens to actively participate in public life by

creating conditions for obtaining additional benefits – from social payments and privileges to educational and medical opportunities. Constitutional provisions in the sphere of social and economic rights have a distinctly stimulating character. They orient citizens toward obtaining education, improving qualifications, professional activity, and social responsibility, since each person who realizes their rights in these areas receives additional advantages – professional development, access to social guarantees, health care, or pension provision. This reveals one of the key features of encouraging norms: they combine individual interest with social benefit.

Moreover, such norms create the preconditions for the formation of social solidarity. When the state guarantees everyone the right to decent working conditions, education, or health care, this not only ensures individual needs but also strengthens citizens' trust in the state as a guarantor of justice. As a result, a dual stimulating effect arises: the individual is motivated to realize their rights, while the state benefits from more active, educated, and socially protected citizens capable of contributing to the development of society.

Third, these norms stimulate civic activity. Article 38 of the Constitution of Ukraine guarantees the right to participate in the administration of state affairs; Article 36 guarantees the right to freedom of association in political parties and public organizations; and Article 54 guarantees freedom of literary, artistic, scientific, and technical creativity (Constitution of Ukraine, 1996). Such provisions encourage individuals to become actively involved in political, social, and cultural life, creating legal incentives for self-realization in various spheres. Their stimulating character lies in the fact that they provide individuals with additional opportunities to realize their potential through participation in public and state life. Constitutional guarantees of civic activity create preconditions for the development of democracy, since citizens, exercising their right to vote, to associate, or to engage in creativity, simultaneously influence social processes and become co-creators of legal order.

Furthermore, such norms perform an educational function: they motivate individuals not to be passive observers but to take direct part in shaping state policy, cultural environment, and scientific progress. This contributes to the development of legal consciousness and increases trust in democratic institutions. In a broader dimension, stimulating norms at the constitutional level creates a space for the formation of civil society, where personal activity and initiative become essential val-

ues. This demonstrates that the Constitution of Ukraine not only establishes rules of coexistence but also encourages individuals to be active participants in social change, which directly corresponds to the principles of the rule-of-law state.

3. Specific Features of the Consolidation of Incentive Norms in Sectoral Legislation

In this context, it should be noted that the institution of incentive norms is also reflected in sectoral legislation, in particular in criminal law. The Criminal Code of Ukraine is traditionally associated with restrictions, prohibitions, and punishments. At the same time, its structure enshrines a number of incentive norms that play an important role in shaping law-abiding behavior and in implementing the principles of humanism and justice. Such norms create legal incentives for socially useful activity, even if a person has already committed a crime. Their main manifestations include release from criminal liability, exemption from punishment or its mitigation, as well as special incentives for cooperation with the state.

In particular, release from criminal liability is provided in cases of active repentance (Art. 45), reconciliation of the offender with the victim (Art. 46), change of circumstances (Art. 48), and expiration of limitation periods (Art. 49). These provisions encourage individuals to admit guilt, compensate for damages, and restore social justice without the application of strict sanctions. Another manifestation is exemption from punishment or its mitigation, expressed in parole (Art. 81), substitution of the unserved part of a punishment with a milder one (Art. 82), release of pregnant women and women with young children (Art. 83) (Criminal Code of Ukraine, 2001). Such norms take into account individual life circumstances and promote the resocialization of convicts. An important type of incentive norms is special incentives for cooperation with the state: in a number of criminal offenses (e.g., provisions on terrorism, banditry, bribery), exemption from criminal liability is provided for individuals who voluntarily report a crime, assist in its disclosure, or help prevent it. This motivates offenders to cooperate with law enforcement authorities while ensuring the protection of public interests.

Therefore, incentive norms in the Criminal Code of Ukraine have a dual nature. On the one hand, they serve as a tool for the realization of human rights, as they allow avoiding excessive criminal repression by taking into account humanistic and social factors. On the other hand, they perform a preventive function, since they encourage offenders to reform, cooperate with the state, and restore the violated rights of victims.

Modern administrative legislation contains a considerable number of incentive norms that perform a stimulating function aimed at increasing the efficiency of public administration and fostering civic engagement. In the field of civil service and public administration, administrative law provides for a system of moral and material incentives: letters of appreciation, awarding certificates of merit, early conferral of ranks, bonuses, as well as advanced training at the state's expense. Such measures motivate civil servants to perform their duties with high quality, increase their sense of responsibility, and set a positive example for others. In addition, executive authorities and local self-government bodies apply various types of incentives to citizens who make significant contributions to the development of the community or the state. This may include awarding honorary titles, presenting state and departmental distinctions, granting benefits or social guarantees, in particular to combatants, volunteers, and large families. Such incentives promote the development of civic consciousness and an active life position.

A special example can be found in the norms of the Code of Ukraine on Administrative Offenses, where Article 22 (Code of Ukraine on Administrative Offenses, 1984) provides the possibility of replacing an administrative sanction with an oral warning. This is a peculiar form of moral encouragement that motivates individuals to refrain from further offenses, demonstrating that administrative law may apply not only punitive but also educational methods of influence. At the same time, incentive norms of administrative law are also manifested in the support of citizens' initiatives and public associations: through scholarships for talented youth, grants for community projects, and support for cultural and scientific initiatives. All this helps create an atmosphere of trust and cooperation between the state and society.

Unlike criminal or administrative law, the primary purpose of civil law is not coercion, but the creation of conditions for the independent determination of the parties' conduct and the exercise of their rights. In this context, incentive norms acquire special significance, as they are aimed at supporting and stimulating active lawful behavior, developing private initiative, and protecting the results of intellectual activity. An important manifestation of incentive norms in the sphere of exercising rights is the principle of freedom of contract, enshrined in Articles 6 and 627 of the Civil Code of Ukraine (Civil Code of Ukraine, 2003), which allows the parties to freely determine the conditions of interaction, choose the form

of contract, and even create new types of contracts not provided for by legislation, provided they do not contradict the law. Such a norm has a stimulating character, as it encourages subjects of civil turnover to demonstrate creativity, initiative, and independence in regulating their legal relations, thereby ensuring the flexibility of the legal system and promoting the development of market relations. Equally important is the principle of good faith in civil relations (Arts. 3, 13), which acts not only as a restriction but also as a stimulus: participants who act in good faith enjoy a higher level of protection of their rights, including in judicial practice. This means that the exercise of rights is carried out through the encouragement of behavior that corresponds to moral and legal values, fostering an environment of trust between the parties. A separate place is occupied by norms regulating intellectual property rights (Book Four of the Civil Code of Ukraine), which create incentives for the development of science, technology, culture, and art. They guarantee authors and inventors both property and personal non-property rights, including the right to remuneration, recognition of authorship, patent protection, etc., thereby forming a motivational basis for creative activity and contributing to the innovative development of society.

4. Conclusions

Incentive norms of law constitute an important element of the legal system, combining the individual interests of a person with the public interests of society and the state. They not only establish opportunities for the exercise of human rights but also form positive motivation for lawful and socially useful behavior. At the constitutional level, incentive norms are aimed at supporting personal development, guaranteeing social and economic rights, and stimulating civic engagement, thereby creating a balance between individual freedom and social responsibility.

In sectoral legislation, incentive norms are manifested in criminal, administrative, and civil law, performing humanistic, preventive, and stimulating functions. In criminal law, they provide conditions for resocialization and cooperation with the state; in administrative law, they motivate both civil servants and citizens to actively participate in public life; in civil law, they support freedom of contract, good faith of the parties, and the protection of intellectual property results.

Thus, incentive norms serve as a tool not only for securing but also for the practical realization of human rights. They contribute to the development of legal consciousness, the enhancement of trust in democratic institutions, the formation of civic engagement,

and the strengthening of legal culture, which are essential conditions for building a rule-of-law and socially responsible state.

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ЗАОХОЧУВАЛЬНІ НОРМИ ПРАВА ЯК ІНСТРУМЕНТ РЕАЛІЗАЦІЇ ПРАВ ЛЮДИНИ: ТЕОРЕТИКО-ПРАВОВИЙ АНАЛІЗ

Анотація. Метою роботи є комплексний теоретико-правовий аналіз заохочувальних норм як інструменту реалізації прав людини, з'ясування їх природи та місця в механізмі правового регулювання, розроблення міжгалузевої класифікації й критеріїв ефективності, а також формулювання пропозицій щодо вдосконалення законодавства та практики їх застосування. **Методи.** Методика дослідження базується на системному опрацюванні наукових джерел і концептуальних підходів, що дало змогу сформулювати обґрунтовані висновки та виробити практичні рекомендації. Results. У результаті дослідження визначено заохочувальні норми та відмежовано їх від інших правових приписів, запропоновано міжгалузеву класифікацію й окреслено механізми їх впливу. Систематизовано приклади застосування у конституційному, кримінальному, адміністративному та цивільному праві. Сформульовано критерії якості й методику оцінювання ефективності, а також подано практичні рекомендації щодо вдосконалення регулювання. Наукова новизна полягає в удосконаленні визначення «заохочувальної норми», розроблено міжгалузеву класифікацію та модель її впливу на реалізацію прав; обґрунтовано «стимулювальну функцію» Конституції й систематизовано галузеві заохочення (кримінальні, адміністративні, цивільні); запроваджено критерії якості та методику оцінювання ефективності з пропозиціями гармонізації зі стандартами Європейського суду з прав людини та acquis ЄС і прозорого моніторингу їх застосування. **Висновки.** Зроблено висновок, що заохочувальні норми права становлять важливий елемент правової системи, що поєднує індивідуальні інтереси особи з публічними інтересами суспільства і держави. Вони не лише закріплюють можливості для реалізації прав людини, але й формують позитивну мотивацію до правомірної та соціально корисної поведінки. Конституційний рівень заохочувальних норм орієнтований на підтримку розвитку особистості, гарантування соціальних і економічних прав та стимулювання громадянської активності, що створює баланс між свободою індивіда та відповідальністю перед суспільством. У галузевому законодавстві заохочувальні норми проявляються у кримінальному, адміністративному та цивільному праві, виконуючи гуманістичну, превентивну й стимулюючу функції. У кримінальному праві вони забезпечують умови для ресоціалізації та співпраці з державою, в адміністративному – мотивують як державних службовців, так і громадян до активної участі у публічному житті, у цивільному – підтримують свободу договору, добросовісність сторін та захист результатів інтелектуальної творчості.

Ключові слова: заохочувальні норми прав, права людини, реалізація прав, Конституція України, кримінально-правові заохочення, адміністративно-правові заохочення, цивільне право, свобода договору, добросовісність, інтелектуальна власність, правосвідомість і правова культура, ресоціалізація, пропорційність.

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