

Encouragement as a means of influencing law on human

Olga Barabash

Abstract – the analysis of the scientific literature allows confirming the existence of two approaches to the definition of the term "encouragement": a wide approach is revealed through the category of "means" and a narrow approach is revealed through the category of "stimulus". The impact of incentives on human behaviour is carried out thanks to the function of social control and observance of all conditions of their effective application. The purpose of the article is to investigate the concept of "encouragement", to present the most acceptable concept revealing the essence of the phenomenon, which is denoted by the term of "encouragement", to determine the mechanisms of influencing encouragement on human behaviour.

Index Terms – encouragement, human behaviour, functions of encouragement, effectiveness of encouragement, means of influencing human behaviour, stimulation.

1. Introduction

Human behaviour according to the degree of its necessity in terms of society can be divided into the desired and undesired. Determination of the line of human conduct depends on two interrelated factors: 1) the internal environment of man (character, desires, moral beliefs, etc.) and 2) influence of the external environment (interaction with other people, the efficiency of the legal system in the country, the general state of law and order, etc.). For the purpose of qualitative and quantitative increasing manifestations of desired behaviour in the society, law provides for various legal means of support and stimulation. In our opinion, such legal means of support and stimulation are obligation, encouragement and permission of the desired behaviour. However, any legal means of stimulating and providing reach its goal only if they are effectively implemented. Therefore, we consider that it is necessary to examine the essence and effectiveness of such legal means of stimulating the desired behaviour of the society as encouragement.

2. General characteristic of encouragement as a means of influencing human behaviour

2.1. The concept of encouragement in law

The essential element of the expansion of the scope of applying legal encouragement as a means of influencing the behaviour of subjects of law, regulating social relations is elucidation of its

features, peculiarities, mechanism of the impact involving not only legal, but also psychological aspects.

V. Slastenin defines encouragement as a way of expression of the public positive assessment of the behaviour and activity of individual students or a group [1, p. 91]. Encouragement acts as one of the methods of stimulation and motivation of training and cognitive activities, as well as, together with the competition and punishment, forms a group of stimulative methods of education [2, p. 14].

The authors of "Pedagogical dictionary" suggested one of the best definitions of encouragement: "Encouragement is stimulating positive manifestations of a person with appreciation of his/her actions, generating a feeling of satisfaction and joy of the realization and recognition of efforts and endeavours of a person" [3, p. 81]. K. Tyhomirov holds this definition [4, p. 40].

All researchers connect encouragement with the process of stimulation, motivation. Stimulative role of encouragement consists in expressing public recognition of human behaviour

that a person chose and implements. Reliving a sense of satisfaction, a person experiences cheerfulness and energy, confidence in own abilities and further development. Therefore, encouragement contributes to the development and strengthening of the positive features of not only behaviour, but also character. Skillfully applied incitements not only elevate mood, stimulate positive actions, but also develop a sense of human dignity [5, p. 14].

In psychology, encouragement is defined as a condition of the formation of a new behaviour. American psychologist B. F. Skinner is one of the founders of this theory [6, p. 517–546]. He rejects all unscientific attempts to explain human behaviour based on internal urges, and he points out that the behaviour is completely determined by the influence of the external environment. B. F. Skinner thinks that you can "make", create and control over the human conduct, and it is the same as the behaviour of animals. The main concept of B. F. Skinner is reinforcement, i.e. increase or decrease of the probability that the corresponding act of behaviour would happen again. Reinforcement and reward are not identical concepts. Reinforcement strengthens behaviour. Reward does not necessarily contribute to this. Positive reinforcement always adds something to the situation. For example, a child who has done his job receives the approval of adults. B. F. Skinner distinguishes between primary and conditioned reinforcement. The primary form of reinforcement is food, water, cold, heat, etc.; the conditioned reinforcement is neutral stimuli, which have strengthening value thanks to the combination with the primary forms of reinforcement. They are signs of love, approval,

attention of other people. Such conditioned reinforcement has a great influence on human behaviour. B. F. Skinner prefers the use of positive reinforcement, which, unlike punishment, has no an instant effect, but provides more lasting influence and almost does not cause negative states.

According to I. Semenov, all social institutions should be organized in such a way that a person systematically received positive reinforcement for desired behaviour [5, p. 16].

In the scientific literature, the term "legal encouragement" is defined as: an independent method of public administration; material and moral weal, benefits and advantages; legal incentive at the level of sanctions, measure of individual stimulation and management process; special means of positive social and legal impact on the behaviour of people, the method of legal regulation; the type of legal incentive aimed at prompting of individuals to active legitimate behaviour; norm-sanction of law; Law Institution, etc. However, legal encouragement is often considered in the context of the legal stimulation and it is recognized as one of the types of legal incentives [7, p. 7].

O. Malko defines the term of "legal incentives" as the measure and form of legal approval of reasonable conduct; as a result, the subject of such behaviour is rewarded, and gets favorable effects [8, p. 71].

K. Typikina tried to supplement and clarify the definition of this concept. The scientist defines it as an additional welfare of moral and material nature or full or partial exemption from various encumbrances that is the form (measure) of the legal approval of voluntary honored actions

(merit). Legal incentives are applicable by state and non-state structures to individual and collective subjects in order to draw attention to achieved high results, to encourage them to further social and active behaviour as well as implementation of similar actions by other subjects [7, p. 45].

V. Nyrkov applied another approach to the definition of the concept. In his opinion, legal encouragement is a kind of legal incentives applying to the subject of law for the diligent performance of duties or for the achievement of socially useful results exceeding conventional requirements, which encourage this person to further active legitimate behaviour and commitment of such actions by other subjects [9 p. 108].

The analyzed material proves that scientists use different features in their definitions of the concept of legal encouragement. In the context of our research, we should examine features, peculiarities of legal encouragement.

We distinguish two approaches to the definition of the concept of "encouragement in law" ("legal incentives"): 1) in a broad sense it is a legal means of influencing the behaviour of subjects of law aimed at commemorating their honored actions; 2) in the narrow sense it is a kind of legal incentives that motivates the subjects of law through providing them additional benefits for a well-deserved behaviour to diligent performance of their duties and achievement of socially useful results exceeding conventional requirements.

Based on the analyzed sources of law, you can separate the primary and secondary features of encouragement in law. The primary features include: 1) legal encouragement is a kind of legal incentives that affect motivational and volitional

component of behaviour of subjects of law by satisfying their needs and interests; 2) the basis for the application of legal encouragement is merit, which is expressed in the honest execution of the subject's rights and duties and in the achievement of socially useful results exceeding conventional requirements applying to them.

The secondary features of legal incentives include: 1) the objectives of legal encouragement, which are: a) private motivation, i.e. stimulating further legitimate behavior of the stimulated subject of law; b) general motivation, i.e. directing other members of the public relations to the implementation of the merits and conscientious actions; 2) mutual advantage of legal incentives for stimulated subjects, and for subjects who set them; 3) implementation of legal incentives through the enforcement procedure [10, p. 163].

2.2. Functions of encouragement as a legal means

Social value, importance of encouragement as a legal phenomenon and a legal means of influencing the behaviour of subjects of law are revealed through its functions. Functions of legal encouragement express the possibilities of this means to influence public relations, to regulate them.

In the scientific literature, there is pluralism of views concerning the functions performed by encouragement in the field of law. They include controlling, motivational, communicative, evaluating, guaranteed, distributive, educational, orientational, stimulative, law-protective, and the function of interests coordination. Moreover, it is still an incomplete list of functions. We pay attention to one function – social (controlling), which, in our opinion,

provides the greatest impact on the vector of human behaviour.

O. Malko determines encouragement as one of the means of social control and distinguishes the appropriate function [11, p. 170]. In his opinion, by means of legal incentives, a legislator and a law enforcer coordinate particular activities, such as designation of actions in normative and law enforcement acts, which are interested to the society and the state, and the state supports them. Therefore, in our view, you can also call the above-mentioned function as coordinating.

O. Kyselova points out those legal incentives, performing the function of social control, "gently "lead away" off illegal behaviour and at the same time positively activate subjects [12, p. 101].

N. Hushchyna also emphasizes the function of social control in law [13, p. 96]. In her opinion, through the influence of encouraging legal norms on the behaviour of the subjects of law, the social control comes to opportunity of applying various kinds of legal encouragement for a well-deserved behaviour, useful for the individual and society. The author believes that encouragement allows exercising personal self-control, which is a part of social control. Each individual builds his own line of conduct, focusing on universally recognized values, embodied in the incentive rules of law.

2.3. Terms of efficiency of encouragement as a legal means

In our opinion, the impact on the behaviour of the subjects of law by legal incentives can be carried out at the normative and law enforcement levels. Therefore, the effectiveness of

legal incentives depends not only on the quality of their legislative execution, but also on the activity features of the stimulated subject.

Therefore, the terms of the efficiency of legal incentives, which must be enforced at the legislative level, include:

1) compliance of the fixed legal incentives with the needs and interests of the state and society. It provides the necessity of fixing those kinds of legal incentives, which can meet the needs and interests of stimulated subjects of law. This process causes a positive motivation of these subjects to choose those variants of behaviour, which are offered by the state and favorable to it. This condition also covers the need for change, reforming of the system of legal encouragement to reflect the needs and interests of the society and the state, i.e. the relevance of specified legal means must be achieved;

2) reality of regulatory application of legal incentives by material-technical and other necessary resources (any fixed measures of encouragement should be carried out, they should be practicable taking into account the existing socio-economic conditions of life. Otherwise, illusory, promised but not provided measures of encouragement will not have any stimulative effect, unless negative);

3) ensuring consistency of statutory legal incentives. Legal incentives must be fixed in systematic unity both with other kinds of legal incentives, and in their internal structure. Legal system of incentives in general and legal encouragement in particular must be clear and comprehensible;

4) clear formulation of the components of merits as well as other rules of legal techniques.

Merit is the basis for application of legal encouragement. A clear wording and intelligibility of actions, for which measures of encouragement may apply to the stimulated subject, are very important. Compliance with this condition is also important in the context of narrowing the corridor for the subjective discretion of the stimulated subject and, consequently, reducing abuse. You must also comply with other rules of legal techniques, such as unambiguity of terminology, a laconic statement of legal prescriptions, etc.;

5) normative regulation of applying legal incentives that would govern the activities of stimulated subjects. Because, as you know, any procedural rules ensure the observance of the rights of interested parties. In addition, this condition is also necessary for the subjects of encouragement, because very often these subjects are bodies of state power and local self-government, which must act under law. The absence of such order makes promotional activities of these entities impossible.

The conditions, which must be ensured at the law enforcement level, include:

1) legality of the use of legal encouragement, which provides for observance of the same principle of the application of legal incentives. It covers, in particular, strict compliance with the regulations and the procedure of applying this kind of legal incentives;

2) selection of optimum types and sizes of legal encouragement. The subjects of encouragement use such legal incentives and their sizes that would provide the proper stimulative influence on stimulated subjects of law through the direction of the motivation of these subjects. The choice of relevant parameters should be carried out

taking into account the principles of application of legal incentives, in particular the principles of proportionality and individualization.

3) timeliness of the application of legal incentives. Legal encouragement does not provide the desired stimulative impact on the subjects of law without compliance with this condition, even with the perfect execution of all other conditions [10, p. 141–143].

3. Conclusions

Thus, taking into account all mentioned views, encouragement is a means of influencing law on human behaviour. The main function of encouragement as a means of stimulating the desired behaviour of the society is a function of social control. The effectiveness of legal incentives depends on the quality of their legislative execution and the activity features of the subject of encouragement.

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