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**THE DIFFERENT KINDS OF ENCOURAGEMENTS IN CRIMINAL RESPONSIBILITY REALIZATION MECHANISM**

**Summary.** The article deals with the study not only of the notion of the encouraging criminal-legal norms but also with their role in the criminal responsibility realization mechanism. The problems of the features of encouraging criminal-legal norms and the determination of their varieties have been studied. It has been stated that the encouraging criminal-legal norms do not compel to the choice of social mercenary behavior but approve and stimulate **b**ehavior of such nature.

**Keywords:** criminal-legal norm, encouragement, exemption from punishment, cancellation of conviction, circumstances excluding a crime, voluntary refusal of execution of a crime, discharge from a criminal responsibility.

**Formulation of the problem.** It is impossible at the present stage of development of the state and the right to limit the scope of criminal investigations only the concept of punishment and the rules governing it. For successful prevention of crime should be developed and other methodological foundations of the criminal law, the study of complex theoretical problems. In connection with this problem of conceptual updated study of the characteristics of different types of incentives in the criminal law. Analysis of the latest research. Promotional standards in the legislation on criminal liability studied Ukrainian scientists, including PP Andrushko, MI Bazhanov, V. Borisov, VV Golin, M. Grosheva, AA Dudorov, B . M. Kutz, V. Lomako A., N. Miller, VA Navrotsky, VV Skibitsky, VV Stashis, VY Tatsiy, G. I. mustachioed, PL Fries, NI Havronyuk, PA B. Hryapinsky and others. It should be noted that a very significant contribution to the development of incentive criminal law made YV Baulina. However, the questions of the legal nature of incentive rules that together form a legal institution of criminal liability, and so far in the literature are controversial. Therefore, the aim of this work is the study of the legal nature and reward systems of criminal law standards, and to improve the concept of "incentive criminal provisions" and clarify norms under consideration performed functions in the mechanism of the implementation of justice. In fact, perhaps, there is simply no such branch of the law, the content of which would be exhausted by one group norms. This thesis is, in our opinion, can be considered correct, because he, above all, allows to raise questions about the presence of the criminal law the whole palette of legal rules and regulations, developed a general theory of law. But still causes quite heated debates the issue of independence of incentive rules. Scientists have expressed diverse opinions, sometimes diametrically opposed to this. Some scholars identify incentive peremptory norms, and others - with the optional standard [1, 183-190].In today thesauruses promotion is defined as the value of the action to encourage or that encourages anyone for something, someone to encourage therefore encourage different ways to certain actions.In legal encyclopedia promotion is defined as a type of regulatory law that establishes the types and rewards of certain persons for committing especially useful to society action ... Incentive rules should provide legal means embodied in the legal validity of the moral and material incentives for socially useful behavior [3, 510] .Unlike peremptory orders, as well as the optional provision, incentive standard in criminal law perform control tasks such set of criminal legal relations which arise only on the basis of entirely voluntary. In this regard, it can be concluded that these standards is missing or have an element of state compulsion.Incentive criminal provisions compared with the mandatory and discretionary standard perform different functions within the meaning of, clearly demonstrating their features and legal nature. In addition, criminal promotional rates, unlike other orders are not forced to choose option of public behavior, and encourage or even encourage such behavior. It is for this characteristic feature of these rules can not be identified with the mandatory or dispositive criminal provisions.Incentive standard in criminal law and perform the replacement warning function. Each of these functions plays a specific role in the mechanism of the implementation of justice. The study found that criminal law promotion: 1) representing the state-established rule of conduct, the observance of which is stimulated by the exception, easing or eliminating criminal legal restrictions, is an independent kind of legal standards, and 2) there is a kind of positive incentives, the essence of which is that he always gives the person under the jurisdiction of the law on criminal liability or logged him in direct conflict, the ability to get out of this state, and 3) the means to remove or mitigate actual or potential criminal burdens under the conditions stipulated by the relevant standard, 4 ) always has a personal nature, that is, can be directed only to an individual, in a useful social behavior is concerned the state and society, and 5) provides for the right person to oppose crimes under circumstances which exclude criminal acts.Thus, the incentive of criminal law are the rules of conduct established by the State, characterized by stimulation of exceptions, mitigate or eliminate criminal burdens due to approve the conduct of the public entity, and in casesunder the Criminal Code, the person granted the right to oppose crimes under circumstances which exclude criminal acts.The signs of the criminal law is to promote the fact that: 1) it provides the rules of the Criminal Code, and 2) these rules apply, public authorities and officials of these agencies on behalf of and in trust the state, or individuals (in the circumstances precluding criminality); 3) the application of the criminal law does not depend on the category of crime, and the identity of the beneficial actions, and 4) the norm, in which it is fixed, addressed to the persons who committed the crime, and are designed to stimulatetheir reformation and law-abiding behavior or persons who have the right to cause harm to legally protected public relations in the circumstances precluding criminality, 5) legal fact the start of the rules by which it is regulated, is a voluntary law-abiding behavior of criminals or the existence of circumstances precluding criminality, 6) application of rules which it provides benefits to the state, and the person who committed the crime or harm to legally protected interests in self-defense (Article 36 of the Criminal Code), the detention of the perpetrator (Article 38 of the Criminal Code), emergency (Article 39 of the Criminal Code), the implementation of the order or orders (Article 41 of the Criminal Code), the acts involved in risk (Article 42 of the Criminal Code), special assignments prevention or detection of criminal activities of an organized group or a criminal organization (Article 43 of the Criminal Code) .Given the above, the incentive properties have penal provisions contained in the rules of the Criminal Code: voluntary withdrawal by the unfinishedcrime (Part 2 of Art. 17), voluntary refusal partners (Part 2 of Art. 31), circumstances preventing criminality (part 1Art. 36, Part 1, Art. 39, parts 1 and 2 of Art. 43), exemption from criminal liability in cases of active repentance (v. 45), exemption from criminal liability in connection with reconciliation of the offender with the victim (Article 46), exemption from criminal liability in connection with the transfer of persons on parole (Article 47 ), exemption from criminal liability due to changes in the environment (Article 48), exemption from criminal liability in connection with the end of the limitation period (Article 49), circumstances mitigating punishment (voluntary surrender, sincere repentance or actively promote the disclosure of the crime; voluntary compensation of damages or reparation of damages, provision of medical or other assistance to the victim immediately after the crime, a crime in excess of the limits of extreme necessity, a special task for the prevention or detection of criminal activities of an organized group or criminal organization, combined with the commission of a crime in cases under the Criminal Code (§ § 1, 2, 21, 8, 9, Part 1, Art. 66), the appointment of a more lenient sentence than that provided by law in the case of the above set of mitigating circumstances (Article 69), the purpose of punishment in the circumstances mitigating the punishment (Art. 691), exemption from punishment and serving it (Part 4 of Art. 74), the release of probation (Part 1 of Art. 75) exemption from the legal consequences of probation (Part 2 Art. 78), exemption from punishment totesting of pregnant women and women with children under the age of seven years (parts 4 and 5, Art. 79), conditional release from punishment (Article 81), the replacement of the unserved part of the punishment with (v. 82), the release from serving pregnant women and women with children under three years of age (part 4 and 5, Art. 83), exemption from punishment on the basis of the law of Ukraine on the act of amnesty or pardon (Art. 85-87), removal of criminal record ( Art. 91), exemption from criminal liability with the use of coercive measures of an educational nature of juvenile (Part 1 of Art. 97), the release of probation for juveniles (Article 104), exemption from punishment, coercive measures of educational character to the minors (Article 105), parole from serving the punishment of minors (Article 107).In addition, should provide a positive incentive postprestupnogo norms of behavior, which should include special types of the person's release from criminal liability after the commission of the crimes set: Part 2 of Art. 111 "treason", part 2. 114 "Espionage", Part 3. 175 "Non-payment of wages, stipends, pensions or other benefits established by law", part 4. 212 "Failure to pay taxes and duties (mandatory payments)," Part 4 of Art. 2121 "Failure to pay premiums on obligatory state pension insurance", Part 2, Art. 255 "forming a criminal organization", part 2. 2583 "Creation of a terrorist group or terrorist organization," part 4. 2585 ​​"Financing of Terrorism", Part 6, Article. 260 "Creation of extra-legal paramilitary or armed groups", Part 3. 263 "Illicit trafficking in weapons, ammunition or explosives," Part 4 of Art. 289 "Illegal occupancy vehicle", part 4. 307 "Illegal production, manufacture, purchase, storage, transport, transfer or sale of narcotics or psychotropic substances", part 4. 309 "Illegal production, manufacture, purchase, storage, transport or shipment of narcotic drugs or psychotropic substances without the purpose of sale,"Part 4 of Art. 311 "Illegal production, manufacture, purchase, storage, transport, transfer or sale of precursors," Part 5, Art. 321 "toxic or potent substances or toxic or potent drugs," Part 5, Art. 3683 "Commercial bribery of an official person of the legal entity of private law, regardless of the legal form," Part 5, Art. 3684 "Bribery person providing public services," Part 6 of Article. 369 "Proposal or bribery." However, to explain the mechanism of the implementation of criminal responsibility, not all types of criminal incentives may be used. Directly related to the implementation of the criminal liability only incentive regulations: exemption from punishment and serving it (Part 4 of Art. 74), the release of probation (Part 1 of Art. 75) exemption from the legal consequences of probation (Part 2 of Art. 78), exemption from probation pregnant women and women with children under the age of seven years (part 4 and 5, Art. 79), conditional release from punishment (Article 81) and replacement of the unserved part of the punishment more lenient (Article 82), freedom from punishment for pregnant women and women with children under three years of age (part 4 and 5, Art. 83), exemption from punishment under the law of Ukraine on amnesty or act of mercy (v. 85-87), removal of criminal records (Article 91), freedom from probation to minors (Article 104), exemption from punishment imposition of compulsory education measures for minors (Article 105) , conditional release from punishment of minors (Article 107 of the Criminal Code). But you can not, in our view, to deny the importance of circumstances precluding criminality (Part 1 of Art. 36, Part 1, Art. 39, parts 1 and 2 of Art. 43), as well as rules governing the voluntary relinquishment. These provisions of the law on criminal liability can distinguish from the non criminal, and therefore punishable by impunity. ButThe Institute of exemption from criminal liability allows the court does not "run" mechanism for the implementation of such liability in cases strictly regulated by the Criminal Code.Thus, for the implementation of criminal responsibility is of particular importance Institute of acquittal and serving it. Despite the widespread use of criminal remedies against persons who have committed a crime, a convincing approach to understanding the legal nature of the exemption from punishment and serving it to the science of criminal law is not developed. Thus, some authors consider the Institute acquittal or serving it as a special order of punishment, others - as a special order punishment (execution).Some scientists are trying to give a definition of non-punishment as an act of justice to be applied in a particular procedural form in respect of a person convicted of a crime, on the basis of which the person is completely free of his sentence, or it wears off or is replaced by a softer [4, 218 ]. However, the pardon is not an act of justice, because it is made by the President of Ukraine. According to VK Grischuk, for exemption from punishment is necessary to understand the "humane act of compromise on the part of the state, carried out at the basis of law and the conditions of the competent authority of (the court, the President of Ukraine), which is to free the convicted person from the condemnation of his personality and he committed the act, and enduring those statutory deprivation and restriction of his rights and freedoms, which manifest content penalties, as well as criminal records in order to ensure implementation of the tasks of preventing the commission of crimes as a convicted and others "[5, 499].This definition displays without exception the essential aspects of the criminal law means of influencing theoffenders, but, in our view, it is very congested. The definition is sufficient to refer to the fact that the exemption from punishment, it is a means of serving criminal law to such persons, not to point to the goal of each variety of tools such as it is common for them - providingachieve the objectives of the criminal law of Ukraine. In addition, it is a means by which criminal liability is realized with respect to persons who have committed crimes.VI Osadchy defines remission and serving it as "stipulated in the Criminal Court of the cases of non-use to a person guilty of a crime, punishment or stopping the serving it" [6, 281]. Does not indicate the possibility of mitigating punishment during his serve, as well as the subject of the application of the tool.Obviously, this issue is to determine the present these views to one central idea: exempteddenie from punishment is a form of implementation of criminal responsibility [7, 289].V. Alexandrov, V. Klimenko note that since the criminalization implemented within the criminal law and criminal-executive relations, insofar remission and serving it recognized as a legal fact, which entails the termination of the criminal law (or transfer them to a state conviction person) or penal relations in connection with the subjects of legal rights and responsibilities [8, 272].It is necessary to focus on some aspects related to the fact that the understanding of non-punishment and serving it as a special order of punishment or special order of punishment (execution) did not enable us to interpret the mechanism of the implementation of justice.Immediately it should be noted that the exemption from punishment forms (gives effect), the second formrealization of the criminal responsibility of persons who have committed a crime, that is, the criminal liability without sentencing and criminal record (exemption from punishment (Part 4 of Art. 74 of the Criminal Code)), remission with the use of compulsory educational measures to minors ( Art. 105 of the Criminal Code). Exemption from punishment or continue serving up the first form of the realization of responsibility in the criminal law relating to sentence and a criminal record. In this case, the release of further punishment is for the first sight of the first form implementation of criminal liability arising from the sentence and its actual serving of (conditional release from punishment (Article 81 of the Criminal Code), the replacement of the unserved part of the punishment with (Art. 82 of the Criminal Code), exemption from punishment of pregnant women and women with children up to three years (parts 4 and 5, Art. 83 of the Criminal Code), exemption from punishment on the basis of the law of Ukraine on the act of amnesty or pardon (Art. 85-87 of the Criminal Code), conditional release from punishment of minors (Article 107 of the Criminal CodeUkraine)), and the exemption from punishment - to the second form the first form of the implementation of such liability arising from the sentence and release him from serving real (release from probation (Part 1 of Art. 75 of the Criminal Code), the legal consequences of the release on probation (Part 2 of Art. 78 of the Criminal Code), exemption from probation pregnant women and women with children under the age of seven years (part 4 and 5 of Art. 79 of the Criminal Code), exemption from serving punishment with the testing of minors (Article 104 of the Criminal Code).)In fact, in the system of criminal law exemption from punishment and serving it or terminate the sale of criminal responsibility libokorrektiruet limits its implementation, specifying the amount pravogranicheny, convict or to face early release from further punishment. Thus, in accordance with Part 1 of Art. 81 of the Criminal Code to persons serving a sentence of hard labor, service restrictions for military restraint, detention in a penal battalion soldiersor imprisonment may be imposed parole from serving. In this case, the convict may revoke in whole or in part and from serving additional punishment. Condition of parole dismissal convict has a certain part ofsentence. Without his presence, even when the person is serving a sentence, a certain degree of correction, parole is not allowed. The above is closely related to the categories of crimes (Article 12 of the Criminal Code). However, it is not a single condition is considered base parole from serving as the norm of the Criminal Code provides for the exemption applies to the incentive rules; it may be a prerequisite to the conduct of a certain requirement of the face. Therefore, the possibility of early release from serving the sentence to convict connected with exemplary behavior and conscientious attitude to work as imperative to reduce the period of serving such sentences. In addition, you can not release a person from further serving any and all penalties, so the legislator and identifies their species from further serving that person can be released. That is, in this case on the basis of an incentive of the criminal law is the implementation specification limits of criminal liability. Output. Thus, exemption from punishment and serving it is criminal restraint, which is the non-use of the court in respect of a person convicted of a crime, the actual serving of the sentence, or release it to the competent authority of the State (the court, the President of Ukraine) on the further implementation of executing agencies and bodies of the State Penitentiary Service of penalties (criminal liability), or in its mitigation, or replacement of a lighter. Analysis of the criminal law section XII of the General Part of the Criminal Code of Ukraine has shown that the institution of non-punishment and serving it includes three types of criminal means of influence: 1) exemption from punishment, and 2) the release of further punishment, 3) exemption from punishment . All these types of release from punishment and serving it gives effect to the implementation of both forms of criminal responsibility. And the existence of the law on criminal liability of different rules governing the exemption from punishment and release from further serving him, we have a way in the first embodiment of the criminal liability with respect to sentencing, distinguish two types: the real of the sentence to be served without serving the real itself. As for the removal of criminal records, then it is in accordance with Art. 91 of the Criminal Code reduces the time specified in Art. 89 of the Criminal Code for a previous conviction after serving the penalty of restriction of liberty or imprisonment, half that prematurely cancels the legal implications conviction. As a foundation to remove criminal records, as well as for all the encouragement of criminal law relating to the implementation of criminal responsibility is positive post-criminal behavior of individuals - exemplary conduct and conscientious attitude.

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**Митрофанов І.І. Різні види заохочень у механізмі реалізації кримінальної відповідальності**

**Анотація.** У статті аналізуються не тільки поняття заохочувальних кримінально-правових норм, а і їх роль у механізмі реалізації кримінальної відповідальності. Досліджуються питання ознак заохочувальних кримінально-правових норм і виокремлення їх різновидів. Констатується, що заохочувальні кримінально-правові норми не примушують до вибору суспільно корисної поведінки, а схвалюють і стимулюють такого роду поведінку.

**Ключові слова:**кримінально-правова норма, заохочення, звільнення від покарання, зняття судимості, обставини, що виключають злочинність діяння, добровільна відмова від вчинення злочину, звільнення від карної відповідальності.

**Mytrofanov I.I. The different Kinds of Encouragements in Criminal Responsibility Realization Mechanism**

**Summary.** The article deals with the study not only of the notion of the encouraging criminal-legal norms but also with their role in the criminal responsibility realization mechanism. The problems of the features of encouraging criminal-legal norms and the determination of their varieties have been studied. It has been stated that the encouraging criminal-legal norms do not compel to the choice of social mercenary behavior but approve and stimulate behavior of such nature.

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