

The Institution of Incentives – an Element of the Civil Service Legislation System

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Abstract. The substantial differentiation of doctrinal definitions of encouraging a civil servant in the absence of statutory regulation of such a concept complicates the understanding of the meaning and purpose of this legal tool. The research topic is relevant because the problem of finding such means of influence on subjects authorised to perform the tasks of the state and local self-government, which would encourage civil servants not only to fulfil their professional duties, but also to increase the efficiency and effectiveness of their activities, is of great importance for the improvement and further development of the civil service in Ukraine. The purpose of this study was to investigate the institution of promotion as an element of the system of legislation on civil service, based on a comprehensive system analysis of legal phenomena in the context of current legislation and theoretical legal approaches adopted in the countries of the European Union. Upon authoring this paper, the following methods of scientific cognition were used: dialectical method of legal knowledge, thanks to which the institution of incentives was considered as a phenomenon of legal reality and its essence and qualitative changes in its formulation were investigated; the method of logical-semantic and logical-legal analysis allowed formulating the terminology for incentive legislation, the legal institution of incentives for civil servants; methods of modelling, analysis and synthesis allowed developing proposals for improving legislation on the legal regulation of incentives for civil servants. It was proved that the pluralism of the wording of this concept determines the need for regulatory consolidation of the concept of incentivisation as an element of improving the efficiency of public service. The study clarified the specific features of the institution of incentives in the system of public service legislation, which cover incentive legal relations, the implementation of which takes place in the system of public service, the grounds for applying incentives to civil servants. The authors considered the idea of adopting the Award Code of Ukraine, which would systematise and streamline many regulations that govern incentives, with the purpose of eliminating obsolete legal material, discrepancies in incentive norms, ensuring their logic and consistency, introducing new legal rules. The legal institution of incentives for civil servants is defined as a set of norms of official and administrative legislation that regulate a group of public service legal relations aimed at directly supporting the activities of public servants and related to the implementation of proceedings within the apparatus of the state authority in cases of public servants' incentives. This paper will be useful not only for employers, but also for the Ukrainian legislator, since the solution of problems related to the improvement of the institution of encouragement of public servants, stimulation of their effective activity should be recognised as one of the priority tasks of the state according to the standards of the European Union

Keywords: service law, public servant, legal regulation, incentives in the public service, improving the efficiency of the public service

Introduction

The dynamic nature of the organisational structure and activity of the state administration apparatus, conditioned upon the European integration vector of Ukraine's development, and the need to strengthen sovereignty determine the formulation of the issue of supporting a balance of the interests of the state and the public servant. One of the most effective means of achieving balance is the possibility of applying incentive measures in the public service system. Understanding the problems of legal regulation and practical implementation of the mechanism for encouraging civil servants is the subject of interest of scientists and practitioners. The relevance of the subject under study is evidenced by the dynamics of legislation, namely the introduction of amendments to the current legislation governing the administrative

legal institution of incentives for public servants [1-3] and the development of new drafts of corresponding laws [4; 5], which determined the search for innovative approaches to solving the doctrinal and practical tasks of the functioning of the institution of incentives in the public service system.

The problem of incentives in the public service in general and the award in particular attracted the attention of legal scholars, which contributed to studies covering the generalised characteristics of all incentives [6-8], individual groups of incentives [9-11], their use in relation to certain types of public service [12-14]. Furthermore, some studies directly investigate the awards for public servants [15; 16].

T. Kolomojets [6], paying attention to the resource of the individual bonus, determined that its size should be limited and in no case form the "main body" of the salary of

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a civil servant because the meaning of the bonus as a reward for “excessive efforts”, for “special contribution”, “for excellent results” of official activity is lost.

M. Tytarenko [8], investigating the incentives for public servants in foreign countries, namely the legislation of New Zealand, concluded that purely material incentives for public servants are prescribed by the laws of New Zealand “by adjusting their remuneration”, as well as bonuses for “special achievements”. However, it is interesting that all issues of stimulating public servants are the prerogative of an independent body – the Public Service Commission. The scientist, having proposed the author’s definition of “incentives in service law”, formulated a proposal to group them in a separate section of the Administrative Procedure Code of Ukraine [4] or the Law of Ukraine “On Administrative Procedure” [5] (Section “Incentivisation as a Type of Administrative Procedure”).

Regarding the role and necessity of using incentives, O. Abramova emphasised that among the legal means contributing to the development of human capital, the importance of incentive measures is to stimulate the disciplined behaviour of employees in performing their duties, as well as the growth of professional skills [17].

K. Mishchenko noted that the motivational policy of the state in relation to public servants is a significant factor in improving the efficiency of public administration. One of the components of this policy is material incentives. Developed countries of the world have considerably improved the quality of public administration due to the material support of their managers. Therewith, Mishchenko adds that the specific features of motivating the work of public servants are related to the features of their work and the imperativeness of the institution of public service. Presently, the motivation mechanism in public service structures is still based on administrative and command incentives related to the clear regulation of the work of civil servants and constitutes a complex system of socio-economic relations between public servants and the state and society [18].

According to V. Lovina, an incentive should be interpreted as a positive stimulating influence of subjects (an official, body, etc.) on the needs, interests, consciousness, will, behaviour of employees, and, consequently, on the result of their work. The application of incentives is based on legal principles, should be prompt, significant, and weighty [19].

H. Korytsev pointed out that an incentive is a material or non-material (moral) reward defined by regulations or not contradicting them for conscientious work of an employee to further motivate them to support the existing professional level and to improve it in the future. Therewith, Korytsev emphasises that the incentives that stimulate employees, established in the organisation within the framework of the labour remuneration system, are legal incentives [20].

However, unfortunately, scientists have not studied the institution of incentives as an element of the public service system in general, which is a prerequisite for authoring this paper.

The purpose of this study was to find out the essence and features of the legal institution of incentivising public servants based on the study of scientific works in the field of law and public administration, the analysis of the current legislation of Ukraine, the analysis of the foreign practices, and to provide scientifically sound proposals for its optimisation.

Promotion of Public Servants in the Service Law System

The Strategy of Public Administration Reform for 2022-2025 indicates that the administrative legal institution of public service in the system of administrative legal regulation plays the role of a “locomotive” to ensure effective public administration [21]. According to the current legislation, namely the Constitution of Ukraine [1], the Law of Ukraine “On Civil Service” [2], the Law of Ukraine “On Service in Local Self-Government Bodies” [3], as well as corresponding decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, regulations of executive authorities, regulations of local authorities, public service is carried out in bodies of all branches of state power. The concept of service law should be based on the principle of combining the interests of the state and public servants, since they are the main link in the state mechanism. In this regard, the concept of development of legislation on public service should cover provisions aimed at creating real opportunities for official growth for highly motivated initiative employees by developing and prescribing in the service contract at the stage of entering the public service an individual trajectory of professional development.

Considering the institution of incentive as an element of the system of legislation on public service, its categorical features indicate internal, external relations, coordination, and subordination ties. The orderliness of the norms that form the institution of encouraging public servants is expressed in internal relations and is conditioned upon the presence of incentive norms. In the Law of Ukraine “On Civil Service” [2], the provisions on official incentives and awards are prescribed in the Section VI “Remuneration, incentives and social guarantees”. Proceedings on the application of incentive measures prescribed in Article 53 detail the regulations of executive authorities issued on the implementation of incentives in the public service system.

The unity of public service incentive norms is ensured by the use of general concepts and terms. The correlation of the institution of incentives for public servants with various branches of legislation characterises external relations, which is a necessary part of the structure. Legal norms governing the legal status of a public servant can be constitutional, administrative legal, or public service. The various structural entities included in this institution of legislation represent its links. They can be links of coordination, which are manifested in the unification of concepts, categories, and regulatory material of related branches of legislation; subordination, expressed by the hierarchy of sources of legislation and norms on the promotion of public servants.

Issues of improving the legal technique of state and service legislation, which form an integral part of the process of reforming the current model of public service, should be investigated within the framework of service law. Service law constitutes a system of legal norms governing public relations in the sphere of internal organisation of the public service, the establishment of the legal status of public servants, the practical functioning of the public service to ensure the activities of public servants and employees of local self-government bodies (hereinafter – public servants), performing the tasks and functions of public power and state administration [22, p. 50].

Legal relations formed in connection with the entry, passage, and dismissal of a citizen from public service are

also regulated by the norms of other branches of law – constitutional, administrative, and labour. The degree of independence is determined by the frequency of practical application of the norms of industry affiliation to the regulation of the range of legal relations that form the specific features of the subject of legal regulation. Improving the public service and its regulatory framework is the task of reforming the official legislation, their positive qualitative changes that meet the requirements of the current legal and political situation in the country.

The scale and importance of the institution of public service encourage thinking about the need to create and support a balance between biased public attitudes, restrictions, prohibitions, and the system of motivation of employees to improve the effectiveness of professional activities. Such ideas are relevant in the light of the development of legislation on public service because the constant change and improvement of official legislation is conditioned upon the dynamic nature of the state's management activities.

The Constitutional Court of Ukraine notes that the professional official activity of citizens in public service positions is carried out in the public interest and is associated with the exercise of special, public-legal functions by public servants, which determines a special professional status [23]. This legal provision covers the rights and obligations of employees, as well as restrictions and prohibitions related to public service, the existence of which is compensated by guarantees and benefits. The specifics of public service of this type are determined by the right of the legislator in the implementation of legal regulation of relations in the field of public service, based on the tasks, principles of organisation and functioning, the need to support a high level, to provide special rules for entering the service, passing it, special grounds for termination of official relations and dismissal. A distinctive feature of the method of legal influence of service law is the advantage of realising public interest.

The share of private interest in official legal relations is small. The public service makes provision for the priority of the interests of the state and functions to solve the problems of ensuring public welfare, exercising public interests based on the principles and provisions established in the Constitution of Ukraine [1] and in the relevant legislation on public service [2; 3]. Therefore, individual legal institutions that form part of the branch of service law require more detailed statutory regulation.

O. Evsyukova and T. Mykhailova note that the public service at the present stage of development of society appears as a complex institutional complex, in modernisation of which it is necessary to actively use network organisational structures, cooperate with civil society through its institutions, comprehensively support the dialogue of state authorities with the population and involve in management decisions, using multi-level coordination of problematic issues with public organisations, political parties, intellectual elites [24].

The legal institution of promotion gradually acts as an effective incentive for positive changes in the individual, society, and the state. The study "Civil service system at the European level" points to the creation of an incentive system in the countries of the European Union [25]. Notably, when incentives are used in activities and there is no strict control, a person is given freedom to show initiative and creative activity. Positive motivation as the driving force of the desired behaviour is external orders and interest of the subject.

According to M. Tytarenko, the official legislation in terms of incentives, namely its urgent aspect, is generalised, fragmented, and makes provision for wide opportunities for subjective discretion by the subject of incentives [26]. The authors of this paper believe that incentive, as opposed to punishment, is more effective. However, considering the issue of improving the efficiency of the public service, specifically from the standpoint of improving competitiveness as the latest criterion in the framework of public administration reform, the legislator has established dozens of restrictions and prohibitions for public servants, created many ways to overcome and prevent corruption in the public service, adopted several regulations establishing procedures for professional behaviour of officials and procedures for reducing professional risks during public service.

The public service has unique features – being under scrutiny of Ukrainian society and, in this regard, a very noticeable vulnerability of employees to criticism, rare cases of their public praise rather than condemnation. Criticism of professional public service should have reasonable limits because it is necessary to criticise actions performed by employees and officials in violation of the law, unnecessary practical decisions, bureaucracy, and the lack of considerable and expected results of managerial work.

Attention to such aspects of the functioning of the mechanism of the public service of Ukraine determines the need to develop provisions on the statutory regulation of official legal relations. As for the public service system, attention should be paid to the type of public service legal relations, the purpose of which is to directly support the activities of public servants. In a set of measures to improve the efficiency of the public service, the institution of incentives is an essential tool for stimulating development.

Professional activity, especially in the field of public service, places high demands on existing entities. Therefore, providing complex functions of managerial and other social activities requires a special incentive mechanism. The study "Pay-for-performance in the public service of the EU" pays great attention to promotion as the main incentive for effective performance [27]. The authors of this study focus on the specific features of the method used within the framework of proceedings on cases of incentivising civil servants. Considering incentives as a type of official legal relations, they are formed during the practical implementation of public service, in the sphere of official activities; they are aimed at ensuring the activities of civil servants.

Improving the Efficiency of Public Servants' Activities in The Context of Improving the Legal Regulation of Incentives

In theory and legislation, there is no single concept of the legal category "incentive". Thus, the implementation of incentive legal relations is based on interest, which is manifested in the employee's will directed towards improving the efficiency of their activities. The content of interest, which forms the basis of the concept "encouraging a public servant", characterises the combination of private and public foundations with the predominance of the latter, which is dictated by the purpose and objectives of the public service.

According to C. Bason and R. Austin, the emergence of human-centred models of public administration that offer new opportunities for creative influence is a constructive counterweight to more bureaucratic and analytical traditions [28]. In

the fields of science, where the imperative method of influence previously prevailed, the role of dispositive regulation can now be observed. V. Voorn, in his study "Professional managers, public values? The delicate balance between corporatization and stewardship to society", notes that the strengthening of the influence of contractual principles on the practice of public administration, the growing need to apply measures of stimulating influence to public servants, which indirectly contribute to increasing the effectiveness of professional activity, are objective factors dictating the necessity and timeliness of the changes mentioned above [29].

Considering the specific features of the method of legal regulation of civil service relations, the general rule of dispositivity is transformed into a limited dispositivity. This feature is related to the property of centralisation in the method of legal regulation of official relations. It is necessary to increase the social significance of incentive norms by strengthening legal guarantees. In this regard, it is necessary to develop, within the framework of administrative and service-legal studies, the provisions on guarantees of incentives in the field of public service, legislatively consolidated at the state level. In the administrative-theoretical sense, in fact, after its legal assessment, the legal basis for applying incentives in a certain form is merit.

The study of achievement as an official-legal category should serve as the basis of consideration and detailed clarification of the properties of its individual models. Such steps will contribute to the creation and strengthening of guarantees for the exercise of the employee's subjective right to incentives, which is no less important for curbing the manager's almost unlimited discretion when applying incentives in the public service. The manifestation of the dispositive method of legal regulation of official relations in the application of incentive measures to public servants is manifested in the implementation of actions and decision-making at the initiative of the head of the public service, based on a subjective analysis of the merits and identity of the subordinate subject. Achieving elevated performance indicators of the public service is possible with a combination of activity and deterrence in the public service sphere, supplemented by intensive legal regulation and a high degree of social activity of employees.

Professional performance is more likely to meet the requirements of efficiency and effectiveness in regulating behaviour, when, if necessary, the activity can be activated by external incentives or, in some cases, restrained. Analysing incentives in the field of public service, it is necessary to determine its position in the structure of official legislation. According to O. Stets, the structure should be determined according to the types of public service: legislation on administrative service; legislation on specialised service; legislation on militarised service. In this context, it is a set of laws, sub-legislative acts, international regulations governing public relations related to the functioning of the public service [30, p. 416].

The set of legal norms regulating the application of incentives in the civil service system, for full and comprehensive research as a legal category, should have the status of a complex legal institution of civil service legislation. At the same time, among the risks of public service reforms, there is a risk of blocking the functioning of the state; the risk of weakening the positions of other public authorities; inclusion in the text of the constitution of principles and

legal constructions that are not inherent in the state [31, p. 54]. In this context, S. Solotkyi, deputy head of the Legal Department of the Secretariat of the Constitutional Court of Ukraine, aptly pointed out the excessive burdensome nature of the Law of Ukraine "On Civil Service" [2], the lack of differentiated approaches to the settlement of an entire range of legal relations [32, p. 131].

In every legal branch (constitutional, administrative, labour, criminal, civil law), incentive norms play an essential role in regulating public relations, but the key impact is manifested in achieving the tasks and goals of the functioning of the executive branch. The authors of this paper are convinced that the intersectoral nature of the legal institution of incentives indicates the need to grant a set of incentive norms a separate status in the legislative system. Similarly, the current state of the institution of public service incentives can be described, where the leading role of regulating the procedure, grounds, implementation in general and individual procedures belongs to departmental legal acts and orders (commands) issued according to them.

The authors of this study propose to adopt the Award Code of Ukraine, designed to systematise, and streamline numerous regulations governing incentives, to eliminate obsolete legal material, discrepancies in incentive norms, ensuring their logic and consistency, introducing new legal rules. I. Kovbas notes the idea of codifying the corresponding array of legislation, which is expressed in the adoption of the above-mentioned code, for a combination of material and procedural norms regulating incentives [33, p. 7]. Furthermore, the scientist argues for the need to implement such an idea by the fact that the establishment of award (incentive) law and the improvement of the corresponding body of legislation will allow the incentive to become an effective means of preventing corruption, as it will prevent abuses associated with obtaining benefits and privileges through unjustified receiving and giving.

It is impossible to define incentives as a sub-branch of any branch of law, since a specific set of incentive norms that hold a material and procedural component applies to a particular type of legal relationship (e.g., administrative, criminal). Within each branch of law that includes the legal institution of promotion, the relevant procedures will be different in terms of legislation and application practices. Incentive norms should be considered as a complex (intersectoral) legal institution, since it combines similar norms related to different branches of law. The complex interrelation of public relations objectively determines the presence of such normative entities in the legal system.

From the perspective of the system-legal approach, incentives must be considered as a complex legal institution that governs social relations related to the presentation for encouragement of persons who committed an eligible act, which covers the issue of the application of diverse types of incentives and the determining status of the encouraged. Incentive legislation constitutes a set of regulations that differ in legal force, which contain norms of a material and procedural nature that reveal the subject of incentive law. The institution of incentivising civil servants is a set of legal norms (of constitutional and administrative law) governing the grounds and procedure for applying incentive measures to civil servants, which is based on the incentive method of legal regulation, certain legal relations, coordination, and subordination links.

Conclusions

Promotion of public servants is one of the key institutions in the structure of the public service, along with the institutions of certification, contract, and disciplinary responsibility of public servants. The complex nature of the institution of incentives in the general legal sense necessitates the determination of specific characteristics for each branch of legislation where it exists. Features of the institution of incentives in the system of state and service legislation are as follows:

– incentive legal relations implemented in the public service system are public service relations aimed at the direct support of the employee's activities;

– the grounds for applying incentives to a public servant are legal facts: actions – achievements embodied in proper models of behaviour: impeccable and effective public service, special distinctions in public service; events – the onset of certain periods of time with which the legislator connects the emergence of public service incentive legal relations.

The legal institution of incentivising civil servants constitutes a set of norms of official and administrative legislation governing a group of state service legal relations aimed at directly securing the activities of civil servants and related to the implementation of proceedings on cases of encouragement of civil servants within the apparatus of a state authority.

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Інститут заохочення – елемент системи законодавства про державну службу

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Анотація. Істотна диференціація доктринальних визначень заохочення державного службовця за відсутності нормативно-правової регламентації такого поняття робить складним з'ясування сенсу та призначення цього юридичного засобу. Досліджувана тема є актуальною, бо проблема пошуку таких засобів впливу на суб'єктів, уповноважених на виконання завдань держави та місцевого самоврядування, які б спонукали державних службовців не лише до виконання своїх професійних обов'язків, а й до підвищення ефективності та результативності своєї діяльності, має велике значення для вдосконалення та подальшого розвитку державної служби в Україні. Метою статті є дослідження інституту заохочення як елементу системи законодавства про державну службу на підставі комплексного системного аналізу правових явищ, у контексті чинного законодавства та теоретико-правових підходів, прийнятих у країнах Європейського Союзу. Під час підготовки цієї статті були використані такі методи наукового пізнання: діалектичний метод правового пізнання, завдяки якому інститут заохочення розглянуто як явище правової дійсності та досліджено його сутність, якісні зміни у його формулюванні; метод логіко-семантичного та логіко-юридичного аналізу дозволили сформулювати понятійний апарат щодо заохочувального законодавства, правового інституту заохочення державних службовців; методи моделювання, аналізу та синтезу – для розробки пропозицій щодо вдосконалення законодавства з питань правової регламентації заохочень державних службовців. Встановлено, що плюралізм формулювань цього поняття зумовлює необхідність нормативного закріплення поняття заохочення як елементу підвищення ефективності державної служби. З'ясовано особливості інституту заохочення у системі державно-службового законодавства, що охоплюють заохочувальні правовідносини, реалізація яких відбувається у системі державної служби, підстави застосування заохочення до державного службовця. Розглянуто ідею прийняття Нагородного кодексу України, який б систематизував та впорядкував численні правові акти, що регламентують заохочення, з метою ліквідації застарілого правового матеріалу, протиріч у заохочувальних нормах, забезпечення їхньої логічності та узгодженості, запровадження нових юридичних правил. Визначено правовий інститут заохочення державних службовців як сукупність норм службового та адміністративного законодавства, що регламентують групу державно-службових правовідносин, спрямованих на безпосереднє забезпечення діяльності державних службовців і пов'язаних із здійсненням усередині апарату органу державної влади провадження у справах про заохочення державних службовців. Стаття буде корисною не тільки для роботодавців, а й для українського законодавця, оскільки вирішення проблем, пов'язаних із вдосконаленням інституту заохочення державних службовців, стимулюванням їхньої ефективної діяльності має бути визнано одним із пріоритетних завдань держави відповідно до стандартів Європейського Союзу

Ключові слова: службове право, державний службовець, правове регулювання, стимулювання в державній службі, підвищення ефективності державної служби