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## ON SOME ASPECTS OF INCENTIVE NORMS IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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### ABSTRACT

*The article reveals the role and place of incentive norms in the criminal law. Separate features and criteria of incentive norms are highlighted, according to which it is possible to determine which criminal legal norms are incentive. Based on the results of the analysis of the views of researchers and the criminal law, the author proposes to introduce a separate norm in the Criminal Code of the Republic of Uzbekistan, defining the concept, classification and application of incentive norms in law enforcement practice.*

**KEYWORDS:** *Incentive norms, positive behavior, exemption from responsibility and punishment, general and special norms, the Criminal code.*

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### INTRODUCTION

The essence of reforms and fundamental changes in the judicial system of the Republic of Uzbekistan in recent years, including measures to liberalize criminal legislation, is primarily aimed at protecting human rights and freedoms, ensuring the principles of legality, humanity and fairness of criminal law. The tasks of the criminal law of the Republic of Uzbekistan are to protect the person, his rights and freedoms, public and state interests, property, environment, peace, human security from criminal encroachments, as well as crime prevention, education of citizens in the spirit of observing the Constitution and laws of Uzbekistan. To fulfill these tasks, the criminal law establishes which socially dangerous acts are crimes, punishments and other legal measures that can be applied to persons who have committed socially dangerous acts [1].

It is clear that the imposition of a criminal penalty on a person found guilty of committing a crime entails the deprivation or restriction of certain rights and freedoms, that is, criminal law in a sense implies the punishment of a person guilty of committing a crime. However, the main goal of our criminal law is not to punish a person, but to correct him, to prevent him from continuing his criminal activity, as well as to prevent the commission of new crimes by both convicts and other persons [2].

In this regard, incentive norms play an important role in criminal law when imposing punishments on persons found guilty of committing crimes, applying norms on the release of criminal liability or punishment to persons. An analysis of the current criminal legislation shows that the term «incentive norms» is not used in the Criminal Code; the content of a number of articles shows that there are a number of incentive norms aimed at encouraging positive behavior and thereby preventing crimes, exposing them and eliminating the damage caused. Incentive norms in criminal law are an independent type of criminal law norms, a distinctive feature of which is a specific method of criminal legal action, expressed in the encouragement of socially useful behavior by excluding criminal liability, exemption from criminal liability or punishment, or mitigation of punishment. In other words, the lawful behavior of a person is legally encouraged by excluding,

mitigating or completely eliminating the adverse consequences provided for by the articles of the criminal law. It is the nature of the positive behavior of a person approved by the law and the use of the benefits provided for in the Criminal code in relation to the benefits that are clear distinguishing features that allow the specified category of norms to be delimited from the norms that prohibit, authorize and oblige.

According to A.M. Kasenov, the main distinguishing feature of these criminal legal relations is that the legal fact associated with their occurrence is not the commission of a crime by a person and not bringing him to criminal responsibility, but the lawful behavior of a person corresponding to the model of positive behavior, enshrined in incentive criminal law [3, p.24]. After analyzing this area of criminal law, R.R. Shakurov gave a more detailed definition of this concept «Incentive norms stimulate lawful behavior by establishing a certain type of incentive associated with the full or partial release of a person from criminal law coercion [4, p.21].

Based on the foregoing, the following features inherent in incentive norms can be distinguished: incentive criminal law norms are a specific category; incentive criminal law norms do not enforce certain behavior, but stimulate, approve of it; incentive criminal law norms stimulate future lawful behavior; regulate certain criminal-social relations, which are primarily aimed at preventing crimes. An important issue in the problem of incentive norms of criminal law is the issue of their classification.

According to a number of Russian scholars, the norms of the General part of criminal law are of a positive-normative nature and there are the following types of such norms: a) mitigating (privileged) norms, such as probation, parole, mitigation of punishment; b) permissible norms, for example, norms that give a person the right to such protection, as necessary protection, to harm a person who has committed a socially dangerous act; c) release from criminal liability, for example, release from criminal liability due to the expiration of the statute of limitations, release from liability due to illness and norms that do not fall into the group of mitigating norms [5, p. 86-87].

As one of the most successful options, one can single out a classification that takes into account the criterion of the orientation of socially beneficial behavior for society and the state, proposed by V.A. Eleonskiy [6, p.52]. According to this classification, incentive norms of criminal law are divided into the following groups: 1) norms that encourage the social and legal activity of the individual; 2) norms encouraging refusal from further criminal activity; 3) norms encouraging correction and re-education of convicts.

In terms of content and depending on the location in the General and Special parts of the Criminal code, incentive norms can be divided into general and special ones. The basis of such a classification is not so much the place of the norm in the system of criminal legislation, but rather its essence, which reflects its form and content.

The structure of general incentive norms determines the conditions and grounds for the application of the norm, as well as the types of incentive norms. Special incentive norms are characterized by a number of specific aspects. First and foremost, it takes into account positive behavior after the commission of a crime. Secondly, it is directly related to the structure of a specific corpus delicti.

That is, the legislator singled out certain elements of crimes, taking into account the level of their public danger, the object of encroachment and the amount of possible damage caused. Another feature of special incentive norms is the form of their expression, which are always located after the aggravating or qualifying parts of the corresponding corpus delicti [7, p. 7].

Incentive norms provided for in the General part of the Criminal code of the Republic of Uzbekistan cover not only the encouragement or positive assessment of a person's active behavior, but also the legal consequences that may arise as a result of their application.

For example, voluntary refusal to commit a crime (part 5 of art. 26, art. 30 of the Criminal code), surrender (paragraphs "a", "b" part 1 of art. 55, articles 66 and 71 of the Criminal code), sincere repentance (paragraphs "a", "b" part 1 of art. 55, part 2 of art. 71 of the Criminal code), active assistance in disclosing crime (paragraph "b" of part 1 of art. 55, art. 66, part 2 art. 71 of the Criminal code), voluntary redress of the harm caused (paragraph "b" part 1 of art. 55, articles 66 and 661, part 1 of art. 71 of the Criminal code), exemption from criminal liability in connection with reconciliation (66<sup>1</sup> of the Criminal code), impeccable behavior (art. 70 of the Criminal code), conscientious attitude towards work (articles 73, 74, 89, 90 of the Criminal code), conscientious attitude towards education (articles 70, 89, 90 of the Criminal code), assistance in preventing, disclosing a crime or in identifying and exposing the organizers or other accomplices (part 2 of art. 71 of the Criminal code), compliance with the requirements of the established regime provided for a certain type of punishment (articles 73, 74 of the Criminal code) [4, B.11-12].

Some corpus delicti of the Special part of the Criminal code contain special incentive norms. The peculiarity of these norms is that they imply release from criminal liability, punishment or non-assignment of certain types of punishments for voluntary refusal to commit a crime or frank confession and assistance in uncovering a committed criminal act, depending on the nature of the crime and the level of its public danger. As a result of the analysis of special incentive norms, they can be divided into three groups: 1) norms providing for exemption from criminal liability (corresponding parts of articles 155, 157, 160 of the Criminal code); 2) the norms providing for exemption from criminal punishment (the relevant parts of articles 155, 157, 159, 160 of the Criminal code); 3) norms providing for the non-application of one or another type of punishment (part 4 of article 167, part 5 of article 168, part 4 of article 173, part 4 of article 175 of the Criminal code, etc.) [7, p. 8].

According to D.R. Kurbanov, the incentive norms of the current Criminal code reflect: 1) release of a person from criminal liability, mitigation of punishment or elimination of other negative criminal consequences of a criminal act for a person; 2) a positive assessment and stimulation by law enforcement agencies and the court on behalf of the state of the positive behavior of the subject after the commission of a crime [8, p.18].

In the criminal law doctrine, incentive norms are also classified according to other criteria. For example, depending on the time of the crime, applied: before the start of the crime; during the commission of a crime; after the commission of a crime [9, p.10-11].

Some authors classify such norms as sincere repentance for an act, circumstances precluding the criminality of an act, while others include voluntary refusal to commit a crime: 1) norms related to the promotion of socially active behavior of a person; 2) norms on encouraging socially useful behavior of a person in connection with refusal to continue criminal activity; 3) norms on the encouragement of positive behavior after the commission of a crime [10, p.55-57].

In our opinion, this classification covers all aspects of incentive norms provided for in the criminal legislation of the Republic of Uzbekistan.

Among scientists at the doctrinal level, a lot of discussions are caused by the norms about the circumstances excluding the criminality of the act. Some experts classify them as incentive [11, p. 26-29], others note that these norms do not have criminal legal incentives [12, p. 398]. On this fact, N.I. Zagorodnikov and N.A. Struchkov wrote that "the norms establishing the institution of necessary defense and extreme necessity are not encouraging, because they do not add anything to the scope of citizens' rights, do not give him any new benefits" [13, p. 53].

The point of view of V.A. Eleonsky, Yu.V. Golik and others that the incentive norms include necessary defense, extreme necessity, mitigating circumstances, the prescription of criminal proceedings, the prescription of the execution of the conviction, is criticized in the scientific

literature of H.D. Alikperov. He believes that “firstly, qualitatively heterogeneous norms are listed separated by commas, some of which establish the legal consequences of active actions (for example, necessary defense), while others, so to speak, “take into account” the existence of circumstances that make it senseless to punish a person (for example, prescription of criminal prosecution). Secondly, the legislator permits and justifies such actions of citizens due to the extraordinary nature of such situations and due to the fact that the law enforcement agencies, for one reason or another, could not protect a law-abiding citizen from the criminal encroachment of the attacker”[14, p. 110].

In turn, the question arises "on the basis of what criteria are incentive norms determined?" or all the norms of criminal law providing for the release of a person from responsibility and punishment, circumstances mitigating punishment or excluding the criminality of an act belong to incentive norms.

It should be pointed out that not all rules excluding criminal liability or exempting from criminal liability or punishment can be called incentive rules. The fundamental criterion for such a distinction is the very legal nature of incentive norms, expressed in their definition.

According to S.I. Kurilov, incentive norms are aimed at subjects of criminal law who take an active position in combating crime, that is, they perform proactive actions that are opposite to the commission of crimes. These actions can be called anti-criminal behavior [15, p. 158].

According to R.R.Shakurov, incentive norms provided for in various articles of the General part of the Criminal code, including confession, frank confession of guilt, active assistance in solving a crime, voluntary compensation for damage and others are not only criteria for assessing his behavior, but it will also allow him to make an informed choice of how to behave after committing a crime [16, p.6-7].

When deciding whether to recognize a particular norm, which provides, for example, exemption from criminal liability, as incentive, first of all, it is necessary to take into account whether the specified rule provides for the use of the incentive measures contained in it as a mandatory condition for the use of socially useful behavior of a person. So out of 7 norms that exclude the criminality of an act, only 5 relate to incentive norms. It cannot be recognized as incentive norms of Art. 36 "The insignificance of the act", Art. 40 "Execution of an order or other obligation", Art. 411 "Physical or mental coercion or threat" of the Criminal code of the Republic of Uzbekistan. In these articles, socially useful behavior is not encouraged, but rather humanism is manifested on the part of the state, taking into account that the harm caused by a person to social relations protected by criminal law is the result of coercion or other circumstances.

According to the same criterion, only certain types of exemption from criminal liability and punishment belong to incentive norms. So according to art. 65 of the Criminal code of the Republic of Uzbekistan, the basis for exemption from criminal liability is not the lawful post-criminal behavior of a person, but an objective change in the situation, as a result of which the act committed by the person has lost public danger. Upon release from criminal liability on the grounds provided for by art. 64 of the Criminal code, it is not so much about the behavior of the person who committed the crime in need of encouragement, but about the shortcomings of the investigation and inquiry bodies that could not bring the person to criminal responsibility.

The same can be said about the norms providing for the release of a person from punishment or mitigation of punishment. Of the 7 articles of this category (Articles 69-76 of the Criminal Code), contained in the Criminal Code, only three - Articles 69, 72 and 75 the Criminal Code are not incentive norms. Compare Art. 73 "Conditional early release from serving a sentence", Art. 74 "Substitution of punishment with softer" of the Criminal Code and Art. 75 of the Criminal Code "Release from punishment due to illness or disability." By the nature of the incentive measure

envisaged, these norms are the same. However, by its legal nature, the rule providing for parole from serving a sentence or replacing a sentence with a softer one is encouraging, since it is designed to stimulate and approve of the correction of convicted persons. The norm that establishes exemption from serving a sentence due to illness or due to disability is not encouraging, since here we are not talking about encouragement, but about the manifestation of humanism on the part of the state.

One of the features of incentive criminal law norms is that any change or addition to the criminal law can, to one degree or another, affect these norms. In other words, incentive norms are the most developing, liberalized part of criminal law and one of the most discussed issues by the public [17].

The analysis of the institution of incentive norms in the criminal legislation testifies to a stable positive trend of an increase in their number and an expansion of the types of models of encouraged positive behavior regulated by these norms.

The increased requirements and tasks of a successful fight against corruption crimes require the use of other means from the arsenal of the criminal legal struggle, in particular, incentive criminal law norms. For example, the introduction of incentive norms in Articles 192<sup>9</sup>, 211, 212, 213 of the Criminal Code of the Republic of Uzbekistan is an important step in the anti-corruption policy of the state, which has expanded the possibilities of exempting persons cooperating in the fight against corruption crimes from criminal liability.

It is known that a bribe-giver, a bribe-taker and an intermediary are participants in many corruption transactions. However, the envisaged in the above articles of the Criminal Code of the Republic, incentive norms apply only to the bribe giver and the intermediary.

At the same time, such regulation of the issue contradicts the principle of equality before the law, since two of the three persons involved in a corruption transaction - the bribe-giver and the intermediary - acquire a privileged position in comparison with the bribe-taker.

Therefore, it is advisable to provide for a similar incentive rate in Articles 192<sup>10</sup> and 210 of the Criminal Code of the Republic of Uzbekistan. Armenian specialist M. Markosyan, supporting the author's point of view, expresses the opinion that this incentive norm should be provided only for the main body of bribe-taking, since the presence of qualifying signs of bribe-taking gives the crime an extraordinary social danger, in which the positive post-criminal behavior of an official can only affect the amount of criminal punishment assigned to him [18].

Some experts believe that the system of legislative acts providing for monetary and other material incentives for citizens who actively contributed to the prevention and suppression of antisocial manifestations is an important direction of the institution of incentive norms. The adoption of such normative acts is the development of an active life position of citizens, based on the objective benefits of lawful behavior [19, p. 163].

However, in our opinion, this reasoning is erroneous, since incentive norms are determined by criminal law and are associated with a criminal-legal assessment of a socially dangerous act of a person encroaching on criminally protected objects. The so-called "bonus" public relations are regulated by the legislation on operational-search activities and administrative law.

Knowledge and correct application of the provisions of the incentive norms of the criminal law is one of the criteria for determining the professional competence of law enforcement and judicial officials. Of course, the presence of incentive norms in the criminal law is a criterion for assessing the pre-criminal and post-criminal behavior of a person, but it is also important in preventing crime, educating people in the spirit of observing the Constitution and the laws of the republic.

In general, the most relevant aspect in solving the problem associated with the difficulties of active

use of law enforcement and judicial authorities in law enforcement, as well as in order to resolve the debatable dispute of scientists about a single list of incentive norms enshrined in the current criminal law, would be proposed to be included in the criminal legislation a special norm that would expand the scope of implementation of incentive norms aimed at criminal-legal prevention of crimes, defining in it the concept, types, grounds for the application of the corresponding incentive norms of the General and Special parts of the Criminal code, as well as develop specific recommendations for expanding the scope of incentive norms in criminal law. To increase the effectiveness of incentive norms: a harmonious and at the same time complex in its hierarchy system of incentives is needed, which should take into account the individual characteristics of the individual and the interests of society and the state.

The implementation of the legislative proposals presented in the article to expand the possibilities of applying incentive criminal law norms in the fight against crimes will contribute to the improvement of the criminal policy of the Republic of Uzbekistan.

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