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THE LEGAL NATURE OF TREASURY REVENUES DUE TO STATE PAYMENTS: THE COMPARISON OF COMPETING METHODOLOGICAL APPROACHES

State finances have been considered as the public phenomenon for over one thousand years. Almost as old as state finances are also theoretical representations about them. This is the point to which are devoted many scientific works from all topical problems of social science. From the practical point of view this question has been one of the most actual. In fact, eight hundred years ago main social collisions of public finance questions generated Parliament in England, as public institute and parliamentarism, and one of the greatest achievements of human civilization. But the convincing answer to the question about the valid legal nature of the public finance, the great part of which make the treasury revenues in nation-wide duties payments has not been found yet. There exist plenty of various theories and doctrines on this problem, a part of which are imposed on one another to a certain measure and another part – mainly mutually exclusive and opposite. In the given report we compare the western financial – legal doctrine about the nature of state finances and the newest views of them in some post-social countries, first of all, in Ukraine and thus try to understand this unique phenomenon of a human society deeply, and adequately.

1. The western scientific idea on the legal nature of the public finances

As the analysis convinces, the real economy is always a mixed economy, where the state acts not only as an administrative instance, but also gives the society unique services, which cannot be provided by private market for different reasons. The question is, first of all, blessings which are not commodities or wares but, which have a great influence on the well-being standard and quality of life. To these blessings belong such benefits and services for the society, as defense of the country, national safety and the law and order; an accomplishment

and the comfortable existence, provided by economic objects, social and household infrastructure; environmental protection; education; health services; science, sports and etc.. Western financial and economic and legal literature has developed a classification of similar blessings in details, which have received the generalizing name **of the public blessings**.

American scientists Nobel prize winners James Bukenen and Paul Samuelson, developed the theory of the public blessings. In development of this concept have also taken part Leif Johansen (Sweden), Richard Masgrev, Alan Peacock (Great Britain), John Hed (USA) and others. **The idea of the public blessing has got crucial importance in the theory of state finances**. As a category of humanistic thinking, the ethical program and a material condition of social life, the public blessing in association with concepts of money and the market became initial logic foundation, a starting point of a theoretical explanation of the economic nature of state finances. Supporters of this theory name state finances as a public or fiscal economy, suggest measuring its productivity in volume and quality of the public blessings.

The blessings of public usage differ from the usual market goods by indivisibility into separate parts, for the purpose of individual consumption, and also that the certain amount of the public blessings can satisfy the needs of additional consumers without reduction of a level of satisfaction by the same needs of already available consumers. Defense is characterised to by the classical example of such situation (the blessing of external national safety) which, as it exists, does not decrease in process of an increase in population of the country. The market is not capable of reacting spontaneously to similar needs and satisfying them as the public blessings have another feature as well that makes it impossible to deprive of them consumers who by virtue of these or those reasons do not pay for them. The person who, for instance, evades from tax payment and consequently does not take participation in financing a budgetary defense expenses, nevertheless is not excluded from consumption of the blessing of national safety. So, the public blessings have the following prominent features: indivisibility in consumption and gratuitousness of using them because of an opportunity of non-payment by virtue of conscious motives, the casual or compelled circumstances. Under these conditions usual market mechanisms cannot satisfy the needs in the blessings, necessary for state functioning maintenance, and development of the society. The almighty private sector on the commodity market is ineffective towards the public blessings, which can be said in terms of the subjective theory of cost that limiting public benefit of such blessings exceeds their social cost limiting.

Last statement requires a separate explanation. For example, the state system of health services financing is more comprehensive and, thus, is useful in comparison with medical service which is provided by private insurance companies maximizing the incomes. Public practice convincingly confirms that the offer of the blessings of medical service in socially effective amounts, i.e., sufficient for

health services of all the population is unprofitable and profitless for the private markets commercialized medical services. “In the same way, – writes David Hyman (USA), the author of the university textbook “Public finances”, – direct grants or subsidized students loans of higher educational institutions are justified first of all by that argument that the government should encourage higher education as limiting benefit of education for a society as a whole prevails the sum of individual limiting social convenience of each student in particular”¹. According to the theory of utility, which refers to common sense, when limiting public cost, for example, ballistic missiles exceed their limiting public benefit, the conclusion follows with an inevitability that there are more rockets than it is necessary for guaranteed defense of the country.

From the point of view of money usage and the prices as the elements of the market, three kinds of financial operations are allocated: financing of the blessings and services which are given consumers in the natural form (management, defense, law); monetary payments of non-market character, which are carried out through the budget (transfer payments, grants); purchases of the goods and services for the state consumption at market prices (the state contracts and orders, the state in a role of the employer). Thus, in modern state budgets operations of non-market character (the blessing and service by nature (in kind)), quasi-market (the budgetary grant has no price, but it is given in the monetary form) and classical market character (payment by the state of goods, services of a labor at market prices) are displayed. For the state “to give” the blessings is meant to pay them, to finance due to budget funds. So due to the concept of the blessing logical-methodological connection between the market and the state is provided and economically based, and effective distribution of available resources between a private sector and a financial system is given reasons, a balance between economic efficiency and public expediency is proved.

Under efficiency there is conformity between resources usage and a standard of well-being of separate people in interpersonal comparison, and also societies on the whole. The ideal of efficiency at a national level considers a situation, when available (always limited!) resources are allocated between the market and the budget, i.e., placed between private and state sectors of economy, in such a manner that provides their maximum effective utilization. In the economy, facilities with the public blessings of such character of resources distribution have received the name of “effective distribution of Pareto” (named after the Italian economist and sociologist Vilfredo Pareto).

Under the conditions of achievement of **Pareto's optimum**, any change, which lifts an effective proportion of intersector resources distribution, means improvement of maintenance of one sector due to deterioration of another. The

¹ Hyman D.N., *Public Finance. A Contemporary Application of Theory to Policy*. – Chicago: The Dryden Press, 1990. – PP.72–73.

material well-being depends from each of the sectors of social groups of the population and a financial condition of areas of economy facilities, and also an interpersonal parity of personal well-being are accordingly redistributed. Certainly, not always an optimization of economic parameters of private managing is possible under the condition that parameters of a financial condition of the state did not worsen. And on the contrary – tactical improvement of quantitative parameters of public finances should not be necessarily a result of qualitative changes in economy. A vivid example of the last point became the State budget of Ukraine in 2005. In a situation when these or other actions benefit in market sector, but bring harm to economy of the public blessings, Pareto's optimum is inaccessible. At an inaccessibility of the Pareto's optimum condition of the first order of the theory of the general prosperity and a public choice offer so-called suboptimum decisions of the second, the third, etc. order.

Such decisions in this or that measure come nearer to Pareto's optimum, but do not answer it completely. Being one of the variants of a social and economic situation, effective distribution according to Pareto's optimum remains an ideal, a normative criterion, the original ethical reference point, appropriate but not real in legal measurement. Nevertheless nothing prevents from calling creators of internal and foreign policy: „Be guided by Pareto's optimum, making a decision of financial problems of resources accommodation, stabilization of a social and economic situation, redistribution of the national income!” Usage of the only existed normative criterion of public welfare to the market and budgetary phenomena equalizes them as complementary parts of the only existed economic whole. In both cases the optimality is focused on the balance achievement of the economic interests, aimed at comprehensive social harmony.

The authors of the concept of the public blessings emphasize, that **leaving the blessings for satisfaction of the certain needs outside the market, the blessings of public using do not drop out of a circle of market concepts**. In works of the western theorists of state finances the budget and budgetary process are described analogically to market mechanisms of revealing supply and demand, prices formation for the public blessings and satisfaction of needs in them. Because of the budget, similar to the market or a stock exchange, exchange acts of sale and purchase, operation of a fiscal exchange “taxes – the blessings” are carried out. According to the conception of a fiscal exchange through the system of state finances the individual exchange agreement between private persons and the state is formed. This agreement is carried out on the basis of value judgment of utility of the state services by individuals – consumers and comparison with subjectively estimated burden of the tax payments necessary for financing of them. It can be imagined as fiscal-economic interaction like self-taxation in the understanding that taxes act as the introduced representative authority form of money attraction and participation of the population in financing the necessary expenses.

In the context of the theory of the labor cost, the similar argument bases on the subjective theory of value, especially on its version – marginalism. According to logic of the last, the exchange under the circuit “the blessings – taxes” is prolonged until limiting utility of the state services exceeds their limiting tax „price”. At the moment when limiting values of individual convenience and their allowable fiscal prices, provided by the state, are equalized, further continuation of the exchange agreement becomes economically unprofitable for the tax bearer. The same situation has existed in Ukraine for many years. Analogically to a market choice, this discrepancy finds out a public choice – a process in which the concept and tools of the economic analysis are applied to acceptance by political decisions. The political reaction on the economic non-equivalency between the utility of the public blessings (services) and their tax prices is a refusal to support at elections that government which, in the tax-payer’s view, does not provide appropriate balance between utility of the blessings and their total cost. Therefore shattering defeat of a presidential party “the National Union “Our Ukraine” at parliamentary elections in spring, 2006 in Ukraine is a natural consequence of its practical politics. For the first time a balance of this kind was theoretically described by a Swedish economist Erik Lindal in 1919. If the given sum of budgetary charges answers the balance according to Lindal, i.e., is equalized with limiting utility of that part of the income which is paid to the state in the form of tax, and the maximal utility of the state activity in the society interests is provided.

The concept of a fiscal exchange recognizes that feature of market interpretation of state finances that the factor of subjective cost proves only at an individual level. Here the state acts as the supplier of certain blessings and services on the financial conditions, determined by a public choice of their consumers as voters and tax bearers at the same time. But from the state position indivisibility and non-competitiveness of the public blessings make them accessible even to those consumers who do not pay the given blessings. Certainly, such opportunity does not suite market principles. As a result, there appears a situation, which in the western financial and economic literature has been given the name “problems of the free rider” (Free Rider Problem) – the opportunity of using the public blessings, without financing their cost. Such specificity of the public blessings objectively pre-determines their compulsory payment, which is provided by the government through the fiscal-budgetary system. And contrary to all restrictions and cautions the market methodology of interpretation of the nature of public finances is rational enough and convincing to occupy dominating positions in the non-Maxist financial theory of the West. “**State finances**, – a well-known French scientist – financier Paul Mare Godme writes, – is **public riches** (underlined by – R.H.) in the form of money and the credit which is at the disposal of the state organs”².

² Годме П.М., *Финансовое право*. Пер с франц. – М.: Прогресс, 1980– С.37. *Handbook of Public Economics*/Ed. by Auerbach A.G., Feldstein M. – Amsterdam: North-Holland, 1985.

Similar interpretation follows from logic of an identification of public finances with the state managing (“public economics”) which is similar to a market economy, deals with needs, the blessings, money, pricing in their interrelation. The contents of textbooks on “public economics”, including themes about the State expenditure, taxes, accommodation of resources and distribution of incomes, in effect, repeats classical subjects of public finances³. A term “the state managing” already aims at a pragmatism. Therefore a purpose of a science about the state managing will consist in revealing and illumination of the “best” ways of competition of money resources and the organization of their expedient expenditure with the purpose of realization of the state functions. Except for the decision of classical financial, political and defensive tasks, the modern state carries out social function of public welfare. The last function includes everything, that provides the population with a material well-being, comfortable and safe existence. **Using the finance the state of the common well-being, according to I. Bentham’s formula, takes part in creation of “the greatest happiness for the greatest quantity of people”.** And by criterion of the Pareto’s optimum – also provides, most socially, the consistent and socially comprehensible form of interpersonal distribution of well-being.

To the point is to remind thus, that the western tradition of an identification of public finances with a state managing in due time was also shared by representatives of a domestic financial science. So, Nikolay Dobrilovsky, the professor – emigrant of the Ukrainian economic academy, in pre-war Czechoslovakia wrote that the states (the public unions) worrying about national education, justice, protection of borders, health of citizens, ways of connection, etc., should also have corresponding means. “The validity of the public unions carries the name of a financial facilities, whose purposes are obtaining material means which are necessary for them for realization of the direct tasks and management of these means”⁴. Theoretically similar sights were proved by the reason, that between “the state, on the one hand, and between separate persons... out another, – there is an exchange agreement; the state satisfies certain needs of persons, and the latter pay for it some sums of money”⁵. At the end of the 1920s the author of the quoted words, a Ukrainian scientist and financier M.I. Mitilino explained the process of an individual estimation of an exchange of the state services for taxes, using a concept of limiting utility, “though the exchange act here is latent”⁶.

³ *Handbook of Public*/ Ed/ by Auerbach A. Feldytein M.- Amsterdam North- Holland, 1985. – P.87.

⁴ Добриловський М., *Основи фінансової науки. Курс лекцій – Подєбриди*: Українська господарська академія в ЧСР, 1934. – С. 1.

⁵ Мітіліно М.І., *Основи фінансової науки*. – К.: Державне видавництво України. 1929. – С. 114.

⁶ *Ibid.* – С.115.

Unfortunately, development of these ideas in the domestic financial science was violently stopped. The subjective – psychological school of value on a domestic field appeared incompatible with the communistic doctrine, though in different variants took a dominating place in the financial – legal theory in the western countries. Conformable to the western doctrine, the theory of public finances was declared “vulgar”, and its adherents were subjected to reprisals. Instead of the market concept here came ideologically engaged, class confrontational interpretation of public finances as “specific” industrial and economic (monetary) attitudes. They were deprived of fundamental economic characteristics, such as: properties and possession, quantitative definiteness and resource limitation, risk *and* uncertainty. In fact “the attitudes” were not exposed to impartial measurement, therefore their opportunities were unlimited, and the concept of the property of them did not exist at all. Such conceptual design corresponds best of all to scholastic spirit of the communistic Utopia and theoretically propped up irrational expending economy. “The attitudes”, in effect, excluded a qualitative and quantitative condition of public finances from influence of human, private interests and put into dependence on action of “objective” economic laws, automatically transforming the person into the blind instrument of fate.

Except for studying especially financial – legal phenomena, the merit of the western scientific lawyers – financiers consists in building financial – legal knowledge on the facts and conclusions of additional sources: objective processes of economy and the state life, the subjective mood, inherent in mass consciousness; general scientific paradigms of financial, financial – legal doctrines and state science and (only in part) the installations of politic-ideological elite. As a consequence, to complex financial theories of the West enter economic – empirical, social – psychological, philosophical – ethical components, collected and covered in foreshortening of pan-marketing methodology. Innovative sources of intellectual and ethical ideas have generated modern synthetic understanding of a substance of public finances.

Theorizing on the basic concepts of the blessings (the public goods) has opened before a financial – legal science new prospects, political decisions concerning volume and structures which are accepted during a public choice, and material realization carried out through tax-budgetary mechanisms. Due to expansion of the object of science of the financial right the person has been put in the center of research with their individual needs, interests, motives of public behaviour. Around these cognitive cells there was a whole anthropological direction of financial – legal knowledge – fiscal sociology, which was authorized by the humanistic principle of leadership of the person in attitudes concerning the public finance. From pages of scientific treatises of the western authors public finances have become a sphere of the validity which is on a crossroads of economy with a policy, it is an element of bipolar market-state socioeconomic system. Public finances and their legal regulation is an amalgam of the complex, mixed phenom-

ena. Nevertheless presence of quasi-market and extra-market features do not confuse followers of a position that the market is a key concept for an explanation of the nature of public finances both by similarity, and by contrast with it. Theorization of the public finance thoroughly penetrated with idea of the market as comprehensive social and economic reality, as a universal logic-cognitive category, and the financial law in view of its requirements arises as a measure of appropriate behaviour of its subjects concerning the public finance.

2. Theory-methodological approaches to understanding of the legal nature of the public finance in Ukraine and some other postsocialist countries

The newest theory of the public finance in Ukraine has only begun to be formed. There is an initial quantitative accumulation of knowledge of the given phenomenon, therefore it is not the time to bring even intermediate results. Nevertheless, in our opinion, it is already necessary in the domestic theory and practice of the public finance to bring in urgent serious corrective amendments. In the Constitution of Ukraine which acts as the quintessence of the theory and practice of the state and a society in sphere of the public finance, approaches to their understanding are planned in the most general features and, at least, inconsistent. So, in item 1 to article 13 of the Constitution of Ukraine in which natural objects of the property right of Ukrainian people are fixed, it is marked: “The Earth, its bowels, atmospheric air, hydrogen and other mineral resources which are within the limits of territory of Ukraine, natural resources of its continental shelf, an exclusive (sea) economic zone **are objects of the property right of Ukrainian people** (underlined by me – R. H.). On behalf of Ukrainian people **the right the owner is carried out by organs of the government and institutions of local government in limits determined by the Constitution**” (underlined by me – R. H.). Budgetary funds of the state are not mentioned, as if they were distinct from the legal nature natural of objects of the property right of Ukrainian people.

The official answer to this question, in our opinion, it can be found in article 95 of the Constitution of Ukraine whose item 1 says: “the Budgetary system of Ukraine is under construction on the basis of fair and unbiased distribution of **public riches** (underlined by me – R. H.) between citizens and territorial communities”. Categories “**the property of Ukrainian people**” and “**public riches**” are synonyms that testify the identical legal nature of the corresponding public phenomena displayed in specified categories. Nevertheless the legal mode of natural objects of the property right of Ukrainian people and the right of a public property of the Treasury is not identical, as convinces the system analysis of the Constitution of Ukraine and other current legislation of Ukraine, and concerning the last funds are even inconsistent.

In particular, basing on item 7, part 1 of article 92 of the Constitution of the state which says, that “the legal regime of the property” “is determined” by “laws of Ukraine”, the domestic legislator has fixed the right of a state ownership on money resources which belong to the state Ukraine in article 326 of the Civil code of Ukraine. And in article 34 of the Law of Ukraine “About the property” has specified objects of the right of a state ownership means of the State budget. It has made possible application to public financial resources the civil doctrine approaches which are, in our opinion, methodologically and theoretically erroneous, and practically dangerous.

One of leaders of domestic theories in civil law Y.M. Shevchenko in the comment to article 326 of the Central Committee of Ukraine reasonably rebukes: “the accessory role of property is inalienably connected to its realization, which is displayed in an item 319 C.C. **This rule concerns also the right of a state ownership** (underlined by me – R. H.). The maintenance of the right of a state ownership has been made competency of possession, with use and order carried out by corresponding bodies of the government”⁷. Was the state allocated actually on behalf of corresponding bodies such powers concerning means of the State budget? Some theorists lawyers – financiers answer the given question assertively.

For example, M.V. Karasiova sees means of the State budget in competency of possession of the state in the maintenance of articles 215 and 244 of Budgetary codes of the Russian Federation. From the analysis of these articles it follows, as she marks, that the Russian Federation on behalf of Federal exchequer is the owner of federal budgetary funds. The federal exchequer possesses the uniform account of the federal budget which is in the Bank of Russia (article 244 of the Budgetary code of the Russian Federation) and other accounts of the federal budget in the authorized banks as well. Thus, as emphasizes M.V. Karasiova, budgetary funds are on the account in the Bank of Russia not as monetary denominations but in a non-cash form, i.e., budgetary funds are as a prerequisite, an object of the property right of the Russian Federation, subjects of the Russian Federation and municipal formations not as things⁸. From here the Russian Federation, subjects of the Russian Federation and municipal formations own budgetary funds not as any goods, and have in relation to budgetary funds the right of the requirement to Bank of Russia and other powers of banks⁹.

⁷ Див.: *Науково-практичний коментар Цивільного Кодексу України: У 2 т. / За ред. О.В. Дзери (кер. авт. кол.), Н.С.Кузнєцової, В.В.Луця. – К.: Хрінком Інтер, 2005. – Т. 1. – С. 543.*

⁸ Див.: Брагинский М.И., Витрянский В.В., *Договорное право. Кн. 1. Общие положения.* – М., 2001. – С. 284–295; Ефимова Л.Г., *Банковское право.* – М., 1994. – С. 181; *Гражданское право. Т.1 / Под ред. Е.А.Суханова.* – М., 2002. – С. 511, 520.

⁹ Див.: Карасева М.В., *Финансовое право России: новые проблемы и новые подходы // Государство и право.* – 2003. – № 12. – С. 7–8.

Competency of using, for M.V.Karasiova, budgetary funds on the part of the Russian Federation, its subjects and municipal formations is carried out through an expenditure of these means. The last is caused by the fact that useful properties of money resources are shown not differently from their functions (payment, references, etc.), for whose realization the owner should enter into legal relation with other subjects. The legal regime of the state and municipal charges are determined in articles 65–68 of the Budgetary Code of the Russian Federation. Thus, on M.V. Karasiova's idea, using budgetary funds on the part of the above mentioned proprietors is inseparable from ordering them. The law on the budget for the next fiscal year is that act in which Russian Federation, its subjects and municipal formations express the will on alienation of budgetary funds which will act for them according to this law to during the next financial year. Taking into account, that the property right to budgetary funds is not a right to a thing, but the right to the right of the requirement, the Russian Federation, subjects of the Russian Federation and municipal formations carry it out using it and ordering the rights of requirements¹⁰.

As the result, M.V. Karasiova's fluent analysis of a design of the ownership of the state of budgetary funds seems to be in the form that has all attributes of classical civil triads of the property such as possession, use and command. But is there actually such ownership of the state of budgetary funds in the sense, that the state can put them in pawn, for example, temporarily, or concede them at own discretion to other subjects or use any other competences, for example, to present, them like any real proprietor in a classical variant can. The system analysis of the Constitution of the Russian Federation does not give bases for an affirmative conclusion concerning the question. Item 71 of the Constitution of the Russian Federation only affirms, that the Federal budget "is" in charge of the Russian Federation"¹¹. The legal nature and a legal mode **of the property right** and **the right of conducting** are absolutely different. In particular, in an explanatory dictionary of Russian language S.I. Ozhegov explains that to know (officially) means "to manage, operate"¹².

In the Constitution of Ukraine the right nature and a legal mode of the property with support of the State budget are determined incomparably more adequately, more precisely, in our opinion, than it is made in the Constitution of the Russian Federation. Nevertheless in this case this definition has a defect a simplified nature, fragmentariness which, certainly, is an inevitable consequence of conditions at that time and modern doctrinary development of this problem. In particular, in article 95 of the Constitution of Ukraine it is specified: "the Budg-

¹⁰ Див.: *ibid.*

¹¹ *Конституции государств Европы: В 3-х т. Т.3. / Под ред. А.А.Окунькова. – М.: Изд-во "Норма", 2001. – С. 31.*

¹² Див.: Ожегов С.И., *Словарь русского языка: Ок. 53000 слов. – М., 2003. – С. 70.*

etary system of Ukraine is under construction on the basis of fair and unbiased distribution of **public riches** (underlined by me – R. H.) between citizens and territorial communities. **Law on the State budget of Ukraine defines any charges of the state on social needs, the size and a target direction of these charges**¹³ (underlined by me – R. H.). As we see, the category of **public riches** very precisely and unequivocally specifies a special-purpose designation of the specified monetary fund and is used for a designation of the legal nature and a legal mode of the property right with support of the State budget of Ukraine. Secondly, the state in this design is obliged that the person, authorized to carry out only actions is stipulated by the society, i.e., he is not the real owner of the state budget of Ukraine but only on behalf of the true proprietor – societies – carries out its rights “only on the basis and within the limits of powers and in a way which are stipulated by the Constitution and laws of Ukraine”¹⁴.

Thus, to open the legal nature and a legal mode of means of the State budget through civil doctrinal approaches and categorically-determined device of a science of civil law, in our opinion, is methodologicalally vicious. The state, carrying out on behalf of a society the property right with support of the State budget, should always operate in public interest, therefore procedure of realization by it of its right should always be strictly determined by the objective right. In other words, if the objective right adjusts the right of a private property by an establishment of those actions which the owner will carry out, not to exercise the subjective right of the public property is always opportunity for activity severely determined by the corresponding law on satisfaction of public interests. Therefore it is hard to agree with a conclusion which “the subjective right of a private property and the subjective right of a state ownership have the identical maintenance”¹⁵.

Conclusions

The analysis of dominating financial – legal doctrines and practical regulation of treasury revenues due to state payments in the countries of the West, on the one hand, and in Ukraine and some other post-socialist countries, of financial convinces in the first case on a basis of the surpassing majority of doctrines of the outlined problem the nature-positive understanding of the right lies, is precises by a principle of leadership of the right that can be seen, while doctrinal approaches and practical decisions of problems of a legal mode of the public

¹³ Конституции государств Европы: В 3-х т. Т.3. / Под ред. А.А.Окунькова. – С. 332.

¹⁴ Ibid. – С. 313.

¹⁵ Усков О. Ю., *Право государственной собственности в Российской Федерации*. – Белгород: Кооперативное образование, 2002. – С.73.

finance of the post-socialist countries still bear in themselves a patrimonial stain of etatism, penetrated through with ideas, positions, estimations and approaches of orthodox legal positivism. Direct practical consequences of these differences of the specified doctrines are applications of a legal regulation of the public finance of postmodernist approaches in the countries of the West, their use on the basis of a market principle of the transparent competition of the declared social needs. In Ukraine and other post-socialist countries the situation of basic inevitability of actually available legal modes of receipts in treasury behind nation-wide obligatory payments as public funds to their valid public – legal nature of public property takes place. This fact is especially dangerous under conditions of association of public authority and business, which is inherent in all postsocialist countries. Therefore it is entirely legitimate and without that the limited public financial resources in essential volumes that does not take into consideration their natural purpose – maintenance of public interests and are used for the even greater augmentation of private capitals, maintenance of private interests of oligarchical clans.

NATURA PRAWNA WPŁYWÓW DO SKARBU PAŃSTWA Z TYTUŁU OGÓLNOPAŃSTWOWYCH OBOWIĄZKOWYCH OPŁAT: PORÓWNANIE KONKURENCYJNYCH PODEJŚĆ METODOLOGICZNYCH

Streszczenie

Analiza dominujących w państwach zachodnich, z jednej strony, a w Ukrainie oraz niektórych innych państwach postsocjalistycznych, z drugiej strony, doktryn finansowo-prawnych i praktyki regulowania wpływów do skarbnicy państwowej z tytułu ogólnopaństwowych obowiązkowych opłat przekonuje, że w pierwszym wypadku u podstaw większości doktryn leży naturalno-pozytywne rozumienie prawa, podczas gdy podejścia doktrynalne i rozwiązania praktyczne problemów prawnych finansów publicznych w państwach postsocjalistycznych jeszcze nie wyzbyły się piętna etatyzmu, są wypełnione ideami i podejściami ortodoksyjnego pozytywizmu prawniczego. Konsekwencjami bezpośrednimi tych odmienności doktryn wyżej wymienionych jest zastosowanie w państwach zachodnich podejść postmodernistycznych w stosunku do regulowania prawnego finansów publicznych, wykorzystanie zasady przejrzystej rynkowej konkurencji. W Ukrainie oraz innych państwach postsocjalistycznych na razie istnieje sytuacja niedostosowania obecnych zasad prawnych wpływów do skarbnicy państwowej z tytułu ogólnopaństwowych obowiązkowych opłat, jak środków państwowych, do ich rzeczywistej natury publiczno-prawnej jako własności społecznej.