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**PUBLIC
FEES
IN
POLAND
AND
RUSSIA**
COMPARATIVE ANALYSIS



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GDAŃSK 2021

Legal status: 1.01.2021

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The research was financed by the Faculty of Law and Administration
of the University of Gdańsk and Department of Financial Law
of the University of Gdańsk

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Wydawnictwo Uniwersytetu Gdańskiego

ISBN 978-83-8206-251-9

Gdańsk University Press
ul. Armii Krajowej 119/121, 81-824 Sopot
tel.: 58 523 11 37; 725 991 206
e-mail: wydawnictwo@ug.edu.pl
www.wyd.ug.edu.pl

Online bookstore: www.kiw.ug.edu.pl

Printed and bound by
Zakład Poligrafii Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel. 58 523 14 49

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From the Authors

Budget and tax policy is the most important method of state influence on the market economy, ensuring the alignment of public interests with the interests of business and the population. In turn, the effective functioning of the budget system largely depends on what principles and methods are used to generate state revenues, and how well their conceptual model is chosen. The elements of modern state revenue policy in Russia are to reduce dependence on changes in world oil and gas prices, and to reduce the tax burden on businesses and the population in order to stimulate investment activity. The solution of these tasks is provided, among other things, by increasing the role of non-tax revenues, among which various fees, duties and quasi-tax revenues are allocated, established on a compensatory basis in order to cover certain state expenses.

The problems of the nature and conditions of the formation of state revenues in the form of fees and charges levied for publicly provided services and based on a combination of fiscal, compensatory and regulatory approaches are being updated in the context of the transformation of public finances under the influence of the transition to new technological structures. The introduction of modern digital platforms in the practice of public administration leads to a reduction in the licensing and control functions of state institutions, reduces the public costs

of public administration and creates a new content of mandatory payments, as well as new opportunities for their collection.

The research is aimed not only at theoretical justification of types and forms of public revenue, but also at identifying their essential legal characteristics, which will reduce differences in the application of state fees, form a regulatory framework for effective policy of their collection, taking into account the harmonization of the interests of the state and payers based on adjustments to tax and budget legislation.

The use of sovereign forms of public revenue generation essentially serves a twofold purpose. The first is a fiscal goal, anchored in the policy of the public law body (the state or a local government unit), which consists in the attempts to gain possibly highest proceeds from those sources of income. The other is the employment of the relationships that accompany generation of the funds, in order to affect the decisions (conduct, attitudes) of the entities burdened with specific forms of the levies. At times these goals get intertwined, making up a harmonious whole, sometimes priority must be given to non-fiscal goals over fiscal needs. An area where examples of the latter solutions can be found is the area of public fees.

Public fees represent the type of a sovereign form of public revenue that has limited fiscal significance. The said does not justify abandoning that type of public income, if any, or replacing it with other sources. The use made of the levies, both in the past and today, seems to be fully reasonable, for the task of public fees in the system of public revenues is not only to supply the system. The reason for their presence should also be sought in the vicarious functions of the levies in question.

As the application of public fees can influence the decisions (conduct, attitudes) of the entities to which they are charged and

shape economic and social relations, various manifestations of the impact may be talked of (prohibitive, preventive, repressive, compensatory, educational, psychological, informational, technical and financial). The functions should not, however, be treated on par with one another, as regards their role and meaning. The role of public fees as a sovereign form of public revenue depends on different factors, such as adjustment of the type and amount of a specific public fee to its object and the intended direction and intensity of impact, the legal structure of the public fee, the tangible and intangible perceptibility of its financial burden.

A normative and functional analysis of public fees, in conjunction with examination of the causes and effects of the changes made, allows attempting to assess the existing state of affairs and provide conclusions regarding the use of public fees in the future. It also provides grounds for comparison, a thing indispensable and priceless in this case.

At present, a new theoretical understanding of the problems of the economic content of state fees and the principles of their organization is required. Further development of the theory and development of mechanisms for effective distribution policies should ensure not only the effective implementation of fiscal goals, but also a positive impact on economic behavior. At the same time, the structural composition of the state revenue system remains insufficiently studied and requires a clear regulatory organization and adaptation to global trends. In this regard, the study of European and international experience in organizing public meetings is of interest to Russian practice.

The study, however, is not purely dogmatic – the presented work is also theoretical. When striving to formulate general statements about the studied legal phenomena, it also exploits the achievements of jurisprudence. In addition, an attempt is taken

to determine to what extent individual types of public fees (the sovereign forms of public revenue appearing under that name in the Polish and Russian fiscal system) are public fees in the strict (traditional) sense of the term, and to what extent they actually represent other types of levies.

No monographic study of public fees, viewed from a systemic and comparative perspective, has yet been undertaken in Poland and Russia. This publication should thus fill the gap in the field, if only to a certain degree.

We leave it to the reader to decide whether and how far the attempt has been successful.

Authors

Part I

PUBLIC FEES IN POLAND

Chapter I

Introductory issues – the conceptual framework and references

1. The scope and substance of a fee relationship

1.1. General remarks

A notion most controversial in legal writings, while vaguely defined in normative terms, is the concept of the public fee as an institution of law and a financial scheme. There is no unified view among the scholars, first and foremost as to the object of the fee, i.e. whether it is only official activities of public authorities that the fee may be applied to, or whether the latter can also pertain to the operation of public sector entities (public utilities).¹ Nor is there a widespread agreement as to the meaning of the compulsory nature of the public fee as a feature making it distinct from a price. It is sometimes emphasized in the literature that the public fee differs from a price in that no option to avoid payment of the fee is available.² The reasoning goes that as far as a price is concerned, the relevant person/entity may evade to pay it by

¹ Cf. J. Jaśkiewiczowa, *Elementy podatkowe opłat publicznych w Polsce* [in:] *Studia podatkowe i budżetowe*, Toruń 1964, p. 16; L. Adam, *Podatki i opłaty w kapitalizmie*, Warszawa 1962, p. 79.

² Cf. L. Adam, *Prawo finansowe*, Warszawa 1967, p. 139 *et seq.*

selecting another good or service or simply by refraining from consumption. In practical terms, however, both options mentioned above may also be limited. In addition, he that is expected to pay a public fee may choose not to enjoy a relevant performance of a public law body (the state or a local government unit) and thus to avoid making the payment, too. Significant (while disputable and normatively indistinct) is location of both the scheme of the public fee and that of impact charge in the financial system. Both of them, while involving mutual performance on the part of a public law body, being subject to enforcement and having indirect character, differ from each other. In order to determine the limits of a fee relationship, discussing the public fee's affinity to a penalty is also of importance.

In the classical meaning, a public fee, as a form of a sovereign public revenue is a monetary consideration charged by a public law body (the state or a local government unit or both) for the needs of the budget, in exchange for the public law body's mutual performance consisting in the issue of an official act or provision of services of public sector entities, based on due legal grounds and delivered in a specified amount, subject to relevant payment terms.³ The public fee is a pecuniary performance, since financial management is, in fact, monetary in nature. History

³ Cf. for instance: A. Rozenkranz, *Ustawa o opłatach stemplowych wraz z przepisami wykonawczymi, teksty i komentarz*, Warszawa 1935, p. XIII; H. Reniger, *Dochody państwowe*, Warszawa 1957, p. 370; J. Jaśkiewiczowa, Z. Jaśkiewicz, *Zarys nauki finansów publicznych*, Warszawa 1968, p. 134 *et seq.*; L. Kurowski, *Wstęp do nauki prawa finansowego*, Warszawa 1976, p. 183; K. Ostrowski, *Prawo finansowe – zarys ogólny*, Warszawa 1970, p. 171 *et seq.*; J. Harasimowicz, *Finanse i prawo finansowe*, Warszawa 1977, p. 156; J. Jaśkiewiczowa, *Finanse i prawo finansowe*, Gdańsk 1978, p. 261; L. Adam, M. Mazurkiewicz, *Opłaty [in:] System instytucji*

of public fees knows no example of their being charged in kind although, technically, this could be feasible (after all, the very concept of public fees was born at the early stages of statehood). An inherent feature of the public fee is a link existing between an act of a state authority, made at the initiative of a citizen, and the payment effected by the latter. Setting the state machinery wheels in motion by the citizen was a sufficient reason for fees being charged by the state and has contributed to a quick extension of the range of the charges resulting from the scheme.⁴ With time, covered by public fees became also official activities not made at the citizen's initiative, not being an exercise of the latter's will nor resulting from his specific conduct, and even activities contrary to the citizen's individual interest.

The public fee is a payment provided against consideration, i.e. one involving a mutual benefit delivered by a public law body to the payer. This consideration is of a legal and individual nature, which means that the entity making the payment may request that a mutual benefit be provided by the state on his behalf. The consideration implies reciprocity of the benefit, but not necessarily its equivalence.⁵ It is just the reciprocity that makes the public fee different from tax.

prawno-finansowych PRL, vol. III: *Instytucje budżetowe*, part II: *Dochody i wydatki budżetu*, ed. M. Weralski, Wrocław 1985, p. 465 *et seq.*

⁴ Cf. E. Meisel, *Gebührenlehre* [in:] *Handbuch der Finanzwissenschaft*, vol. I, 1st ed., Tübingen 1926, p. 397.

⁵ Cf. C. Kosikowski, H. Dzwonkowski, A. Huchla, *Ordynacja podatkowa. Komentarz*, Warszawa 2003, p. 33; E. Ruśkowski [in:] E. Ruśkowski, J. Salachna, *Ustawa o dochodach jednostek samorządu terytorialnego. Komentarz*, Warszawa 2004, p. 40.

1.2. The place of the public fee within the system of levies

1.2.1. The public fee vs. tax

As far as the relation of public fees to taxes is concerned, it should be noted that the distinction between them is often based on what is called the mutuality of benefits. The collection of a public fee is usually associated with a specific activity expected by the payer from the state or other public law body; he may also be forced by law to request that the act be issued given the situation in which he finds himself. Therefore, the obligation to pay a public fee arises irrespective of whether the person burdened with the duty has demanded taking specific actions by public law bodies himself or has been legally obliged to request them. Referring to the concept of the “fees,” it is possible to divide them into two different groups, the first of which includes payments related to the performance of official activities and is close to taxes, whereas the other embraces charges related to the provision of intangible services, being thus similar to prices. Public fees concerning official activities of public bodies, while close to taxes, differ from the latter in that there is a direct relationship between the fee and a specific official activity. In addition, the fees associated with the official activities of public law bodies include all other features and structural elements of the tax (the entity, object, basis of assessment, scale, exemptions and reliefs, etc.), which can be modelled in a way similar to taxes.

Taking the mutuality (reciprocity) of benefits as the basic criterion whereby public fees may be distinguished from other payments made to the state (or local government), it should be observed that the fees in question, as existing within Polish budgetary system, may be counted among: a) public fees being

pecuniary performances provided against mutual consideration; b) public fees as cash performances partly entailing consideration and partly not involving it; c) public fees as cash performances not involving reciprocity. Referred to as fees may be performances that have the characteristics of a tax, as the payments indicated above under b) and c) do have the features of such a levy. Resorting to such a measure is supposed to disguise the actual legal nature of a tax payment.

The criterion of equivalence is put to particularly thorough scrutiny when viewed against the issue of relation of the amount of public fee to the value of the mutual performance provided by a public law body (the state or local government).⁶ The principle of equivalence does give rise to certain questions, though. First, it is its scope that is disputable. The problem is, whether the equivalence of a public fee should be understood as a duty of the public law body to provide performance of an equivalent value, i.e. whether the full equivalence,⁷ sometimes difficult or even impossible to assess, is to be spoken of. Or should the equivalence be seen as a causal link existing between a public fee and an act

⁶ Cf. R. Rybarski, *Nauka skarbowości*, Warszawa 1935, p. 146 *et seq.*; B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2001, p. 33; A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Warszawa 2006, p. 83; W. Wójtowicz, *Prawo podatkowe*, Bydgoszcz 2000, p. 16; R. Mastalski, *Prawo podatkowe, część II szczegółowa*, Warszawa 1998, p. 204.

⁷ Cf. B. Brzeziński [in:] B. Brzeziński, T. Dębowska-Romanowska, M. Kalinowski, W. Wójtowicz, *Prawo finansowe*, Warszawa 2000, p. 129; the Constitutional Tribunal, in its judgment of 10 December, 2002 (P 6/02, OTK 2002/7/91) argued that “characteristic of the fees in their classic form is their full equivalence, which means that the value of the performance provided by the administration fully corresponds with the amount of the charged fee.”

of a public authority?⁸ The other view on equivalence seems to be more appropriate, all the more that the rule in question is not always observed in the practice of the state's financial management. In a majority of situations the claim for a mutual performance is technically enforceable, since a specific reciprocal benefit from state or a local government unit by the entity obligated to pay the fee lends itself to identification (as the case is, for example, with public fees paid for services of economic nature). Yet public fees may also concern various kinds of performances for which payment is charged by a public law body to cover the costs of a specific activity in part or in full. Examples are "fees," referred to as ones, where the payment either brings no mutual benefit to the payer at all or the benefit is only apparent. The latter concerns, e.g. the situation of the fee-payers in case of whom the mutual performance provided by the state or a local government unit does not result from the payers' needs but represents a duty established by the state (local government unit). A public fee showing no link with a mutual consideration of a public law body is actually a tax, even if it is not called so.

A matter of significance (though doctrinally controversial) is the issue of apparent (vs. actual) nature of actions of public authorities and the alternate application of public fees and taxes.⁹

Its meaning cannot be overestimated considering two main functions of public fees: the fiscal one (consisting in generation of public revenue) and the function of intervention (prohibition), supposed to prevent excessive burdening of public agencies with specific activities.

⁸ Cf. T. Dębowska-Romanowska, *Prawo daninowe – podstawowe pojęcia konstytucyjne i ustawowe, cz. I*, "Glosa" 1996, no. 11, p. 3.

⁹ Cf. L. Adam, *Podatki i opłaty...*, p. 82.

Scientific monograph entitled „Public Fees in Poland and Russia. Comparative analysis” is an extremely interesting and valuable scientific publication that covers a research area that has not yet been presented in such a comprehensive manner. The comparative analysis of the Polish and Russian public fees systems is full of interesting and inspiring theses and conclusions.

Professor Dominik Gajewski

The experience of recent years shows the urgent need to create a special set of measures in the field of relations for the payment of mandatory state fees, among which, first of all, the need to develop a regulatory framework and conditions for collecting such payments is highlighted. These problems are complex, diverse, and require extraordinary developments of a theoretical and applied nature for each state. In this regard, an objective pattern should be recognized as the appearance of scientific publications in which the authors attempt to form their own view of the ongoing processes in the field of revenue generation of budget systems and justify new theoretical and methodological results.

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Gdansk University Press

ISBN 978-83-8206-251-9