

A BETTERMENT LEVY IN POLAND AND A „FEE PAYABLE TO DEVELOPMENT” IN THE SLOVAK REPUBLIC – DIFFERENCES AND SIMILARITIES

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Abstract. An attempt to compare two public levies calculated by units of territorial government in order to collect resources for infrastructure investments – a betterment levy in Poland and “a fee payable to development” (in Slovak: poplatek za rozvoj) in the Slovak Republic was made in the paper. It was assumed that the pursued research objective will be realized by means of the desk research analysis as well as the descriptive and logical one. Legal acts that govern issues of calculating a betterment levy in Poland and also selected legal acts which are obligatory in the Slovak Republic were subject to the detailed analysis. In conclusion, it was revealed that in spite of the fact that both fees are single levies collected for infrastructure investments, their calculating way as well as legal construction are radically different.

Key words: public levy, infrastructure investments, financing of investments

INTRODUCTION

Conducting spatial politics with preparing and legislation of the study of spatial development conditionings and directions and also local plans of spatial development belong to commune’s own tasks [Salata i in. 2015]. Both in Poland and the Slovak Republic, a commune is a basic unit of territorial division and the core of municipal system. One of its main tasks is to improve living conditions of the community that lives in its area [Gorzelany i in. 2015]. A commune is a local society with democratic internal organiza-

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tion which is structurally and subjectively separated in order to decentralized performing of essential part of local tasks from the range of public administration.

Effective performing of public tasks by territorial government units needs financial resources. The tasks which are realized by public institutions are mostly financed from tax incomes but also from public levies to which betterment levies collected from benefits achieved by property owners as well as “the fee payable to development” collected from investors in the Slovak Republic can be included among other things [Król 2016].

Fees are cash benefits connected with a counter-benefit from government and public administration bodies. They have fiscal purpose and involve public subject's benefit usually for the subject that contributes the fee [Będzieszak 2014].

The aim of the paper is to compare two public levies calculated by units of territorial government in order to collect resources for infrastructure investments – a betterment levy in Poland and “a fee payable to development” (in Slovak: *poplatek za rozvoj*) in the Slovak Republic.

MATERIALS AND METHODS

It was assumed that the pursued research objective will be realized by means of the desk research analysis as well as the descriptive and logical one. These methods are often used due to low costs, simplified organisational matters and relatively easy access to derivative data which can be the high quality source material [Król 2016]. Legal acts that govern issues of calculating a betterment levy in Poland and also selected legal acts which are obligatory in the Slovak Republic were subject to the detailed analysis.

The desk research as one of research methods of non-reactive surveys is the conjunction of three analyses: a content one, a present statistical data one as well as a historical-comparative one [Gorard 2002, Bednarowska 2015].

A betterment levy in Poland

Units of territorial government bearing the costs connected with communes' spatial development are interested in participating in benefits that result from it. Among other things, betterment levies by which the legislator realizes the rule of common good [Constitution 1997, art. 1] make it possible. These fees are the tax burden paid by individual subjects for the whole community.

The betterment levy term comes from the Latin word *adiectum* which means “add, contribute” [Cymerman et al. 2009]. The payment due is “the value added fee to the existing value”. It means, in practice, the fee paid for the rise of property's value caused by increasing its utility values by specified activities [Jasiołek and Adamczyk 2011, Mika and Siejka 2015]. The essence of the betterment levy amounts to the division of benefits from the increase of the property's value induced by the proper event between its owner or usufructier and the unit of territorial government.

The condition to calculate a betterment levy is the increase in property's value which has to be related casually with building technical infrastructure devices [Marek and Baum 2016]. The betterment levy is a public law benefit for the commune and constitutes its own income [Czochański and Dziubińska 2008].

History of a fee from an added value dates back to the interwar period when it has appeared for the first time in the Act of 10 December 1920 about public roads building and maintenance in the Republic of Poland. In accordance with the Article 23 of this Act, subjects which obtained special benefits due to road's building or maintenance or over-exploited that road can be obliged to participate in its building expenditures, unless they earlier incurred the cost voluntarily on the basis of the settlement [the Act 1920, Sulczewska 2014]. However, the term “a betterment levy” appeared for the first time not until the Act of 21 August 1997 about properties' management [Act 1997]. Changes in the range of subjects obligated to contribute the fee and percentages of its calculation were brought respectively by: the amendment of the Act about properties' management of 28 November 2003 and the Act of 24 August z 2007 about the change of the Act about properties' management and the name of some other Acts [Dawid 2010].

The legislator predicted three fundamental cases when a unit of territorial government can calculate a betterment levy: as a result of dividing a property (to 30% of its value rise), in respect of consolidation and division as well as technical infrastructure building (in both cases to 50% of increase of property's value). The rate of percent betterment levy is determined by the communal council in a resolution [Act 2007]. A betterment levy can be calculated for all properties regardless their kind and location. The exception is for the properties dedicated in the local plan for agricultural and forest purposes and in case of lack of the plan – being used for these purposes [Act 2003, Jasiołek and Adamczyk 2011].

“A fee payable to development” (in Slovak: *poplatek za rozvoj*) in the Slovak Republic

The fee for the development is a new tool in Slovakia to help local authorities with financing the construction of social and technical infrastructure on account of rising construction and thickening settlements. The need for such an instrument was long requested from the representatives of local governments of towns and villages where growing construction raises the need to build additional infrastructure. The requested construction represents a disproportionate pressure on expenditures in the budgets of individual municipalities. For this reason, the National Council adopted the Act 447/2015 Z. z. on local fees for development with effect from 1 November 2016. Subsequently, the law was amended in December 2015 [Zákon č. 447/2015 Z. z.].

As reported by interpretative analysis of the Law [IUR 2016], a fee is charged for some activities; in this case, the “development”, construction use and development of particular lands designated for a particular purpose by the master plan, respectively. Development of such sites raises certain demands and needs which are placed in the public sector, in this case in local government units (city, village). In particular, it concerns the construction of road infrastructure, social infrastructure, for example kindergartens, schools, public facilities and so on. Therefore, subject to the payment is a kind of construction activity by the territorial authorities that raises costs.

What is specific for a fee for the development, its implementation is voluntary and it depends on the particular village or town and also whether it would be implemented. The implementation of this fee would be confirmed only in case of approval by generally binding regulation (VZN), with the sole acceptance of the government authority and thus it

can be adopted across the board in the municipality or just in individual parts. In general, the fee for the development is required especially where the necessary infrastructure is caused precisely by a new construction (in still uninhabited parts of the commune which is the master plan of the village designed to be built in) and to a limited extent in the center where infrastructure is already built. The mentioned issue concerns much urban economy where their master plan should be examined within each community and its changes or rather its planned construction are checked just in terms of urban economics. The use of such methods to analyze and calculate the impact of planned developments are more popular [IUR 2016].

Building with valid building permit authorizing the construction (hereinafter referred to as “planning permission”) is the subject of the fee for the development of the building construction in the respective municipality. Also building which is reported to the building authority or the one with decision to approve changes to the building before it completes or has additional permits belong to this issue. The construction according to the previous permit, if the embodiment of the creation is new or additional floor space in the over-ground part of the building belongs to this group as well. Of course, that is when the municipalities implemented said charge for development. On the contrary, the fee for the development does not concern:

- 1) maintenance, repair, reconstruction or modernization of a residential building, in which the change of the total floor area of all apartments and office space in an apartment building remains unchanged;
- 2) maintenance, repair, refurbishment or upgrading of the other buildings such as apartment buildings in which unchanged area of floor space and construction or purpose of its use remains unchanged;
- 3) small building, superstructure and extension of floor space with an area up to 25 m²;
- 4) a building or a part of building which:
 - a) is a social housing and building that serves for the implementation of social protection of children and social guardianship,
 - b) is a built-in garage and parking space within an existing building,
 - c) is medical equipment,
 - d) is a kindergarten, a building of primary, secondary and higher professional education and also higher education in public universities, only practical training center or specialized teaching equipment of public higher education schools,
 - e) is social service facility,
 - f) serves for the religious practice of religious communities registered by the state,
 - g) serves for the defense of the state,
 - h) serves for the purposes of museums, libraries, galleries and cultural centers,
 - i) serves for sports,
 - j) is a significant investment under a special regulation,
- 5) construction of glasshouses on the land registered as arable lands and gardens with an area of floor space to 1,000 m²;
- 6) buildings designed for hydroponic cultivation of plants with an area of floor space to 1,000 m² where the greenhouse is heated by geothermal energy;
- 7) the structure of agricultural production and the buildings used to hold their own agricultural production, with an area of floor space and 1,500 m².

The mentioned fee shall become chargeable according to the validity of the building permit taking respectively into consideration the effective date of the decision to authorize changes to the building before its completion, the effective date of the decision on additional building permission, or on the date of notification to the building office buildings. If the taxpayer starts realizing fee, obligation will cease on the day the building permit will have expired.

As stated above, the fee is paid by the developer who has been granted with the planning permission. This does not apply if the builder is the commune itself. If there are more developers, the law also regulates who pays the fee.

The base for the development fee of the area of above-ground floor of constructions in m² which is subject to a said fee is for purposes of this law the floor area above ground considered as a part of the building and the respective sum of the area of all the rooms in the upper floors of the building. The rate of the development of the communes themselves is determined by VZN and can range from 10 to 35 euros for each started m² of floor area above ground of the part of the building. This rate can be determined as the general arrangements or charge different rates for different categories of buildings, or different parts of the territory. The fee charge can be changed only up to 1st of January of the calendar year, i.e. from the beginning of each financial year. The total amount of the fee for the development is then calculated for the taxpayer as the product of the above fee reduced by 60 m² and the rate of the levy for development in force when the payment is obliged. The fee is levied for the development as the general decision and is payable within 15 days from the date of the decision. That tax comes to the municipality and consequently the management of the fee for the development is carried out exclusively by the Autonomous Communities and its management cannot be delegated to any other natural person or legal entity.

Finally, the most important thing about the fee and its purposes, the law sets out the limits within which the revenue from this levy can be used and its use is subject to development. Therefore, the revenue from the fee for development can be used to cover capital expenditures related to construction, including land settlement for the following purposes:

- 1) childcare facilities,
- 2) for providing social, sporting and cultural services,
- 3) social housing,
- 4) school equipment and devices for the practical training,
- 5) medical equipment,
- 6) publicly accessible parks, adjustment of public green,
- 7) local roads, parking areas, public lighting and technical infrastructure.

Total fees and general development in the administrative area, or in its individual parts stay in relation to the building which is subject to stamp duty and fee development. If the building does not cost more, but is not exempted from the stamp duty, the commune should be able to use the funds in the territory where it is needed. For this reason, the commune by a generally binding regulation is able to determine that the revenue from the levy or a defined percentage portion will be used in a cadastral area or another entity of the village.

That legislation can equip communes with another instrument to finance its development. In addition to the standard tax system and specific charges accrued on the funding opportunities further, it can be dedicated to the fee development. A specific feature of this legislation consists in facilitating the storage, voluntary towns and villages in its

implementation, the flexibility of villages and towns in the design and approval of generally binding regulations of cities and communes which will cover specific details of this charge and also how the proceeds of disposing of this fee take place, in particular.

RESULTS AND CONCLUSIONS

Fundamental difference between the fees emerges in the way of their calculating. Principally, the betterment levy is collected in the course or after finalisation of the investment realized from public resources (after creating conditions to connect the property to individual devices of technical infrastructure or after creating conditions to using the built road), after property's division or consolidation and re-division. Realizing an investment, a commune is forced to possess resources for that. It is different in case of "a fee payable to development" in the Slovak Republic which is collected to acquire resources for the investment before its realization. The fee "payable to development" is connected only with infrastructure's development and it is calculated depending on the building's usable area (expressed in m²). The rate of a fee is established by the commune once a year and it can amount from 10 to 35 euro per m² (tab. 1). In turn, a betterment levy is calculated for the rise of property's value which results from building technical infrastructure from public resources, land division or consolidation and re-division.

Table 1. Characteristics of selected attributes of a betterment levy and "a fee for development"

Levy	Betterment levy Poland	"Fee for development" (in Slovak: poplatok za rozvoj) The Slovak Republic
Legal basis	Properties' owners participate in technical infrastructure devices building costs by paying betterment levies to the commune [Journal of Laws 2016, pos. 2147, Art. 144].	Act no. 447/2015 Coll. [Zákon č. 447/2015 Z. z.]. The law on local fees for development and on amendments to certain laws (as no. 375/2016 Coll.) [Zákon č. 375/2016 Z. z.].
Settlement requisiteness Obligatory or not?	The commune's body can (does not have to) establish a betterment levy accordingly to performed division and technical infrastructure devices building (art. 98a, par. 1, art. 145 par. 1 u.g.n.). Establishing a betterment levy is in these cases based on administrative recognition. So, optionality of issuing the decision that establishes a betterment levy as a result of two mentioned procedures creates situation that a commune can voluntarily abandon its collecting. However, as a result of consolidation and division and after premises came true, the body is obliged to its establishing (art. 107 par. 4 u.g.n.) [Ziniewicz 2011].	Compulsory for new buildings, exemption for greenhouses in 1,000 m ² , buildings for agricultural production and storage up to 1,500 m ² , sports facilities – halls, grandstands, stadiums and gymnasiums.

Table 1. cont.

Levy	Betterment levy Poland	“Fee for development” (in Slovak: poplatek za rozvoj) The Slovak Republic
A proper body to establish the fee	The village mayor, the town mayor or president	Administrative fees for development conducted solely by municipality.
The appeal body	Municipal Apellant Council (in Polish: Samorządowe Kolegium Odwoławcze, in Polish short: SKO), Provincial Administrative Court (in Polish: Wojewódzki Sąd Administracyjny, in Polish short: WSA), Supreme Administrative Court (in Polish: Naczelny Sąd Administracyjny, in Polish short: NSA).	Lack of opportunity to appeal.
A fee’s addressee	An owner or a usufruiter	Investor
Time to pay the fee	Depending on the case in which the fee was calculated [Journal of Laws 2016 pos. 2147, Art. 107, point 3; Journal of Laws 2016 pos. 2147, Art. 148].	The fee for the development is payable 15 days from the date of issueing the building permit.
The level of payment	Accordingly to property’s division (to 30% of rise of its value), on the grounds of consolidation and division as well as technical infrastructure building (to 50% of rise of property’s value). The rate of percent betterment levy is established by the commune’s council in a resolution.	The rate of the development is from 10 to 35 Euros per each m ² of floor area above ground part of the building.
Why is it calculated? What is its purpose?	Participation of citizens in technical infrastructure building costs from public resources.	The fee for the development of the income of the municipal budget. Revenue from the fee for development can be used to cover capital expenditures related to construction.

Source: own study

Incomes of territorial governments in Poland from the betterment levies are not significant and cover barely a slight part of investments’ costs. However, the communes should not abandon their charging as their appointment’s intention was participating of land properties’ owners in infrastructure building costs from public resources. The fee “payable to development” is collected in the Slovak Republic before realization of investment in the amount which has to allow the commune to realize it.

SUMMARY

Both in Poland and the Slovak Republic, calculating public levies often causes social protest and many controversies. The betterment levy in Poland as a public law benefit supplies commune's budget. The core of its collecting is rising of property's value which brings financial gain to the property's owner or usufructier. Calculating "a fee for development" in the Slovak Republic goes before investment realization in infrastructure and often "in general" enables to realize the investment.

In spite of the fact that calculating a betterment levy has a relatively long history and there are numerous court judgments, scientific elaborations, legal opinions, presentations and audit reports accessible that describe complexities of calculating these fees, it is still possible to find calculation irregularities in many communes. Those in the range of (among others) the content of resolutions taken in calculating percent level of the fee toll rate and the terms of establishing and making decisions that assess fees are the mistakes most often made. [Król 2016].

The fee "for development" is a new levy calculation of which was started in the Slovak Republic on 1 November 2016. It should support financing investments in infrastructure, however, the number of resources obtained in that way will be known in 2018 at the earliest. Next years will also show social attitude to its calculation and legal problems connected with it as well as efficiency of expenditure of resources gained in such a way.

Continuing development brings with it necessity to build technical infrastructure devices on the areas without them up to now, elaborating new or changing current plans of land management, division or finally lands consolidation and re-division in order to their more effective usage. All this generates costs that might be an obstacle in commune's development. In the light of that, it is reasonable to calculate betterment levies in Poland and "a fee for development" in the Slovak Republic.

ACKNOWLEDGEMENTS

The surveys were financed from the Personal Scholarship Fund for academics of the Hugo Kollataj University of Agriculture in Krakow.

Results obtained in the research project VEGA no. 1/0673/16 have been used in this paper.

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OPŁATA ADIACENCKA W POLSCE I „OPŁATA NA RZECZ ROZWOJU” W REPUBLICIE SŁOWACKIEJ – RÓŻNICE I PODOBIENSTWA

Streszczenie. W artykule podjęto próbę porównania dwóch danin publicznych, naliczanych przez jednostki samorządu terytorialnego celem pozyskania środków na inwestycje w infrastrukturę – opłaty adiacenckiej w Polsce oraz „opłaty na rzecz rozwoju” (popłatek za rozwój) w Republice Słowackiej. Przyjęto, że obrany cel badawczy będzie realizowany przy pomocy analizy danych zastanych (desk research) oraz analizy opisowo-logicznej. Szczegółowej analizie poddano akty prawne regulujące kwestie naliczania opłaty adiacenckiej w Polsce oraz wybrane akty prawne obowiązujące w Republice Słowackiej. W konkluzji wykazano, że choć obydwie opłaty mają charakter jednorazowej daniny pobieranej na rzecz rozbudowy infrastruktury, sposób ich naliczania i konstrukcja prawna są diametralnie różne.

Słowa kluczowe: danina publiczna, inwestycje w infrastrukturę, finansowanie inwestycji

Accepted for print – Zaakceptowano do druku: 2.06.2017

For citation: Król, K., Gawroński, K., Halva, J., Pagáč, J. (2017). A betterment levy in Poland and a „fee payable to development” in the Slovak Republic – differences and similarities. *Acta Sci. Pol., Formatio Circumiectus*, 16(2), 137–146.