# Public Levies – Revenues or Expenditures of Public Budgets?

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**Abstract**

The Constitutions of 1920 and 1948, unlike recently, do not mention the charges in addition to taxes when defining mandatory payments. "Veřejné dávky" (public levies) were understood to be a payment which was imposed on members and participants of such corporations on the basis of a public authority (state and public self-governing corporations) in order to cover the payment of public needs. However, the primary method by which the state has provided the necessary means to cover its expenses was the charges. The core of these charges was equivalency of the mutual fulfilment. Secondly, the principle of requiring funds from the members of the state collective without immediate consideration was followed, i.e. the institute of taxation. In addition to these terms, for example, the term contribution is used for mandatory payments. In a number of cases, the term contribution is linked to the expenditure side of budgets and so often coincides with the concept of subsidy. On the expenditure side of the budget, the term "veřejné dávky" (public benefit) can be used for payments which, given their nature, are provided from the public budget. Differentiation of the use of the term "veřejné dávky" (public benefit eventually public levies) can lead to misunderstandings, which should be solved by the legal terminology.

**Keywords**

public levy; public benefit; charge; contribution; subsidy

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# 1 The Legal Terminology of Mandatory Levies

Legislators[2] in representative bodies of all levels, i.e. entities deciding that some levies are enacted, frequently tackle the question of how to correctly term the payment that they want to implement. The issue is not only to avoid problems and disputes regarding the possibility of collecting and enforcing mandatory payments but also to ensure that a new legislation does not conflict with the Constitution or the Charter of Fundamental Rights and Freedoms. This issue raises concurrently the question of whether to use a generic term for all payments or a group of payments in the area of spending.

Financial law regulations apply to the certain sphere of economic processes that are expressed in the monetary form. The ways in which legislative practice takes over and uses theoretical economic concepts are different but, generally, it can be said that legal norms consider the knowledge of economic science to be generally valid and recognised. While the legal norms are formally exempted from the necessity to indicate the origin of the economic concepts that are taken over, they also create a situation in which their content does not have to be understood and interpreted uniformly. In addition to merely acceptance of the economic categories as they are generally valid, other forms of mutual relation between theoretical economic constructions and their legal regulation are practiced.

The requirement that the liability to pay tax or charge should be based on a legal definition in the rule of law has already appeared in Adam Smith's work and has been accepted as one of the underlying principles contained in the Declaration of the Rights of the Man and of the Citizen of 1789. Principles, stipulating the necessity to define citizens' liability to pay tax or charge towards the state through the law can be virtually found in all our Constitutions – both in the Constitution of 1920 (section 111 of the Constitution of 1920) and in the Constitution of 1948 (section 33 of the Constitution of 1948) or in the Constitutional Act on the Czechoslovak Federation (Art. 12 of this Act). This principle of legality is not formulated expressly in the Constitution of 1960. When considering the provisions of the Charter of Fundamental Rights and Freedoms, they confirm that the principle of legality of taxes and charges is part of the constitutional order even today. Art. 4 (1) of the Charter of Fundamental Rights and Freedoms refers to the possibility of imposing a liability only on the basis of the law and within their limits while respecting fundamental rights and freedoms. This general principle is specified by Art. 11 (5) for taxes and charges which may be imposed under that provision only on the basis of the law. However, none of the above-mentioned constitutional legal norms enacted within the territory of the Czech Republic have defined what is meant by the tax or charge and does not address the question whether the term tax or charge should be replaced by a more general term. This issue is only the object of the theoretical works regarding financial law.

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In the past, the name of the payment has only played a secondary role. The decisive factor for the construction of state revenues was the choice of such tool that would bring the necessary revenues to the Treasury and, at the same time, would contend with the least resistance of the obliged entities. The definition contained in a particular law is usually a definition applicable within the frame of such particular law, when the legislator defines what he will understand under a certain term. However, such binding definition of the legal terms (through the fact that is applicable only for the particular legal relationship) given by the legislator beforehand, exists merely as a legal concept (as opposed to facts that exist independently of the legal relationship). Our laws and other generally binding legal regulations sometimes tend to the so-called legal definition method, i.e. to determine the content of some general terms when the particular law applies, especially if the content of the relevant term differs from the generally recognised content of this term. The definition of the term may be used in the same wording in more than one law or it may apply only to a particular law. If other law or laws also refer to it, such definition becomes a generally accepted definition of a particular concept and is associated with an unambiguous meaning. However, if the definition of a term differs in different laws, there may be a problem in the general understanding of a particular term (and thus an interpretative problem occurs), not only from the view of legal theory but also from the view of the application.

## 2 Public Levies ("veřejné dávky")

The state authority realised, from the embryonic forms of its existence, that by requiring material or monetary payments from the members of the state collective, the state affects other than proprietary relationships. The privilege to levy[3] has always been the right of a public corporation to impose and collect taxes to use them freely and to set rules for that purpose – the state has an unlimited privilege to levy. Even today, it could be said that it is the prerogative of the state to impose and collect taxes[4] and charges assuming that they are determined by law.

The Constitutions of 1920 and 1948 do not mention the concept of charges in addition to the term taxes (both terms are currently included in the Charter of Fundamental Rights and Freedoms) but public levies ("veřejné dávky"). Public levies were recognised as payments that were imposed on the basis of the public authority order (i.e. state and public self-governing corporations) on members and participants of such corporations in order to cover the public needs (Drachovský, 1934: 314). Public levies were legally defined as a bond of public law where the creditor is a state or a public corporation and the debtor is the member or the participant of that corporation.

[3] The term "berně" was very often used for designation of taxes in the past centuries. The term "berní výsost" (privilege to levy) is derived from the term "berně". We could use the term "privilege to tax" today.

[4] The analysis of the term tax is beyond the scope of this paper.

Public levies could be set out by state or self-governing corporations on the basis of the authorisation laid down in the law. As a generic term, the concept of public levies includes special elements – taxes and charges. These were both payments, that were imposed independently, and surcharges (payments bounded to another payment liability) levied in favour of the collecting body or without such a direct link to that body. These payments were not only taxes and charges but also their accessories (penalties, etc.). Public levies have always been a term only for payments of public character (it could not therefore be a payment of a private-law nature – e.g. telephone charge and fee, even if the term "charge" or "fee" is used in this particular term). Sometimes these public levies were also referred to as "taxes in the broader sense of the word" and we also come across the term "berně".[5]

It is also worth mentioning that the Municipal Financial Amendment – Act No. 329/1921 Coll.,[6] laid down the privilege of municipalities to levy taxes – the possibility to impose levies on municipality citizens as a liability towards the municipality (both the material and monetary payments). Within the monetary payments there were contributions, charges, and levies. Levies could be imposed as a general contribution that cover the municipalities' expenditures in the form of the surcharges set out by the levy norm or as an individual municipal levy. Unlike levies, the charge or contribution was associated with a certain benefit that the person who had to pay them gain in return. The value of the charge should be the equivalent for the use of public facilities (i.e. charge paid for the use of water supply) or for the operation of the administrative authority carried out in favour of the applicant – the payment was specified in advance for all entities and it was categorised by particular rates. The value of the contribution was the equivalent for the specific economic benefit that an individual gained by using a particular device – even if he did not have to use it. Surcharges and contributions were thus imposed in the sphere of private law and they were of a different nature than levies – the character of levies was closer to the character of taxes (levies were either mandatory or facultative).

Although the term of public benefits is currently not usually used in legal norms the state can obtain resources for performing its functions both in the form of taxes or charges or other similar payment liabilities, as long as the state is authorised by law. Given the fact that a number of theoretical contributions from the field of financial law and financial science is devoted to the issue of taxation, this paper focuses on some other mandatory payments.

## 3 Charge

The first method used by the state for obtaining necessary resources to cover its expenditures was the sale of certain rights, privileges, payment for the possibility of

5 Considering the term "berně" see footnote 7.
6 For more details see Šafář and Zeis, 1936.

carrying out certain activities, etc. For these rights, performance of particular activities, etc., a consideration was required. This payment was named by different terms and in the territory of our state these various terms were unified under the term charges. The core of the concept of charges was the consideration for the concurrently gained benefit in favour of the taxpayer, i.e. the equivalence of mutual fulfilment. Secondly, the principle of requiring funds from members of the state collective without immediate consideration was applied, i.e. the concept of tax.[7]

It can be said that charges are payments imposed due to a specific activity of public facilities when this activity is triggered by an individual who pays the charge. The obligation that arises in these situations is reciprocal – the principle *quid pro quo* applies – the commitment of the state to do something in favour of the individual and the liability of the individual to pay for it – the coercion is relative, the assumption for payment is some activity of the state or administrative authority.

In the cases set out by law, an individual (the liable entity) is liable to contribute to the state's authority to cover its expenditures and concurrently he has the right to limit his contribution to a certain amount set out by law. The other entity in a relationship is the state that also has an obligation (and not just the right) to require the liable entity to meet a charge liability. The entities that represent the state have to care about the fulfilment of the obligation (the act is not performed without payment of the charge). The right of the state to enforce these liabilities is exercised by its authorities within the limits of the law and by the legally prescribed means.

In the past, the charge has been already recognised as a particular compulsory levy, that was imposed due to specific activities of public facilities. The liability to pay was most often triggered by an individual's request for a particular activity, for example a court decision, and a levy in the form of the charge was a specific consideration for this activity. The charge also functions as a consideration today, i.e. it is used to cover the specific expenditure of the requested authority that is incurred as a result of the individual's request. In general, it is considered as an unjustified burden for society if the burden of consideration for activities of the competent authorities is borne by the person who does not request the activity of the competent authority. Besides the consideration principle, however, the principle of availability of the decision-making process must also be applied, i.e. in order to make the procedure financially accessible for applicants so that natural and legal persons can actually exercise their rights.

[7] As a separate economic-legal category, fees appear in the classical economy. In justifying the payments to the State, this theory was based on the principle of exchange in that the State secures to citizens as taxpayers either a generally desirable or individually desired benefit and accepts for them a reimbursement determined by the nature of the transaction in question. Classical economy has generalised the principle of the charge legal regulation for the entire state administration. The difference between taxes and charges was only quantitative in character and depended on the extent of the services provided by the State and the charges charged for it.
The Czechoslovak financial-legal theory and the relevant legislation were also under the strong influence of the German (Austrian) financial sciences. The most important representatives of the Czech financial legal school or political economy were K. Engliš, A. Bráf, J. Drachovský, V. Funk and V. Vybral.

If the system of charges is defined, the charges are usually categorised by the activities that lead to imposition of the charge, i.e. when decisions of the court or the administrative body are considered then the charges are divided into judicial and administrative charges. Besides these typical charges imposed at the level of the state, there are local charges levied by the municipality that have, however, a number of tax features and should rather be named as local or municipal taxes. But this has not happened so far. However, the question how the charges that are not explicitly included in any of the above mentioned groups should be classified has not yet been clearly answered by the financial theory.[8]

Therefore, it is possible to define a charge with particular features.

1. The charge is first and foremost a legal liability as a tax. Without a legal determination of payment liability, no charge can be laid down. There are laws regulating groups of charges (judicial, administrative, local charges) and specifying the relevant charge liabilities of such groups of charges. In addition to these laws, however, charge liabilities are regulated in a number of other special laws that regulate different areas of public life and the inclusion of these liabilities in the concept of charges as payments of tax law nature is more complex. The situation is also complicated by the fact that the term charge is also used for some payments that are private in nature and these payments thus cannot be included in the group of public law payments for this reason.
2. However, the state (as a self-governing entity) receives revenue through the charges. Then the state covers a part of the expenditures associated with public administration by this revenue and thus the state is always the creditor. Charges perform a fiscal function similar to taxes, although the performance of this function is limited due to their amount.
3. A public law character is also evident considering the charge as the state's claim – this claim is linked to the activity of the state authorities and the element of the objectivity of the payment is emphasised (for example, when determining the amount of the charge, the social status of the person liable to pay the charge is not taken into account). For some local charges, however, this feature is somewhat modified.
4. As regards the charges, unlike taxes, it is not a payment that is only to be used to raise funds for public needs but the definition of the state's consideration is important considering charge liabilities – the obligation is formulated bilaterally.
5. The content of the charge liability is, in addition to other liabilities, the liability to pay a charge, i.e. it is the monetary payment similarly to taxes. For none of the charges currently levied, there is a possibility of fulfilling the liability in kind.[9]

[8] This is not something new – C. F. Bastable has already mentioned in his work *Veřejné finance* [Public Finances] (1927) that charges lack any harmonisation or logical organisation and that the charges may appear in every field of public power (p. 242).

[9] Engliš already in 1929, in his work *Finanční věda* [Financial Science] stated that earlier typical charges were paid in kind and paid by public employees (sobotales, športle) later transferred to money form,

6. Fee liability is also associated with a certain result that the legislator wants to capture. The law defines and differentiates between the fees and the amount of the fee for which the fee is payable.
7. Lastly, considering the characterisation of the term "charge", it is possible to state that the state plays another role than the taxpayer because of the state's character of power since the state may determine the types and amounts of payment liabilities. To a certain extent, the municipality also has this authority (as regards the local charges) but the limits of the decision-making of a municipality are also laid down by law.

## 4 Levy

By the end of 1992, the term "odvod" was often used to designate the mandatory payment. These were mandatory payments imposed on state organisations (state-owned enterprises) where the difference in payment obligation was considered to be the transfer of funds within one form of ownership, i.e. from state ownership to the state budget, i.e. back to state ownership. The definition of the term "odvod" was based on its economic substance as a means of reallocation of funds within the framework of the unified state ownership.[10]

At present, we rarely meet the concept of "odvod", although it is no longer a specific payment liability that no longer has the characteristics to which this payment liability was previously associated. Therefore, the term "odvod" can be attributed to two large groups of payments which have a different character – payments that can be described as tax payments and payments that are a certain penalty for failure to fulfil obligations. An example of the first group's payments may be a payment for withdrawal of land from the agricultural land fund or payment under the Employment Act, payment to the Wine Fund, etc. The second group includes the payments associated with a certain sanction – they are especially payments that are imposed due to breach of budgetary discipline.[11]

It is clear, therefore, that there are the above-mentioned payments ("odvod") that are close to taxes but they should not be classified as public levies owing to their sanctioning nature. Although they are revenues to the public budget, they are not levies imposed on a particular taxpayer by a law but a payment that is imposed only when the liability has been breached.

with their income flowing to the state treasury so that the population did not feel as being an employer. Since the time of Engliš, many have not changed in this way. Engliš, 1929: 203.

10 Bakeš, 1979: 99 et seq.

11 However, it should be noted that the word deduction in conjunction with the word tax or charge is the expression of a certain activity, indicating what is to be done – it is not the term that would imply a payment obligation.

## 5 Contribution

The borderline between public benefits and private sector reimbursements was attributed to contributions that were used to cover a part of the expenditures and that were collected from users of particular facilities.

Historically, their origin is associated with charges. These are payments imposed by the state to certain entities in connection with the service that the state provides to them. A certain difference from the charges is that the contribution is also levied on entities that do not individually reap such benefits. Contributions in this sense are in the nature of statutory payment liability and they differ from voluntary contributions levied for the same purpose.

At present, the term "contribution" is also used for designation of payment obligations associated with the various benefits that the state provides in return and that differ considerably from the original structure of contributions (see below). The term "contribution" is also used for the funds received by the municipality or the region to carry out tasks within the delegated powers. However, these contributions are in fact a form of subsidy – it is a transfer of a part of the funds for the state administration from the state budget to the budgets of the municipalities that perform the state administration instead of the state. It is not a full payment of costs, it is only a contribution, because a part of the expenditure in this area is provided by the municipality for itself and it gains certain revenues (administrative charges) for this activity.

## 6 Public Benefits on the Expenditure Side ("Veřejné Dávky na Straně Výdajů")

The expenditure side of budgets does not have clearly classified and identified types of expenditures. An exception is the term "subsidy" or "recoverable financial assistance" which are defined and determined in the Act on Rules. But, for example, the term "subsidy" may appear not only in the meaning of the expenditure of one budget but also in the meaning of the revenue of another public budget. In many cases, the term "subsidy" also merges with the term "contribution" as regards the expenditure side of budgets. However, these terms should be distinguished more precisely – when it comes to the revenue of the public budget it is a payment liability towards the public budget that stands on the revenue side along with taxes and charges.

It is thus a payment that – given its nature – can be classified as a public benefit. As regards the expenditure side of the budget, where the term "contribution" is used, it is a payment close to subsidies and should be therefore termed "subsidy" and classified as subsidy. However, it should be noted that in some cases (see the contribution to the performance of delegated powers) such a contribution at the level of municipal and regional budgets is their significant income and thus the providing of this contribution

is close to obligatory payments at this level (the State Budget Act defines how much the state has to pay to the budget of each municipality).[12]

The term "contribution" is used especially in connection with certain payments that go to the social sphere and are linked to non-budgetary legal norms (parental allowance, housing allowance, etc.). The state provides particular public benefit on the basis of the law and contributes to a defined purpose. For participants involved in a particular scheme, the term "contribution" is used to describe the payment of the state for the benefit of a participant.[13] This contribution is by its nature one form of the state support. The Nature and Landscape Protection Act allows the providing of allowances under specified conditions for a particular activity (for example mountain mead mowing) or the Forest Act defines certain types of payments related to forest care, which are also referred to as contributions or allowances and are inherently purposeful public benefits. The Act on Elections to the Chamber of Deputies – contribution to election expenses or the Act on Association in Political Parties according to which the contributions are provided from the state budget (the permanent contribution and contribution to mandate).

The term "contribution" is also associated with a certain type of organisation that is taken into account by laws regulating budgetary management (Act No. 218/2000 Coll., and Act No. 250/2000 Coll.). State contributory organisations receive a contribution from the founder (state) – from the public budget – a contribution to operation. If such an organisation is established by the municipality, the contribution organisation receives a contribution from this founder (municipalities or regions). Again, this is a targeted state support. As a rule, the contribution is linked to the fact that the state wants to support a certain area in the sense of supporting a particular state policy. There is some objective to be achieved through public benefits. However, the state has to respect the rules of public support under the regulation it has adopted. Thus, the expenditure from the state budget may be a public benefit of a municipal budget, which treats these benefits according to the determined rules. This municipal budget may also provide public benefits to other entities.

## 7 Conclusion

On the basis of the above-mentioned definitions of mandatory payments, it can be concluded that the common term "veřejné dávky" (that can be translated as a "public levies" or "public benefits" but in the Czech language these terms are interchangeable) should rather be used as a common term for the designation of budget expenditure rather

[12] There was one more type of public revenue, which was referred to as an allocation. On the basis of special laws, the local government was granted a share in the yield of some state taxes to fulfil its tasks. At present, this function is ensured by the mechanism of budget tax determination.

[13] For example, according to Act No. 96/1993 Coll., on building savings and state aid for building savings.

than as a designation of all mandatory payments to the public budget. It would include subsidies, repayable allowances, and contributions to a specific area provided that it is coming from the public budget. As the concept of tax is often recognised in a broad sense of the word, including all mandatory payments to the public budget – without differentiation, classification and inclusion of other mandatory payments (levies, contributions, etc.) – then the concept of public benefit ("veřejné dávky") could be one of the alternatives for the common term of payments provided by public budgets (on the expenditure side of the budget).

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