

CHAPTER 1

MODERN TRENDS IN PUBLIC ADMINISTRATION

PROBLEMS OF PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION IN UKRAINE: POSITION OF PUBLIC ADMINISTRATION SCIENCE AND INTERNATIONAL EXPERIENCE

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Abstract. *The purpose of this work is to identify the main features and opportunities for using cooperation between the private sector and the public, in particular in the context of the functioning of public-private partnerships. The article uses a generalization method to identify positive international experience for Ukraine, to form a list of problematic issues in the implementation of public-private partnership. With the help of the analysis method, gaps in the regulatory and legal field regarding the implementation of public-private partnership agreements have been identified. The comparison method was used to identify the possibilities of introducing the experience of other states into the domestic practice of public administration. The functional and structural methodology was used to identify links between public administration functions and the involvement of the private sector in resolving public issues. The article reveals a scientific problem concerning the degree of development and the possibility of involving methodological, theoretical, organizational, legal, structural and functional and other foundations of the private sector in public administration and related problems. Public-private partnership acts as one of the mechanisms for the distribution of functions of public administration, requiring the study and development of effective methodological, organizational, legal, institutional frameworks for its development.*

Keywords: *public-private partnership, public administration, public administration functions, authorities.*

JEL Classification: H10, H77, K30, M16, M38

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Introduction. An analysis of the world experience of public-private partnership as one of the mechanisms for attracting investment indicates the positive dynamics of its use in various spheres of the national economy. The domestic practice of implementing public-private partnerships is currently at the stage of formation, both at the legislative level and at the organizational and functional level. Attempts are being made to identify and remove obstacles to the development of public-private partnerships, increase and guarantee for private partners, improve the mechanisms for the functioning of public-private partnership processes, and resolve problematic

issues of regulatory support. The largest number of public-private partnership projects were recorded in the field of waste treatment, collection, purification and distribution of water, construction and / or operation of infrastructure facilities.

Literature Review. The issues of the formation and functioning of the public administration are disclosed in the works of modern researchers of domestic science - V. Averyanov, E. Afonin, S. Virovoy, I. Gritsak, M. Karpa, V. Malinovsky, A. Obolensky, G. Sitnik, etc . [1-3]; foreign science - W. Parsons, G. Kolbech, A. Smith, J. Mill, W. Dunn, L. Pal, P. Brown, L. Gann and others. Institutional relations between the public and private sectors were studied by T. Veblen, J. Commons, R. Coase, D. North, J. Hodgson and others. Prospects for public-private partnerships in the implementation of infrastructure projects and the provision of public services are disclosed in the works of I. V. Zapatrina [4].

Aims. The object of this research is the functions of public administration. The subject of scientific research is public-private partnership as one of the mechanisms for the distribution of public administration functions. The purpose of this work is to identify the main features and opportunities for using cooperation between the private sector and the public, in particular in the context of the functioning of public-private partnerships. The delimitation of public functions as a component of public administration between the participants in management actions will contribute to the efficient allocation of resources.

Methods. The article uses a generalization method to identify positive international experience for Ukraine, to form a list of problematic issues in the implementation of public-private partnership. With the help of the analysis method, gaps in the regulatory and legal field regarding the implementation of public-private partnership agreements have been identified. The comparison method was used to identify the possibilities of introducing the experience of other states into the domestic practice of public administration. The functional and structural methodology was used to identify links between public administration functions and the involvement of the private sector in resolving public issues.

Results. Before the definition of the concept of "public-private partnership" in international practice, there are many approaches and definitions. As defined by the International Finance Corporation, a public-private partnership is a relationship through which the private sector provides the public with infrastructure assets and infrastructure services traditionally provided by the state; as defined by the Asian Development Bank: a set of possible relationships between public and private actors in the context of infrastructure and other services; in Puerto Rico, any agreement between a government agency and one or more persons to carry out operations, functions, services or responsibilities of a government agency, and to design, develop, finance, maintain, or operate infrastructure facilities; in South Africa, it is a contractual relationship between public sector institutions and private actors, according to which the private sector performs the functions of a public institution and uses public property in accordance with certain specifications for a long time, benefitting from it; in Japan - effective improvement of social infrastructure, guaranteeing the provision of affordable and quality services to the population by

implementing measures to promote regulation of public property through the use of private funding, managerial and technical capabilities, which provides a positive contribution to the development of the economy.

Taking into account the experience of development of different states, one of the features of the functions of the public service can be identified as the direction of activity of public institutions [21-24]. State authorities decide the functions of the country; local self-government authorities - ensure the performance of the functions of the community; enterprises, institutions, organizations - within the vested functions of the public service.

The world experience of using public-private partnership for the implementation of public functions is in different areas, in particular:

- The UK has focused public-private partnership projects on infrastructure such as schools, hospitals, prisons, defense facilities and highways;

- Canada carries out a significant number of public-private partnership projects in such areas as energy, transport, environmental protection, water resources, water supply and sanitation, recreational facilities, information technology, healthcare, education;

- Greece mainly implements public-private partnership projects in the transport industry, in particular on roads and airports;

- Ireland has identified public-private partnerships such as highways and urban transport systems;

- Australia has identified transport and urban life support systems as priority areas for public-private partnerships;

- The Netherlands uses a public-private partnership mechanism in the public housing sector and urban life support systems;

- Spain is implementing public-private partnership projects in the field of toll roads and urban life support systems;

- The United States mainly implements public-private partnership projects that combine environmental protection, life support of rural settlements [5].

The transport sector can be considered a striking example of attracting investment. The most notorious projects for the development of railway transport are distinguished: Tunnel Rail Link (Great Britain), high-speed highway HSL Zuid (Netherlands), Oresund line (Denmark - Sweden). Other large-scale projects using public-private partnerships include the Eurotunnel under the English Channel, Sydney Harbor Tunnel, Confederate bridge in Canada, national airports in Hamburg and Warsaw, Central Park in New York, separate branches of the underground in London and others. Turkey has been one of the leaders among the countries of Eastern Europe and Central Asia in the development of public-private partnerships in recent years, which has increased the country's GDP by three times, attracting \$ 115 billion in investments in 193 public-private partnership projects. The main investment sectors were: energy (76 projects), roads and road infrastructure (29 projects), ports and port infrastructure (21 projects), airports (19 projects) and healthcare (17 projects). It should be noted that the use of public-private partnership mechanisms can radically change entire industries - more than 50 airports (including 21

international ones) are currently operating in Turkey, while the share of private investment in the industry is 90%) [6].

The organizational and legal forms of cooperation within the framework of public-private partnership in world practice are quite diverse. In some countries, the forms of cooperation are reduced exclusively to concession agreements, in others they use the form of outsourcing, the creation of joint ventures [25-29]. In general, for the effective use of public-private partnership, it is advisable to take into account the interests of all participants on an equal basis, to balance the risks and responsibilities of the parties.

According to the data of the central and local executive authorities in Ukraine, as of 01.01.2021, 192 contracts were concluded under public-private partnership conditions, of which 39 contracts are being implemented (29 are concession contracts, 6 are joint activity contracts, 4 are other contracts), 153 contracts are not in progress (118 - not in progress, 35 - broken / expired) [7].

These projects are being implemented in the following areas of economic activity:

- waste treatment (116 projects, accounting for 47.7% of the concluded agreements);
- collection, purification and distribution of water (79 projects, accounting for 32.5% of the concluded agreements);
- construction and / or operation of highways, roads, railways, runways at airfields, bridges, flyovers, tunnels and subways, sea and river ports and their infrastructure (17 projects, accounting for 7% of the concluded agreements);
- production, transportation and supply of heat (7 projects, accounting for 3% of the concluded agreements);
- production, distribution and supply of electrical energy (5 projects, accounting for 2.1% of the concluded agreements);
- search, exploration of mineral deposits and their production (3 projects, accounting for 1.2% of the concluded agreements);
- real estate management (2 projects, accounting for 0.8% of the concluded transactions);
- tourism, recreation, culture and sports (1 projects, accounting for 0.4% of the concluded agreements);
- ensuring the functioning of irrigation and drainage systems (1 project, accounting for 0.4% of the concluded transactions);
- others (12 projects, accounting for 4.9% of the concluded agreements) [8].

According to the Law of Ukraine "On Public-Private Partnership", public-private partnership projects should have a higher performance than in the case of an exclusively public partner, and be concluded for a long-term period (from 5 to 50 years) [9].

Article 3 of the Law of Ukraine "On public-private partnership" defines the basic principles of public-private partnership, including: equality before the law of public and private partners; prohibition of any discrimination against the rights of public or private partners; coordination of interests of public and private partners in

order to obtain mutual benefit; invariability during the entire term of the agreement concluded within the framework of the public-private partnership, the purpose and form of ownership of objects that are in state or communal ownership; fair distribution between public and private partners of the risks associated with the execution of contracts concluded within the framework of public-private partnerships; determination of a private partner on a competitive basis, except for cases established by law [9].

In order to resolve a number of obstacles to the effective implementation of public-private partnerships, on November 24, 2015, the Verkhovna Rada of Ukraine adopted the Law "On Amending Certain Laws of Ukraine on the Elimination of Regulatory Barriers to the Development of Public-Private Partnerships and Stimulating Investments in Ukraine" [10]. The purpose of this regulation is to increase guarantees for private investors, improve the mechanisms for the functioning of public-private partnership processes, and resolve problematic issues of regulatory support. The law removes inaccuracies from the existing edition of the Law "On public-private partnership" on the rights of a private partner. Now there is a possibility of the emergence of common shared ownership of newly created or acquired objects, which has on me the incentives of partners and the legally approved guarantee of ownership of the objects [19, 20]. Prior to that, there were obligations to transfer the created objects exclusively to the ownership of the state partner.

The law establishes a number of additional guarantees for private partners, namely:

- additional types of state support within the framework of a public-private partnership: by paying the private partner other payments provided for by an agreement concluded within the framework of a public-private partnership, in particular, payments for the readiness (availability) of a public-private partnership object for operation (use) , through the acquisition by the public partner of a certain amount of goods (works, services) produced (performed, provided) by the private partner under an agreement concluded within the framework of a public-private partnership; by supplying a private partner with goods (works, services) necessary for the implementation of a public-private partnership;

- the right to apply to international arbitration and / or arbitration courts to resolve disputes;

- provisions on the stability of legislation;

- the right of a private partner to suspend the fulfillment of investment obligations if the prices (tariffs) for goods (works, services) of the private partner, subject to state regulation, are not economically justified and there is no adequate compensation [11].

Such measures do not solve all the problems in this topic. Scientists and practitioners have identified a number of risks and problematic issues in the implementation of public-private partnership projects in Ukraine, including:

- the possibility of ineffective management by the private partner of the property provided by the public partner to fulfill the terms of the contract, untimely

commissioning of the subject of the contract and its non-compliance with the criteria provided for by the contract;

- uncertainty of private partners regarding the fulfillment of their financial obligations in long-term projects due to the fact that the state cannot guarantee the minimum volume of consumption of goods or services and the establishment of prices (tariffs) for produced goods or services provided by a private partner at a level that is economically responsible reasonable costs of their manufacture or provision and provides a return on investment;

- the absence in the Budget Code of the possibility of guaranteeing compensation for damage to a private partner associated with the discrepancy between the demand for goods and services and the planned indicators, non-fulfillment by the state of obligations under contracts, compensation for the difference in tariffs, etc .;

- the lack of guarantees for the fulfillment of financial obligations under public-private partnership projects for the entire period of their implementation by the state, which is associated with the annual budget approval and adjustments to budget programs;

- the absence of tax and customs benefits for the implementation of public-private partnership projects, which reduces their attractiveness for private partners in the presence of such benefits for other forms of government incentives for investment activities;

- the possibility of changing the regulatory framework, in particular, making changes to tax and regulatory legislation, changing quality standards (increasing requirements) for goods and services provided by a private partner under the terms of the contract, which may entail a significant change in the conditions for participation of private partners in projects;

- the lack of confidence of the private partner in the possibility of protecting their interests in the justice system on an equal basis with the state, in particular, the ability to demand from the state fulfillment of obligations and compensation for losses incurred due to non-fulfillment of obligations;

- there is no guarantee that the private partner will receive permits and approvals from the executive authorities or local self-government bodies necessary to fulfill the terms of the agreement, including obtaining the right to use the land plot necessary to fulfill the terms of the agreement;

- the presence of a high level of corruption in the government, which leads to an increase in the cost of public-private partnership projects for a private partner. At the same time, it can be argued that this problem is not fundamentally insurmountable. In particular, when the first real concession agreements are launched and the government properly fulfills its obligations, it is possible to predict a gradual reduction in the cost of concession agreements to global levels [12].

Discussion. Institutional problems also arise. The state partner is the state, the Autonomous Republic of Crimea, territorial communities represented by the relevant state authorities, in accordance with the Law of Ukraine "On the Management of State Property Objects", manage state property objects, local authorities, the National

Academy of Sciences of Ukraine, national branch academies of sciences [30-32]. A private partner is a legal entity, except for state and municipal enterprises, institutions, organizations. It is advisable to carry out a generalized determination of the parties in accordance with the functions of public administration, namely - satisfaction of public interest by providing public services; performing the functions of public authority; performance of functions and tasks of public institutions. Within the framework of defining the functions of state-legal partnership, one can use the following approach to delineating functions according to the subject of implementation:

- functions of the civil service and their officials;
- functions of local government and its officials;
- functions of state-owned companies, institutions and organizations and their officials;
- the functions of other institutions, organizations, enterprises authorized to perform the functions of the public service and their officials.
- cooperation between public and private partners [15-18].

Conclusions. Generalization of analytical, statistical and other materials on the development of public-private partnerships in Ukraine made it possible to highlight the following main problematic issues of the functioning of public-private partnerships in the context of this study:

in the regulatory field:

- availability of a stable regulatory framework and selection criteria and opportunities for effective investment management;
- lack of guarantees of compensation for damage to a private partner;
- the existence of the possibility of annual adjustment of financial obligations in accordance with the approved budget and budget programs, and others;

in the organizational field:

- the possibility of making changes, including in the regulatory field, in tax and regulatory mechanisms, changing standards / requirements for goods and services;
- lack of tax and customs benefits for the implementation of public-private partnership projects;
- the implementation of the registration of contracts requires methodological and legal regulation;
- untimely commissioning of the subject of the contract;
- non-compliance of goods and services with established standards / requirements and others;

in the long term:

- lack of trust of partners (for the equal protection of their rights and interests, for the fulfillment of financial obligations, etc.);
- lack of a strategic view of investment priorities;
- lack of government guarantees regarding the minimum volume of consumption of goods and services, or others.

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