THE ROLE AND IMPORTANCE OF THE PUBLIC-PRIVATE PARTNERSHIP IN THE REPUBLIC OF SERBIA IN FINANCING LOCAL ECONOMIC DEVELOPMENT

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Abstract

Due to the current needs of the construction of new public infrastructure, investment in goods of general interest and the public interest by providing services in the Republic of Serbia, it is necessary to create a framework to attract private investment, notably through the establishment of public-private partnerships, which would specifically be aimed to increase the number of private investments, contribute to the development of infrastructure and reduce public debt.

With the Law on public-private partnerships and concessions, which was adopted in November 2011, the concept of public-private partnership was introduced to the legal system of the Republic of Serbia for the first time, and thus it was allowed to state and local authorities to fulfil the needs for infrastructure and public services and to achieve this model, with clearly established rules of conduct. The law regulates the models for public-private partnerships and concessions, and the Commission of a public-private partnership is established. The Commission has a consulting, informative, expertise and educational role in relation to the formulation and implementation of public-private partnerships, and it is authorized to produce methodological documents, determining the need for new forms of financing apart from traditional budgetary funding.

Linking public and private sectors enables support to ongoing development and implementation of local strategies for sustainable development, in order to improve the quality of life. The essence of private sector involvement in traditional public affairs is to reduce the fiscal pressure on local budgets, accelerating infrastructure investments, improving services, and encouraging the growth of output and job creation.

Keywords: Public private partnership, Concessions, Commission for public private partnership, Public sector, Private sector, Cooperation, Local economic development, Public interest, Budget funding.
General review of Public-Private Partnership

A public-private partnership is a dynamic and developing process of funding projects of economic development, and it represents a form of cooperation between the government and private sector with a purpose to modernize the construction of public infrastructure as well as strategic public services. In some cases, a public-private partnership includes financing, planning, constructing, reconstructing, managing or maintenance. In other cases, it includes providing the services which are traditionally provided by public institutions. Although the focus of public-private partnership should be on the improvement of efficiency in public services through sharing risks and implementation of private sector expertise, it should be stressed that public-private partnership indirectly reduces the pressure on public finances by providing additional source of funding. For that reason, public-private partnership is based on the fact that both public and private sector can benefit from adjoining their financial resources, knowledge and expertise for providing better services to all citizens.

Public-private partnership is the direct consequence of the economic needs of the country to develop a partnership with private capital, instead of obtaining credit capital intended for construction, and development of infrastructure, and the development of sustainable system that provides services of public interest. It is very important that public and private interest, although in partnership, remain in constant competition which is realized in legal frameworks of public-private partnership (Cvetković and Sredojević 2013 : 13-14). Public-private partnership has justified its existence when both sectors (public and private) achieve their objectives that were causes of partnership. These causes aren’t the same. The cause of public-legal subjects is achieving social prosperity and improving the quality of living by making the quality of public services better and building infrastructure and objects of public importance. The aim of private-legal participants is economic benefit. The main characteristic of public-private partnership is cooperation, not competition. Mutual interest and risk sharing are crucial for realization of projects. Public-legal entities should adopt entrepreneur way of thinking and acting, and private public sector should respect the criteria of public responsibility and it should have the obligation to protect the public interest. In a situation like that the common interest is to create a flexible management structure and to evaluate the effectiveness of public-private partnerships with a measurable result – economic, political and social.

Types of Public-Private Partnership

In theory, there are two types of public-private partnerships: a partnership that relies merely on responsibilities of partners from both public and private sector determined by a contract, and an institutionalized partnership, which does not include the cooperation of public and private sector in the frames of any legal subject.
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The first type of public-private partnerships is a cooperation between a public partner and private investor that is determined by a contract in which it is stated that the private investor is obliged to finance the building of a public object (a road, school, pool, sport’s hall) and after that continues to provide maintenance of the object and accept a compensation through doing a public service from final users or the budget. This type of partnership considers a variety of forms in which one or more, small or big, projects are given to the private investor, which can include creating, making a project, financing, completing the work, restoration, using the resources and/or providing services. One of these types of partnerships by contracts is a concession, which stands for commercial use of natural sources or causes that are of public interest. The law defines concession as a public-private partnership determined by a contract, determined by time, under certain conditions, that includes paying of concessive compensation from the private and/or public partner. Additionally, the private partner is responsible for any risk regarding commercial use of the subject of a concession. (Pavlović-Križanić 2012: 19)

The other type of public-private partnerships is an institutionalized public-private partnership which stands for founding a conjoined company or building and/or managing a public infrastructure. Investments, responsibilities, obligations, risk sharing and managing such an institution is the result of the contract between a partner from private and a partner from the public sector. Moreover, institutionalized public-private partnership can be created by founding a new institution or taking over a part of a previously existing public company by a private investor. This type of public-private partnerships is recommended in companies that provide public services that are of great importance for a public sector and, thus, it is needed for public sector to keep the control over such services. (For instance, in Italy, Hungary, Czech Republic and other countries, public-private companies are in charge of providing water based on the contract on utilities).

Legal and regulatory frame of public-private partnerships in Republic of Serbia

A public-private partnership is an object of direct and indirect regulating by different laws. Indirectly, the institution of public-private partnerships is an object of regulating by the Law of public-private partnerships and Concessions (Anon. 2011a) and Law of public procurement (Anon. 2012a). Directly, public-private partnerships are an object of regulation of systemic laws that regulate the economic system of Republic of Serbia. In that sense, the most important laws are Law of utility services (Anon. 2011b), Law on public property (Anon. 2011c), Law on foreign investments (Anon. 2003a), Law on energy (Anon. 2011d). Norms that refer to public-private partnerships represent the rules that are generally implemented to all types of partnerships, regardless of legal model or an object of partnership (energy, infrastructure,
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For the first time in the Republic of Serbia Law on public-private partnerships provides an explicit frame for regulating this important institute. The law was enacted because of the realization of following goals:

• The empowerment of financial capacities in regard to building infrastructures;
• Realizing the public services of a higher quality;
• Realization of publicity and ‘transparency’ of procedure of availability and usage of public resources;
• Compatibility of legal frame of public-private partnerships and the conventions of EU and ‘good practices’ (Cvetković 2012 : 11).

The Law on public-private partnerships and concessions regulates the conditions and the fashion of creation, suggestion and approving of projects of public-private partnerships; rights and obligations of public and private partners; authority of Commission for public-private partnerships; conditions and the way of granting concessions; the subject of a concession; legal protection during the acts of assignment of public contract (Anon. 2011a) as well as the basic principles:

• The protection of the interests of the public;
• Efficiency;
• Transparency;
• Equal and just treatment;
• Free market;
• Proportionality;
• The protection of environment;
• The autonomy of will;
• The equality of both partners (Anon. 2011a).

With regard to this law, public-private partnership is a long lasting cooperation between a public and a private partner with a goal of providing financing, building, reconstruction, managing or keeping of infrastructure and other buildings of public importance and providing services of public importance, that can be a partnership based on a contract or it can be institutionalized (Anon. 2011a). In regard to this law, concession is a public-private partnership determined by a contract, containing the elements of a concession, in which a commercial exploitation of a natural resource is determined by a public contract. Natural resources can also refer to the assets in public use, that belong to the state or providing services of public interest, that are given to the domestic or foreign entity, for a limited period of time, under strict conditions. A private and/or public partner gives compensation, whereby the private partner takes the risk involved in commercial use of the object of the concession (Anon. 2011a). Concession can be awarded for commercial uses of natural resources or resources of public use that are public property or conducting a business of public interest, and in particular for exploration and exploitation of minerals and other geological resources, for specific activities within the protected areas, as well as for exploitation of other natural resources; in the areas of energy; for harbours, public
roads, public transport, airports; in the areas of sport and education, on cultural assets; for utility services; railway; for commercial uses of cable cars; in healthcare; tourism. The grantor of a concession can be:

- The Government, on behalf of the Republic of Serbia in cases when public bodies and subject of concession are under the authority of the Republic of Serbia
- The Government of autonomous province, on behalf of autonomous province, in cases when public bodies and subject of concession are under the authority of the autonomous province
- The Parliament of a municipality, in cases when public bodies and subject of concession are under the authority of a municipality
- A public company, or a legal entity authorized by rules for awarding concession (Anon. 2011a).

A public call is to be published in “Službeni glasnik RS” as a means of public informing that is distributed on the territory of Serbia, on the web page of the public body and on the Portal of public procurements. Besides that, if needed, a public call is to be published in one international paper and the internet edition of appendix to “Službeni list” on European Union, which is obligatory for every project with the value greater than five million euro. A public contract is signed over a period of no less than 5 and no more than 50 years. If any regulation changes after signing a contract in the direction of diminishing any of the parties involved, there is a stabilization clause that allows adjusting the contract without any limitations in regard to reclaiming the position a partner had at the beginning of concluding the agreement. Legal protection in the process of signing a contract is provided according to the Law of public purchases. Public contracts are registered in the Public Contract Register kept by the Ministry of Finance and Economy as a unique electronic database on the Portal of Public Purchases.

The object regulated by the law is extensively defined. The law regulates the conditions and the manner of producing, suggesting and approving of projects of public-private partnerships, subjects, rights and obligations of actors in public-private partnerships, legal grounds (public contract), process of awarding concessions, protection of the rights of actors in the process of assigning public contracts, and any other issues that can occur during the arranging and realizing the partnership. The Law on Public-Private Partnerships and Concessions is the fundamental legal source of managing public-private partnerships. Note that subjects of public-private partnerships cannot be used exclusively for commercial purposes of general application. The awareness of the public interest is therefore essential for the existence of the partnership; without that element a project is not a public-private partnership in reference to the Law on Public-Private Partnerships and Concessions. On the other hand, a public body can use other legal mechanisms (a lease contract or other forms of contracts) with a goal of creating such a project (commercial, without realization of public interest). However, those mechanisms are not included in frameworks of
the implementation of the Law on Public-Private Partnerships. In addition: when a municipality (or any other public body) sells or leases a lot for construction or a plant for industrial production, there are no grounds for the implementation of public-private partnerships. Namely, this is the case of putting into operation of economic resource (a lot) in order to utilize it in an economic activity. Public interest is being exhausted, which means that it begins and finishes with the obligation of an investor (a buyer or a leaseholder) to utilize the lot for the purposes of performing an economic activity with regard to systemic laws (tax, labour and employment law, environmental law and others). Nonetheless, if a lot is leased for a limited period of time (not longer than fifty years, according to the Law on Public-Private Partnerships and Concessions) with an aim of fulfilling a certain public interest, then it is the matter of a project that is regulated by this Law, since its realization and process partly involves public interest. Thereby, the existence of the private interest realized in the interest of a private actor for the returns of their investments and earning a suitable profit is not excluded (without such an interest that agreement would not be a public-private partnership, but it would be a project of public works that are funded from the budget).

Institutional framework – Commission for Public-Private Partnership in the Republic of Serbia

An important actor of the concept of public-private partnership in Republic of Serbia is Commission for Public-Private Partnership designed as professional body of the Government of Republic of Serbia, which provides help in the realization of public-private partnership projects and concessions in Republic of Serbia. Commission is made of nine members, deputies of relevant ministries and bodies. Representative of the Ministry in charge of Economy and Regional Development is also the President of the Commission, a representative of the ministry responsible for finance is his deputy. President of the Commission represents the Commission before the state bodies and organizations, as well as other national and international bodies, organizations and institutions; manages the work of the Commission; organizes, directs and coordinates the work of the Commission; President convenes meetings of the Commission, proposes the agenda of meetings and presides at meetings; signs documents of the Commission; takes care of implementation of the Rules and other regulations of the Commission; performs other duties specified by law, these Rules and other regulations of the Commission. The deputy chairman of the Commission can preside at a Session of the Commission on the basis of the written authority of the President of the Commission. Preparation of meetings is organized by the President of the Commission with the help of professional services of the Ministry. Preparing of the meeting of the Commission includes in particular: compiling proposals on the

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agenda; preparing appropriate written materials for the meeting; summons for the meeting and providing technical and administrative conditions for the undisturbed work of the Commission. Report on the work of the Commission meeting is also prepared. Record contains basic information about the meeting of the Commission, and in particular:

- indication of the number of session with the note marking oral, in written or conference session;
- place, time and date of the session;
- information about the present and absent members of the Commission at the meeting, and other persons present at the meeting;
- agenda of the session;
- issues that were the subject of the vote and the result of each vote;
- summary of discussions on issues on the agenda, unless the record is made for the work of the session held in writing form;
- results of the voting on all issues which the Committee discussed at the meeting;
- opinions or other documents adopted at the meeting;
- other information relevant for the session and decision making;
- time of the conclusion of the session (Anon. 2012b art. 25).

An integral part of the record sheets are declarations of members of the Commission at meetings and written papers for declaration which members submitted in writing. Written records of the meeting of the Commission shall be made no later than 10 days from the date of the meeting. Publicity of the Commission is exercised by:

- publication of the documents which the Commission adopted in carrying out prescribed tasks;
- publication of the annual report on state aid granted in the Republic of Serbia;
- publication of other data and information deemed to be of importance for the implementation of regulations in the field of public-private partnerships and concessions;
- issuing statements to the media (press releases) (Anon. 2012b art. 27).

Necessary professional, technical and administrative support, and other resources necessary for the successful operation of the Commission are provided by the Ministry (Anon. 2012b art. 28). The Commission is profiled as a professional (not a political body). Following the adoption of the Law on Public-Private Partnership and Concessions a by-law was adopted (Decree on the establishment of the Public-Private Partnership), which provides that “for the implementation of any project of public-private partnership it is necessary to obtain a favourable opinion of the Commission” (Decree paragraph 5.). This is clearly committed to the “binding” nature of the above Commission’s opinion: the absence of a positive or negative opinion means that giving the project to a public-private partnership is not approved. The Commission has the authority to: assist in the preparation of proposals for public-private partnerships; facilitate the development of public-private partnerships and public contracts; inform and consult on issues of public-private partnerships with
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the elements of a concession or without them; give advice in the process of approval of the project proposal for public-private partnerships without elements of concession and the concession act nomination procedure for the approval by the competent authorities; identify and facilitate the implementation of best foreign experience for the Republic in terms of public-private partnerships with the elements of a concession or without them; develop methodological materials in the field of public-private partnerships and other. Until today, positive opinion of the Commission is adopted for four project proposals of public-private partnerships, and another project that meets the requirements prescribed by law is in the procedure. Ministry of Finance and Economy has prepared a Decree on the Supervision of the implementation of public contracts awarded for the implementation of public-private partnership with the elements of the concession without them, as well as the Rules of Procedure, the methods and content of the register of public contracts, which were adopted by the Government. The methodology developed and value for money, which is entrusted to the international consultants, waiting for its approval by the Commission.

Examples of projects of public-private partnership and their impact on local economic development

Local government in Serbia is responsible for providing adequate infrastructure to support existing and encourage new businesses in their territory. Local development planning on the basis of public revenue base is too narrow for the rapid development of the local community. Today, therefore, it is necessary to complete the budget funding by attracting private capital to build local infrastructure and improving the quality of public services. Involvement of the private sector in the construction of public facilities and providing public services to local authorities realizes a number of benefits for its citizens:

- faster implementation of projects that can be achieved by entrusting more phases of the project (financing, design, construction, use) to a private partner (including a consortium),
- savings in construction costs through faster implementation, faster procurement and reducing of risk of exceeding the deadlines and costs,
- savings in operating costs by using modern technology, skilled labour, centralization of administrative staff and multipurpose use of facilities,
- innovation in the provision of infrastructure and services through competition that encourages private partners to find efficient ways to carry out projects of its competitors and municipalities,
- more possibilities of financing of infrastructure projects without the involvement of the limited budget and borrowing on financial markets,
- better measurement of the performance of service delivery by introducing market standards for assessing the quality and
Public-private partnerships offer no benefits for local projects. For this reason, there is a question of identifying appropriate projects. The experience of the European Union showed that potential projects should meet the following requirements: (1) that the project has a higher value, (2) that the private sector can provide the necessary facility construction and the provision of services, (3) that the project requires technology that is available, (4) the local authorities to define their needs for the duration of the project, (5) that the project is financially viable and economically justified, and (6) that there is an agreement for the project among relevant bodies at local and higher levels of government.

In Serbia, almost two years after the Law was implemented, only one project in public-private partnership is realized, submitted by JKP Informatika Novi Sad, proposing the implementation of the project to build and expand an existing optical telecommunication network on the principle of an open FTTH (fibre to the home – fibre to the end user) in the city of Novi Sad. In addition, this year, three projects were evaluated positively by the Public-Private Partnership Commission: a Concession Deed proposal for the activity of urban-suburban public transportation in the city of Loznica; a Concession Deed proposal for the design, financing, construction, maintenance and management of a public parking garage in Šabac; as well as the proposal of a public-private partnership project submitted by the Public Utility District Heating Zrenjanin, which proposes the production of heat and electricity from biogas and the use of organic raw materials and agricultural industry residues and by-products from the food industry to produce it. The proposal of a public-private partnership that has been submitted by the Public Company for Land, Building and Roads “Directorate for Construction Apatin” in the name of Apatin, contains elements that are regulated by the Law on Public-Private Partnership, but the Commission points out that it needs to comply with the provisions of the Law on navigable and inland waters and precise duration of public-private partnerships.

Conclusion

It is more than expected for public-private partnerships to gradually become an option of choice in the following years, especially for local authorities and in relation to funding big local and regional projects. The question of conducting valid and transparent mechanisms for the analysis of a price/value of every project (value for money methodology, that is to be prepared by the Commission for Public-Private Partnerships and Concessions), minute elaboration on the legal criteria of the assessment and the approval of a project (including determining the type of the risk of each partner), as well as determining a valid mechanism within a municipality in
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order to follow up on the implementation of a project are the most important issues to be resolved. Unless these issues are resolved shortly upon taking up a project, the occurrence of improperly and inefficiently prepared realized projects could become a serious burden on a budget in a long term. Moreover, covering the deficit can cause the increase in debt, followed by ecological, social and economic risks (Pavlović-Križanić 2012: 23).

The expectations from this institute are immense in regard to the increase of the influx of private investments in those local projects with the potential of improving the quality of public services, by investing the funds into new infrastructures, equipment and the way services are provided. The Public-Private Partnerships Commission has the crucial role in fulfilling such expectations. Furthermore, the Commission’s work is expected to be efficient and depoliticized and encouraging in terms of the investing of private funds into a faster growth of local communities, as well as improving the quality of public services. Arrangements of public-private partnerships should be made after a thorough and impartial assessment. Promoting of a model of public-private partnerships and its wider application can be very beneficial not only for private sector, but for the society in general as well. In the future, these arrangements might be the leader of the local economic development, due to the reasons of efficiency, investment’s reliability and cost analysis, compared to standard budgetary funding of projects.

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