

Social Transformation in the Context of Legal Regulation of Public-Private Partnerships

Transformación social en el contexto de la regulación legal de las asociaciones público-privadas

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ABSTRACT:

The article deals with methodological and conceptual features of social transformations in the context of social development. In the course of post-non-classical science development, there have been significant changes in its basic principles and methodological aspects, adjusted by common methodology, that are related to the concepts of temporality and transitivity. A special place is given to the analysis of foreign and domestic research experience in public-private partnerships. The paper discusses features of system, holistic, theoretical, historical, pragmatic and praxeological approaches to the study of public-private partnerships. We have found that public-private partnership formation is a complex challenge that depends on many factors, in particular – historical, cultural, social and legal. We have considered the legal framework of public-private partnership of such countries as Great Britain, France and the USA. We highlight that the use of international experience in regulating public-private partnership is rationale with

RESUMEN:

El artículo se ocupa de las características metodológicas y conceptuales de las transformaciones sociales en el contexto del desarrollo social. En el curso del desarrollo de la ciencia post-no-clásico, se han producido cambios significativos en sus principios básicos y los aspectos metodológicos, ajustados por la metodología común, que están relacionados con los conceptos de temporalidad y la transitividad. Un lugar especial se da al análisis de la experiencia de investigación externa e interna en las asociaciones público-privadas. El artículo analiza las características del sistema, los enfoques holísticos, teóricos, históricos, pragmáticos y praxeológicos al estudio de asociaciones público-privadas. Hemos encontrado que la formación de la asociación público-privada es un desafío complejo que depende de muchos factores, en particular, - histórico, cultural, social y legal. Hemos considerado el marco legal de la asociación público-privada de países como Gran Bretaña, Francia y los EE.UU.. Destacamos que el uso de la experiencia internacional en la regulación de

due account for national-cultural and legal peculiarities of the state.

Keywords: social transformation, transitional period, transitional society, temporality factor, public-private partnerships

asociación público-privada es lógica con la debida consideración de las peculiaridades nacionales-culturales y legales del estado.

Palabras clave: la transformación social, período de transición, de la sociedad de transición, factor de temporalidad, las asociaciones público-privadas

1. Introduction

The socio-philosophical specificity in considering the concept of transitivity has determined the nature of an adequate conceptual framework for the study of social transformations (Farrington, 2016). However, intensive studies of transitional periods have not led to content-driven generalizations and generalizations of conceptual nature. Limitations of theoretical and methodological means of system analysis have determined the local character of using the concept of social transformations in applied research areas on social dynamics, for example – in management and jurisprudence.

Nonlinear study of social transformations is effective because it expands the subject field of science, promotes a holistic understanding of modern global social transformation and the role of social subject in similar processes, according to priority areas of socio-economic stabilization in the field of law (Lysons, & Farrington, 2016; Mena, Van Hoek, & Christopher, 2015; Popov, 2014, pp. 215-219).

In modern science, the issues related to the structure of transitional periods have been insufficiently studied. However, such periods are related not only to the mechanisms of social transformation progress and development. They determine the main trends of the social system that interpret the progressive development within certain period.

This article makes one of the first attempts to consider social transformations in the context of studying the legal regulation of public-private partnership. In this regard, the relevance of the research is conditioned by the necessity of improving management activities in the public sector, namely – by improving business administration and management processes.

The Postmodern Era has predetermined a new stage in society development, affecting the changes in state role and functions. In the CIS countries, public administration system is being reformed due to the search for new ways to transform the managerial processes of interaction between the State and society effectively, meeting the requirements and challenges of modern social and geopolitical reality (Lerman, 2017, pp. 15-32). Modern challenges require changing role of the State, improving living standards of citizens, creating relationships with business structures and civil society. The CIS countries need a powerful infrastructural and technological breakthrough that will solve not only a number of domestic problems, but also will increase the self-sufficiency and independence on the international stage. However, this breakthrough is impossible without the consolidation of the state and society at the political, ideological and socio-economic levels.

In modern Russia, as in developed countries, the transformation trend of public and private financial, economic and managerial resources based on public-private partnership is becoming a common practice (Slack, Brandon-Jones, & Johnston, 2016; Booth, 2014; Chick, & Handfield, 2015). Nevertheless, the domestic legal framework is completely unprepared to regulate this kind of relationship. This situation results in inefficient cooperation, higher risks for investors, a ground for various disputes and abuses.

In legal science, there is no agreement of opinion in the sphere of delegated powers of state bodies to subjects of private law (Guth, 2015; Johnsen, Howard, & Miemczyk, 2014; Slack, Brandon-Jones, & Johnston, 2016). In the general theory of administrative law, the idea of administrative contract law (administrative contract, concession, etc.) development was formed under the influence of German doctrine. The lack of own scientific experience in legal practice has led to mechanical carry-over of foreign institute of law without taking into account the national specifics of legal systems in the CIS countries (Carvalho, Nepal, & Jamasb, 2016, pp.

1330-1347). Thus, we have faced a disjointed system of regulatory legal acts that indirectly regulate public-private partnerships in the form of the Civil Code and Tax Codes, unrelated regulatory legal acts.

2. Methods

The theoretical and methodological basis of this study involves methods of comparative analysis, as well as fundamental developments of foreign and domestic researchers. In general, there are two areas in the study of public-private partnership. The first area determines the economic vector of the research. It is the Higher School of Economics, which pays much attention to the legal and political mechanisms of public-private partnership. The second area involves the legal-cultural and spiritual-moral factors affecting the institutionalization of public-private management, as well as the works devoted to the abuse of power and legal responsibility on the part of the subjects of public-private partnership.

3. Data, Analysis and Results

In the CIS countries, the transformation of public-private partnership requires resolving a number of serious legal, organizational, institutional and financial-economic problems. Thus, we are forced to deal with the issues related to frequent changes in taxation and violation of its principles, insufficient protection of intellectual property rights, lobbying for interests of large state companies, abuse of local authorities and the lack of professionalism, shadow economy, the lack of correlation between the accounting rules and international standards etc. The imperfect legislation and legal instability also play an important role, accompanied by the constant adoption of new legislative acts, which priority is not always substantiated.

The optimal way of state development involves not only the reliance on original national experience, but also consideration of global political, legal and economic trends, the possibility of rational and reasonable transformation of effective foreign instruments, mechanisms and technologies of private-public cooperation for achieving public policy goals.

In generalizing international and national scientific experience in legal regulation of relations that are arising, changing and terminating in the sphere of public-private partnership (PPP), we can allocate a number of scientific approaches to its study. The system, holistic, theoretical, historical, activity and praxiological approaches are the most common (Osei-Kyei, & Chan, 2015, pp. 1335-1346). A comprehensive content analysis of research traditions and approaches is a necessary part of studying the PPP. Each scientific approach contains explanatory arguments necessary to develop and transform the overall conceptualization of the national system of contract relations in public-private partnership of the Russian Federation (RF).

The "*historical approach*" reflects the understanding of private-public cooperation in general and the understanding of PPP in particular, as they are in the process of historical transformations, changes, emergence and disappearance. This approach makes it possible to analyze socio-economic, political, historical, and cultural processes that affect the transformation of separate forms of PPP. Thus, the abstract understanding of PPP as a universal and unchanging form of private-public relations is replaced by a consideration of its development as a natural process of transition from the relatively simple forms of PPP to more complex ones. The historical approach allows us to consider each form of PPP as a relatively independent entity, transforming in accordance with its laws and values. In analyzing its role and significance in PPP, we can state the following. Firstly, this approach substantiates the understanding of PPP as a constantly transforming social reality. Secondly, it allows us to observe PPP in real forms and types. Thirdly, it makes it possible to allocate all political, economic, socio-cultural factors that affect PPP development. Thus, methodology of macro- and micro-comparison, diachronic and synchronic comparison in studying the processes of PPP development, performance and origin in various legal systems shows that the "PPP model" is determined by the peculiarities of national legal system or by the legal system in general (Goetz, 2009). The basic features of the

legal system forming the PPP model characterize whether applying certain types of PPP forms is suitable or unsuitable within a particular legal system. In this regard, PPP model can depend on the level of legal awareness, legal ideology, sources of law, on the level of law axiology, legal hermeneutics, political regime, legal drafting methodology, etc. In this case, we have to monitor the correlation of borrowed forms with national legal system and with the national concept of PPP after choosing and legislating new foreign forms of PPP. Current legal regulation of PPP shows that there is no national PPP concept in Russia (as a strategy and model of PPP development). Therefore, there is no common understanding of how the PPP model is being implemented in RF. Random borrowing of foreign forms of PPP not only deceives investors, but also poses a threat to national security.

"Theoretical approach" reflects private-public cooperation in one of possible aspects of its performance (Carvalho, Nepal, & Jamasb, 2016, pp. 1330-1347). In fact, dynamic and transformational features of PPP are not taken into account, as well as stages of evolutionary development. In theoretical approach, specificity of the object is replaced by the abstract analogues of real phenomena. However, this approach has been transformed into a detached comprehension of PPP to solve certain research problems in studying the legal mechanism of PPP and the functions of its elements.

The *"system approach"* is essential in studying the phenomenon of public-private partnership. This approach makes it possible to avoid methodological one-sidedness and to study PPP from the standpoint of the philosophy of law, economics and strategic management. Currently, there is a growing scientific popularity of system approach to assessing the significance and feasibility of long-term PPP projects, risk management in implementing these projects. In relation to this philosophical and methodological approach, all other studies of PPP are more or less private and complementary in nature. However, this approach has a number of significant drawbacks. According to a quantitative view on PPP and on its structure in terms of function and subordination of its separate independent types and elements, PPP is a kind of "super-system", which elements are subsystems – separate large areas of private-public cooperation and interaction. There are subsystems of civilized and shadow lobbyism; a system of public procurement and outsourcing; contract subsystem, etc. Each of them can be considered as a relatively independent system. Thus, the study of PPP as a system begins from the level of elements, the way of their transformation into the simplest ones and then into more complex systems (subsystems) of public-private cooperation.

"Holistic approach" considers the priority of the whole, which is not a function or result of combination. In this case, allocation of certain elements of PPP and their functions is understandable from the point of their relation to the whole, it stands to structure. The element outside the whole loses all its qualities. The features of separate types of PPP are determined by the fact that they differ not only in morphology (composition of elements). The elements have different meanings and functions in terms of public-private relations to which they relate. In this regard, the visions of PPP under system and holistic approaches complement each other, helping to understand the nature of private-public relations in different modes of transformation. The attitude of I.V. Kuznetsov is of particular interest (Kuznetsov, 2012, pp. 196-204). He considers a "holistic approach in studying PPP" as controversial in modern economic science, since the holistic PPP concept should be based on certain achievements of alternative economic traditions and looks. Their lack prevents the development of effective guidelines for economic agents – participants of partnership, focused on using the potential of PPP.

Scientific literature analysis allows us to allocate a number of other methodological visions and concepts. Hence, the *"activity approach"* is of particular importance. According to this approach, PPP is considered as a special type of activity inherent in private-public cooperation between the business sector and the State: labor, investment, entrepreneurial and industrial activity (employees of the company participating in PPP project); lobbying activity (legal entities or individuals that are bringing civilized and non-legal pressure on company's officers entering into

an agreement on PPP); professional activity of public servants (carrying out their official duties related to PPP project).

In the context of "*praxiological approach*", PPP is considered as an effective and appropriately organized practice. A number of its supporters suggest that PPP is essentially a way of adapting a person to the world. It is designed to ensure the self-preservation, comfort and development of a man, to create the most effective means of achieving these human goals. Thus, the state and business can unite their efforts in solving significant problems of society in various spheres and areas of human activity. In terms of legal science, the issues of combining financial flows of public and private partners are under attention, as well as issue of authority delegation (delegated powers of state bodies on providing public services to a private partner), power abuse, etc. In terms of strategic management, the praxeological understanding of PPP has been widely developed in the framework of service approach in public administration (Gough, & Eisenschitz, 1996, pp. 178-195).

4. Discussion

Summing up, we can conclude that the analyzed scientific approaches interpret the essence, role and importance of PPP differently. They indicate that PPP is a very complicated and controversial structure; it is multi-functional structure with many forms and types in the complex implementation mechanism. These approaches indicate a large number of socio-economic and cultural-political factors that determine the prospects for PPP development as a form of private-public cooperation. Obviously, the PPP institute can become an excellent legal and economic instrument for positive social transformations in PF. However, analysis of current science achievements in the field of PPP, as well as its legal regulation in Russia, shows not only the lack of a national PPP development strategy in public administration system, but also serious disagreements among scientists, political elites, heads of state authorities and local self-government in understanding both the essence of the above-mentioned institution and its functions, challenges, forms and mechanisms.

In general, public-private partnership has demonstrated its efficiency in solving infrastructure problems in a number of developed and developing countries (Goetz, 2009). However, there is no understanding of public-private interaction importance and possibilities in the CIS countries. This holds up the "post-Soviet" market development, does not allow using this mechanism to develop public infrastructure on a global basis.

This paper substantiates that the institutional development of PPP depends on several interrelated levels.

Thus, *program-ideological level* requires a national PPP development strategy, theoretical-methodological and ideological-program substantiation of the essence and significance of PPP, as well as main provisions, possible principles and boundaries of public-private interaction. Thus, there has to be defined model of PPP development that fits the public administration system (since separate PPP models can be effective in terms of economy, but poses a threat to national security from the legal point of view). At this level, each state determines the purpose and objectives, possible forms and types of PPP. In this case, doctrinal and axiological approaches to public-private interaction must meet the socio-economic and legal realities of the state.

In this regard, the PPP model and its efficiency in public administration of each specific state can depend on the level of legal awareness, legal ideology, sources of law, on the level of law axiology, legal hermeneutics, political regime, legal drafting methodology, etc. In this case, we have to monitor the correlation of borrowed forms with national legal system and with the national concept of PPP after choosing and legislating new foreign forms of PPP.

Institutional-political-and-regulatory level ends the legalization of public-private interaction by legal regulation, receiving its formal legal expression in specific forms and types of PPP. Its legalization provides legal frameworks and mechanisms for legal regulation, codified legal

status of entities, remedies, guarantees and legal responsibility. At this level, legal regulation of PPP institutional development is being improved and developed. Current regulatory and law enforcement chaos in PPP leads to adoption of regulatory legal acts with doubtful content, which miscalculations and gaps may pose a serious threat to national security in the CIS countries.

The *law enforcement level* covers law enforcement activities in implementing PPP projects and the social and legal experience formed on its basis. In fact, we are talking about the compliance, implementation, use and application of rules regulating the implementation mechanism of PPP projects.

In terms of developed countries, PPP is an integral part of state's economy. Thus, "Private Financial Initiative" program has been operating in the United Kingdom since 1992. Currently, it is a part of the state program for PPP development, designed to stimulate more active participation of the private sector in public projects (Goodliffe, 2002, pp. 13-18). In France, Presidential decree "On PPP contracts" has been valid since 2004. It provides a definition of PPP as a civil law contract, according to which a state or company representing the interests of the state instructs the third party to perform certain activity during the investment period (Dormois, Pinson, & Reignier, 2005, pp. 243-256). The United States does not have a single federal law, but most states have their own local regulatory legal acts regulating the PPP (Akintoye, Beck, & Hardcastle, 2008).

Thus, PPP structure and development depends historical, legal and cultural factors.

5. Conclusion

Thus, we have considered the main approaches to the essence of public-private partnership. We have substantiated that PPP development depends on several levels.

In Russia, as in other CIS countries, the PPP program remains at a low level due to the lack of clear goals, strategy and due to insufficient legislative framework.

In developed countries, the institute of PPP is developed. In this regard, it is appropriate to adopt their experience with due account for national, historical and cultural features.

The results of this article can be a theoretical source in developing a program for PPP development and introduction in the CIS countries.

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References

Farrington, B. K. (2016). *Procurement and Supply Chain Management*. New York: Pearson Education.

Slack, N., Brandon-Jones, A., & Johnston, R. (2016). *Operations Management*. New York: Pearson Education.

Booth, C. (2014). *Strategic Procurement: Organizing Suppliers and Supply Chains for Competitive Advantage*. London: Kogan Page.

Chick, G., & Handfield, R. (2015). *The Procurement Value Proposition: The Rise of Supply Management*. London, Kogan Page.

- Guth, S. (2016). *Project Procurement Management: A Guide to Structured Procurements*. North Charleston, CreateSpace.
- Johnsen, T., Howard, M., & Miemczyk, J. (2014). *Purchasing and Supply Chain Management: A sustainability perspective*. New York: Routledge.
- Lysons, K., & Farrington, B. (2016). *Procurement and Supply Chain Management*. New York: Pearson Education.
- Mena, C., Van Hoek, R., & Christopher, M. (2015). *Leading Procurement Strategy: Driving Value through the Supply Chain*. London: Kogan Page.
- Slack, N., Brandon-Jones, A., & Johnston, R. (2016). *Operations Management*. New York: Pearson Education.
- Popov, V.V. (2014). Methodological features of social contradictions. *Humanities and Social Sciences in Europe: Achievements and Perspectives*. Vienna, 215 – 219.
- Lerman, Z. (2017). Privatisation and Changing Farm Structure in the Commonwealth of Independent States. *The Eurasian Wheat Belt and Food Security*. – Springer International Publishing, 15-32.
- Carvalho, A., Nepal, R., Jamasb, T. (2016). Economic reforms and human development: evidence from transition economies. *Applied Economics*, 48(14), 1330-1347.
- Osei-Kyei, R., & Chan, A. P. C. (2015). Review of studies on the Critical Success Factors for Public–Private Partnership (PPP) projects from 1990 to 2013. *International Journal of Project Management*, 33(6), 1335-1346.
- Goetz, D. F. J. (2009). *Public Private Partnership Projects*.
- Kuznetsov, I.V. (2012). Foreign experience in public-private partnership. *Russian Journal "Economic Sciences"*, 8, 196-204.
- Gough, J., & Eisenschitz, A. (1996). The construction of mainstream local economic initiatives: Mobility, socialization, and class relations. *Economic Geography*, 72(2), 178-195.
- Goodliffe, M. (2002). The new UK model for air traffic services—a public private partnership under economic regulation. *Journal of Air Transport Management*, 8(1), 13-18.
- Dormois, R., Pinson, G., & Reignier, H. (2005). Path-dependency in public–private partnership in French urban renewal. *Journal of Housing and the Built Environment*, 20 (3), 243-256.
- Akintoye, A., Beck, M., Hardcastle, C. (ed.). (2008). *Public-private partnerships: managing risks and opportunities*. John Wiley & Sons.

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