

## KONCEPT JAVNO-PRIVATNOG PARTNERSTVA U FUNKCIJI RAZVOJA PREKOGRANIČNE SARADNJE

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**Apstrakt:** U radu se javno-privatno partnerstvo sagledava kao pravni fenomen, pri čemu se uvažava višedimenzionalnost JPP koncepta. Tenziju i kontroverzu javno-privatnog partnerstva kao okvira zajedničke akcije javnog sektora i privatnog sektora sa ciljem obezbeđenja funkcionisanja delatnosti od opšteg interesa, generiše suprotnost bazičnih karakteristika javnog i privatnog interesa. Prvi je svojom strukturom i načinom funkcionisanja usmeren ka zaštiti, ostvarivanju i razvijanju opšteg (javnog) dobra. Potonji je, pak, utemeljen na privatnoj inicijativi usmerenoj ka ostvarivanju dobiti. Ključni zadatak regulative JPP-a je da opisanu razliku prevaziđe i uspostavi balans javnog i privatnog interesa koji se ukrštaju u svakom projektu javno-privatnog partnerstva. Izgradnja pravnog okvira JPP koncepta bazirana je na sledećim pretpostavkama:

- postojanju strateške političke odluke pouzdanog legitimiteta o ulasku privatnog kapitala u javni sektor;
- uvažavanju principa saradnje javnog i privatnog sektora, zasnovane na konceptu međuzavisnosti resursa navedenih sektora;
- legitimnosti JPP projekta bazirane na merljivom rezultatu koji se od projekta očekuje;
- eliminisanju dihotomije hijerarhija-trziste kroz primenu JPP koncepta;
- obezbeđenju fleksibilnosti neposrednog ugovornog regulisanja JPP-a (regulisanja u formi javnog ugovora).

Postavljanje projekta JPP-a u kontekst prekogranične saradnje kao širi okvir, otvara dodatne opcije za razvoj infrastrukturnih projekata čiji značaj tangira oblasti koje imaju status prekograničnih. Uz to, sekundarni efekti ovih projekata su uzajamna razmena znanja, ostvarivanje višeg nivoa koherentnosti interesa uključenih javnih partnera kroz pripremu konkretnih projekata, te opšte pozitivno dejstvo na odnose država koje razvijaju prekograničnu saradnju.

Rad ispituje mogućnost primene teorije relacionih ugovora kao osnova za razvoj filozofije ugovaranja koja odgovara javno-privatnom partnerstvu: naime, navedena teorija nastala je kao odgovor na činjenicu postojanja ugovora o ekonomskoj razmeni čiji akteri funkcionišu u različitim diskursima. Za uspeh navedenih ugovora suštinski je važna kooperacija ugovarača, a

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čitav se ugovorni odnos sagledava kao tekuća integracija ponašanja koje raste i menja se sa događajima u predvidljivoj budućnosti. Upravo su navedene karakteristike etablirane odlike ugovora o JPP-u kao javnog ugovora.

U radu se takođe takođe ukazuje na značaj adekvatno ustanovljenog i implementiranog pravnog okvira JPP-a za razvoj odnosa javnog i privatnog sektora i izvan granica konkretnih projekata javno-privatnog partnerstva.

**Ključne reči:** JPP, prekogranična saradnja, relacioni ugovori, javni ugovor

## PUBLIC-PRIVATE PARTNERSHIPS CONCEPT IN THE DISCOURSE OF CROSS-BORDER COOPERATION

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**Abstract:** The paper analyses Public-private Partnership (hereinafter: PPP) as a legal phenomenon, whereby the multifaceted nature of PPP concept is recognized. Tension and controversy of public-private partnerships as a framework for joint actions of the public sector and the private sector which goal is to ensure the proper functioning of activities of general interest, generate opposite basic characteristics of public and private interests. The first is by its structure and way of functioning aimed at the protection, realization and development of general (public) good. On the other hand, the latter is based on a private initiative aimed to maximize profit margin. A key task of PPP regulation is to overcome the above mentioned difference in order to a balance between public and private interests to be established (interests which intersect in each and every project of public-private partnerships). Legal framework for the PPP concept is based on the following assumptions:

- the existence of strategic policy decisions (on which reliable legitimacy is attached) about the entry of private capital in the public sector;
- full awareness about the importance of the principles of cooperation between public and private sectors, based on the concept of interdependence of those sectors resources;
- the legitimacy of the PPP project based on measurable and verifiable results that are expected from the project;
- elimination of the dichotomy hierarchy-market through the implementation of the PPP concept;
- assurance of the flexibility of concrete contractual regulation (PPP regulation in the form of a public contract).

Setting up a PPP project in the context of cross-border co-operation as a wider framework opens up additional options for the development of infrastructure projects of common importance for cross-border areas. In addition, the secondary effects of PPP projects are mutual knowledge

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*exchange, achievement of a higher level of coherence of the interests of the involved public partners through the preparation of concrete projects, and a general positive effect on the relations of the countries that develop cross-border cooperation.*

*The paper examines application of the theory of relational contracts as a basis for the development of philosophy of contracting which corresponds to the habitus of public-private partnerships: namely, the above described theory was created as a response to the fact of existence of agreements on economic exchange which actors operate in different discourses. For the success of the said agreements the cooperation of contractors is of essentially importance: the entire contractual relationship is considered as ongoing integration of behavior that grows and changes with the events taking place in the foreseeable future. The described characteristic are precisely the features of PPP agreement as the public contract.*

*The paper also emphasizes the importance of properly established and implemented legal framework of a PPP for the development of relations between the public and private sector outside the boundaries of specific projects of public-private partnerships as well.*

**Key words:** *PPP, cross-border cooperation, relational contracts, public contracts*