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Public-private collaboration for national security: challenges and opportunities

Співпраця державно-приватного сектору для національної безпеки: виклики та можливості

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Abstract

The purpose of the article is to study public-private collaboration as the main tool to guarantee national security and the sustainability of the State. Research results. The article examines the content, characteristics, and development prospects of public-private collaboration. The system of legal instruments of Ukraine regulating this issue is analyzed. The principles of implementation of the public-private partnership are characterized, as well as the key requirements for its effectiveness. It is summarized that the public-private partnership in the field of national security and defense is a form of cooperation that must guarantee the effectiveness of the implementation of protection and defense measures in the form chosen by the parties in the relevant contracts or agreements. Practical implementation. Public-private collaboration has been used to: build military infrastructure; develop new defense technologies; train military personnel Value/originality. To improve administrative and legal regulation of the public-private partnership, we propose to perform its full transition to online procedures, as it will facilitate the access to information and resources for private companies.

Анотація

Метою статті є вивчення державно-приватного партнерства з дискурсу розуміння його як основного інструменту забезпечення національної безпеки та стійкості держави. Результати дослідження. У статті досліджено зміст, особливості та перспективи розвитку державно-приватного співробітництва. Проаналізовано систему нормативно-правових актів України, що регулюють це питання. Охарактеризовано принципи реалізації державно-приватного партнерства, а також основні вимоги до його ефективності. Узагальнено, що державно-приватне партнерство у сфері національної безпеки і оборони є формою співробітництва, яка має гарантувати ефективність здійснення заходів з охорони та захисту у формі, прописаній сторонами у відповідних договорах чи угодах. Практичне значення. Державно-приватне співробітництво використовувалося для: будівництва військової інфраструктури; розроблення нових оборонних технологій; підготовки військовослужбовців. Цінність/Оригінальність. Для покращення адміністративно-правового регулювання

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Keywords: public sector, public-private partnership, national security, defense, military-industrial complex, private sector.

державно-приватного партнерства пропонуємо здійснити його повний перехід на онлайн-процедури, оскільки це спростить доступ до інформації та ресурсів для приватних компаній.

Ключові слова: державний сектор, державно-приватне партнерство, національна безпека, оборона, воєнно-промисловий комплекс, приватний сектор.

Introduction

Recently, there has been an increasing focus on relationships between the State and civil society, which is based on updated principles. We agree with the view of those authors who note that a feature of modern management practice is building relationship between the State, civil society and business based on the principles of partnership, effective interaction, transparency and decentralization of public administration. The civil society institutes and business structures are allowed to express more than just their views on certain socially significant issues, but directly participate in the development and adoption of management decisions (Soroka 2020; Danylenko, 2019; Sokyran, 2020).

The rules of state aid work for the implementation of public-private partnership projects and require the State, as a partner, to comply with the conditions for the transfer of budgetary resources to private partners to avoid a ban on the public contracts due to the incompatibility of the State aid with economic competition. As an example, we can name the Plan for the Reconstruction of Ukraine (National Reconstruction Council, 2022), which was drawn up by the Ministry of Economy with a recovery price of \$750 billion in budget funds. The implementation of the Plan started with the signing of the Memorandum of Understanding with the International Finance Corporation (IFC), which will help our country to rebuild its transport, logistics, urban, social and energy infrastructure. One of the rather optimistic sections of the memorandum is to attract private investors to the reconstruction of Ukraine's infrastructure within public-private partnerships and concessions.

Therefore, the relevance of the research lies in the fact that progressive development of the economy, increasing social responsibility of business have become prerequisites for the introduction of public-private partnership as a new legal form of market interaction. It is aimed at ensuring the balance of socio-economic

interests of various layers of society and the real participation of social partners in the development and implementation of socio-economic policy within the legal forms established by the State through equitable, rule-based cooperation (Aparov & Yatsenko, 2015).

Consequently, the purpose of the article is to study the public-private partnership from the discourse of its understanding as the main tool for ensuring national security and stability of the State. The results of the conducted research are expected to intensify the implementation of public-private partnership in the military sphere to increase the level of national security and defense of Ukraine. To improve its administrative and legal regulation, a full transition to online procedures should be carried out.

Methodology

The research is based on the thorough study of phenomena and their characteristic features, which is ensured by the combined use and application of the rules and principles developed by methodological science. The following methods of scientific knowledge were used to achieve the goal of the research: general philosophical, general scientific and special scientific.

The method of legal hermeneutics was applied during the analysis of the provisions of the current legislation, regulating general and specific principles of public-private partnership implementation in Ukraine.

Monographic method was helpful when analyzing the research by scientist, who considered the issue under study.

With the assistance of logical method the scientific basis for the article was examined and applied.

The use of methods of abstraction, analysis and synthesis contributed to distinguishing the features of public-private partnership in the field of national security.

The methods of induction and deduction served as tools for summarizing the obtained results.

State-legal modeling method helped to identify the ways of optimizing administrative and legal regulation of public-private partnership in Ukraine and the method of generalization was applied to draw the relevant conclusions.

Literature Review

The issue of public-private partnership was highlighted by many scientists. Thus, Yu. Zuiieva (2023), having analyzed foreign cases of public-private partnership, states that international experience indicates high efficiency of partnership relations between the State and private sector, as well as the expediency of attracting external investment resources during the implementation of complex large-scale projects in various fields. The author comes to the conclusion that cooperation between the State and private investors in the social sphere (medicine, education), transport sphere (motorways, ports, railway transport) and energy sector (construction of power plants, facilities management) is the most in demand at the present stage.

Aparov and A. Yatsenko (2015), also emphasize that public-private partnership is an important tool on the way to the restoration and modernization of the national economy, solving important socio-economic problems by combining and using the resources of the public and private sectors. Unlike former author, the scientists believe that the scope of public-private partnership is much broader and cite the following: search, exploration of mineral deposits and their extraction, production, transportation and supply of heat and electricity, distribution and supply of natural gas, construction and operation of transport infrastructure facilities, mechanical engineering, collection, purification and distribution of water, security health, tourism, waste management, real estate management, etc.

A rather interesting work is the study by Brailovskiy (2014), who investigated the history of public-private partnership and analyzed the current state of its development in Ukraine, highlighting further prospects. However, the author is a representative of economic science, so

the emphasis was precisely on the economic components of the use of public-private partnership in Ukraine.

Speaking about the use of public-private partnership in the context of national security, only few scientists have studied this aspect. As an example, we can name O. Pronevych and S. Pronevych (2015), who believe that a promising direction for the use of public-private partnership in the field of security is the creation of the necessary institutional and legal foundations for the provision of services in the field of private detective (investigative) activities.

Mekh, Horobets and Holovko (2022) focused their attention on the main principles and forms of public-private partnership in the security sector, while pointing out that national security reflects the state of protection of the democratic constitutional system and national interests of Ukraine, therefore it is achieved due to the sustainable development of the national economy, integration into the European economic space, the development of human capital of Ukraine (through the modernization of education and science, health care, culture, social protection, ensuring environmental safety, creating safe conditions for human life), strengthening the capabilities of the national cyber security system by using various tools of influence (including public-private partnership).

Since the public-private partnership in the security and defense area has been working relatively recently, the phenomenon from a management perspective requires research and analysis, development of approaches to management, taking into account the specifics of the industry, systematization of knowledge and research of world experience. Access of non-State legal entities to the defense and industrial complex effectively puts them on the global market. Accordingly, it involves them in the global competition in this area and the "race of innovations" in the market of defense and security goods and services (Kravchenko & Prudkiy, 2023).

The analysts of the National Institute of Strategic Studies, examining the public and private sectors regarding their ability to protect national security, come to the conclusion that there is now a fundamental shift from cooperation between these actors to paternity (Markieieva & Rozvadovskiy, 2021).

The majority of Ukrainian experts note that there are currently a number of specific activities outside the legal field of public-private partnership: security, detective work, intelligence, military consulting, law enforcement, counter-intelligence, anti-terrorist activities, etc. At the same time, the security circumstances in Ukraine require an urgent change in the political and legal conditions in this area.

For example, the activities of private military companies that could provide a wide range of security services have not yet been legally regulated. At the same time, the relevant laws of Ukraine Law No. 959-XII "On foreign economic activities" (Article 4), Law No. 549-IV "On the State Control over International Transfers of Military and Dual-Use Commodities" (Par. 17, Article 1), Law No. 2642-VIII "On mine countermeasures in Ukraine" (Article 36) allow foreign economic entities to provide a range of commercial services, which include a significant proportion of those offered by private military companies.

Results and Discussion

Since cooperation between the State and the private sector first appeared in the practice of foreign countries, there are disagreements in the domestic literature on the translation of the term "public-private partnership". As for the CIS countries, this concept is interpreted as "public-private partnership" or "State-private partnership". Such differences in translation are due to the fact that the word "public" in foreign countries is usually understood more broadly than "State". English-Russian Muller's dictionary (2023) provides the following synonyms to interpret the definition of "public": State; national, universal; generally available; communal; open, vowel.

The professional online dictionary Multitran (2023) proposes the next analogues to this term: communal; open; vowel; national; nationwide; State; public law; universal. It should be understood that in the English language there is no difference between the words "state" and "public"; both of these concepts are expressed by the term "public", which is indicative, because the State is not only officials and politicians; the State and power is society, which affects the processes taking place in the country.

Thus, public-private partnership is a form of cooperation between the public sector (institutions and authorities) and the private

sector (enterprises and companies), in which both parties jointly direct efforts and resources to solve certain tasks or provide certain services. This may include implementation of infrastructure projects, provision of social services, property management, etc.

Public-private partnership in the sphere of human, society and state security is a complex socio-legal problem. The strategic direction of law-making activity in Ukraine is also the creation of institutional and legal foundations for the establishment of public-private partnership in the field of prevention, response, and minimization of the consequences of man-made, natural and socio-political emergencies (Danylenko, 2019).

The first legal act in which a legal definition of public-private partnership was provided at the legislative level is the Law of Ukraine No. 2404-VI (2010). It was adopted to determine the organizational and legal basis of interaction between State and private partners and is currently the source of the main principles of its implementation.

Undoubtedly, any interaction should be based on certain principles as rules of conduct for all parties of partnership.

Let's clarify that in legal doctrine, principles are general, guiding (basic, main, starting, initial theoretical, general normative, directing) provisions (Sokyran, 2020, p. 41). For the sphere of public-private partnership, the following concepts are established:

- 1) equality of public and private partners before the law;
- 2) prohibition of any discrimination against the rights of public or private partners; coordination of the interests of public and private partners for the purpose of mutual benefit;
- 3) ensuring higher efficiency of activity than in the case of implementation of such activity by a public partner without involving private partner; continuity throughout the period of the contract concluded within public-private partnership, the purpose and form of ownership of objects in the State or communal ownership or belonging to the Autonomous Republic of Crimea, transferred to a private partner;
- 4) recognizing rights and obligations provided for by the legislation of Ukraine and determined by the terms of the contract concluded within the framework of the state-

- private partnership by the public and private partners;
- 5) fair distribution of risks associated with the performance of contracts concluded within public-private partnership between public and private partners;
 - 6) determining private partner on a competitive basis, except for cases established by law (Soroka, 2020).

Summarizing the principles listed above, we get the following basic rules for its implementation: equality before the law, non-discrimination, efficiency, compliance with legislation and contract terms, fair distribution of risks, competitiveness.

However, it should be noted that researchers define other principles of public-private partnership in the scientific literature. Such principles are not fixed at the legislative level, but they are still important for clarifying the essence of public-private partnership. Thus, the authors single out the following principles of implementation of public-private partnership:

- 1) the principle of efficiency of budget expenditures;
- 2) the principle of public interests priority;
- 3) the imperative principle of social relevance of the State's economic policy;
- 4) the principle of business social responsibility;
- 5) the principle of the public nature of social relations management;
- 6) the principle of information transparency;
- 7) the principle of ensuring State control.

We agree that it is not possible to define all principles at the legislative level, so they can be specified when concluding a public-private partnership agreement, but some of them are extremely important. After all, as practice (including international one) indicates that the parties do not always adhere to the established principles, which does not have the effect for which the partnership was established.

For example, in 2018, the European Court of Auditors (2018) in its report "Public Private Partnerships in the EU: Widespread shortcomings and limited benefits" stated that despite the potential of this partnership to achieve faster policy implementation and ensure proper service standards, audited projects are not always were effectively managed and did not provide adequate value for money. The potential benefits of public-private partnerships were often not realized as they have been delayed, increased and

underutilized, resulting in inefficient spending. The authors of the report determined that, in addition to bureaucratic delays, the final result was also affected by the lack of proper analysis of strategic approaches to the use of public-private partnerships and the institutional and legal framework.

Thus, in deciding whether to transfer a national security project to partners from the private sector, the public sector should find out if this decision maximizes the value for money, as well as whether it protects public interests (in the context of equal conditions between public-private partnerships and traditional purchases).

In addition to the above, a public-private partnership should include:

- 1) sharing of risks and responsibilities, where both parties, the public and private sectors, share the risks and responsibilities associated with the implementation of the project or services provision;
- 2) financial transparency (to comply with it, it is necessary to conclude a detailed agreement on financing and management of funds, which will ensure not only transparency, but also effective use of resources);
- 3) innovation (the private sector can bring technical know-how and innovation, thereby ensuring a more effective solution to problems);
- 4) duration, because such partnerships usually involve a long period of cooperation, which ensures stability and long-term benefits for both parties;
- 5) socio-economic impact (public-private partnerships can contribute to socio-economic development, in particular, by creating new jobs, improving the quality of services and developing infrastructure).

Since public-private partnership is used in many areas, however, specifically in the field of national security and defense, its priority is rarely overlooked (there is no mention of it in the Law of Ukraine "On Public-Private Partnership" (Law of Ukraine No. 2404-VI, 2010).

However, this Law defines: "...by the decision of the state partner, the public-private partnership can be applied in other spheres of activity, providing socially significant services, except for the types of economic activity that, according to the law, are allowed to be carried out exclusively by State enterprises, institutions and organizations". Since national security is always

a socially significant area, it is logical to assume that the provision of services within its borders is a socially significant process”.

Thus, the legislator indirectly allows the implementation of public-private partnership projects in the security and defense area. However, there are currently a number of specific activities outside the legal field of public-private partnership: security, detective work, intelligence, military consulting, law enforcement, counterintelligence, anti-terrorist activities, etc. At the same time, the security conditions in which is Ukraine now, require an urgent change in the political and legal circumstances in these areas (Markieieva & Rozvadovskyi, 2021, p. 11).

With the beginning of the full-scale invasion of the Russian Federation on the territory of Ukraine, there was a big problem with the lack of weapons, including drones. At the same time, it gave impetus to the formation of new private enterprises, which not only meet the linear needs of the security and defense sectors, but also create innovative high-precision products.

More than 200 companies producing drones of various types are already operating in Ukraine. Thanks to State programs and charitable funds, most of the contracted drones were manufactured in Ukraine – "Kazhan", R-18, "Vampir", Punisher and others (Honcharova & Danishevskaya, 2023). Many more both the name and the development itself remain classified. Startups in this field can be conventionally divided into two groups:

hardware, for example, drones, anti-drone guns, tactical headphones, communication systems, etc.;

software: battlefield management systems, gunnery software, training modules, cyber security systems, and more (Soroka, 2022; Kravchenko & Prudkyi, 2023).

One of the few examples of cooperation between public and private partners in the field of national security is the Airlogix official website (2023) project, whose team first developed and created reconnaissance drones "Gor" for ground troops. Thanks to State programs, the initiative of the Ministry of Digital Transformation and the UNITED24 fund, the company was able to receive a state order for the production of such drones. And although the collaboration was not carried out through public-private partnerships, but rather through the State order, this example clearly demonstrates that the public and private

sectors can successfully implement projects even in extreme conditions.

It should be understood that scientific and technical cooperation is becoming an increasingly important and effective form of modern relations both at the national and international level. Given the high rate of scientific and technological progress, any country, no matter how significant its potential in the field of science and technology, can fully satisfy its needs in advanced science and technology for the production of the entire spectrum of scientific products, which is constantly changing and improving. Cooperation in creating high-tech products is the most important part of modern international relations. Knowledge, especially science-based, is critical to turning the increasingly complex problems facing society into opportunities for more sustainable development, achieving the Sustainable Development Goals, and meeting other shared commitments (Soroka, 2020).

Accordingly, within the framework of security and defense, this model vividly describes the synergistic effect of the interaction of the State (mostly the Ministry of Defense), enterprises regardless of ownership, as well as universities, which are, on the one hand, places for generation and testing of new ideas, and on the other – provide qualified personnel to both State agencies and enterprises creating innovative products or providing services for this area.

However, regulatory and legal provision of public-private partnership in the field of national security requires significant modernization (understanding all the complexity of the existing mechanism and considering that a country is in a state of armed conflict does not have time for long procedures existing in peacetime). Therefore, the Government's Priority Action Plan for 2023 determined that it is necessary to develop and submit for approval a draft law on amendments to the Law of Ukraine "On public-private partnership" to create conditions for the development of the defense and industrial complex of Ukraine in order to stimulate the development of the defense-industrial complex using mechanisms of public-private partnership and military technical cooperation with foreign countries for the production of highly effective weapons, military and special equipment, meeting the needs of the Armed Forces, other bodies of the security and defense sector, increasing the export potential of the defense-industrial complex, it is necessary to develop and submit for approval a draft law on amendments

to the Law of Ukraine "On public-private partnership".

In addition to the above, Transparency International Ukraine (2023) in its study "Public-private partnership as a tool for the reconstruction of Ukraine" presented the following conclusions regarding the prerequisites for the successful implementation of public-private partnership:

- 1) predicted regulatory policy and priorities of the State;
- 2) investment protection;
- 3) performance monitoring;
- 4) determination of the conditions of public-private partnership;
- 5) project support;
- 6) research on the impact of public-private partnership;
- 7) revision of conditions.

In our opinion, in the conditions of global digitalization of public services, as well as in view of the presence of corruption risks in Ukraine, it is necessary to include a full transition to online procedures as part of the successful implementation of public-private partnership in general, including in the field of national security. Moreover, at the end of May 2023, Prime Minister Denys Shmyhal presented the Government's vision for the coming years: Ukraine is a digital country, convenient for people and business, safe and economically strong. Of the four core principles, one of them is public-private partnership, primarily in the military-industrial complex (Mosorko, 2022).

Using the safe direction of the public-private partnership institution in the military-industrial complex is, in our opinion, more promising (provided it is reformed) than short-term investments in startups. After all, its duration will enable the private partner to strategically plan its activities, which is a guarantee of stability and sustainability.

Conclusions

Public-private partnership is a form of cooperation between the public and private sectors to solve certain tasks, projects or provide certain services. In such partnerships, the public and private sectors combine efforts, risks and resources to achieve common goals.

We can summarize that the public-private partnership in the field of national security and defense is a form of cooperation that should

ensure the effectiveness of the implementation of protective and defense measures in the manner chosen by the subjects of the relevant contracts or agreements. As a tool for ensuring national security and stability of the State, it has significant potential, because it can bring together a significant number of stakeholders with common goals, solutions of urgent problems or the natural development of legal phenomena and, as a result, - resources for achieving these goals.

The use of the public-private partnership institution in the military-industrial complex (for example, for the development and manufacture of drones) and after the war in rebuilding the country is seen as the most promising directions in the modern conditions in which Ukraine is. This requires modernizing existing legislation to simplify it regarding the access of private actors to public funds and mechanisms for monitoring the effectiveness of the use of their provision.

In addition to the above, it is necessary to make other legislative changes to regulate the access of private actors to the system of ensuring national security and defense, for example, in the following areas: security, detective work, intelligence, military consulting, law enforcement, counter-intelligence, anti-terrorist activities, etc.

To improve administrative and legal regulation of the public-private partnership, we propose to perform its full transition to online procedures that significantly simplify the participation of potential investors in tender procedures, which is undoubtedly a big step forward.

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