



Uniwersytet  
Wrocławski



ISSN 2029–2236 (print)  
ISSN 2029–2244 (online)  
SOCIALINIŲ MOKSLŲ STUDIJOS  
SOCIAL STUDIES  
2011, 3(1), p. 193–211.

## THE CONCEPT OF PUBLIC-PRIVATE PARTNERSHIPS IN LITHUANIA

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Received 12 November, 2010; accepted 23 March, 2011

**Abstract.** *The article analyses the use of the concept of public–private partnerships in Lithuania (“the concept”) and its alteration with economic, political and other social changes in the administrative law. The alteration of the concept is considered in legal theory, legislation, and legal practice through analysis of scientific publications, conference materials, legal acts, cases of public–private partnerships. The author aims at evaluating the framework, the functional and distinguishing features of the concept, revealing and upholding the adequate definition of public–private partnership, and identifying the factors having an effect on the change of the concept. While analysing the changes in the understanding of the concept, the author stresses that the legislation that reveals the understanding of the concept has been delayed. After the analysis of theoretical issues raised in the paper, the author proposes several versions of a public–private partnership.*

**Keywords:** *public and private sectors, public–private partnerships, concession, public service.*

## Introduction

*Relevance of the study and research problems.* The issue of public–private partnerships is especially relevant nowadays. Despite the economic crisis and undergoing reforms in the public sector, problems require a long-term solution and not just one certain reform according to the state programme at a specific period in time. Political, economic, institutional and other social aspects must be harmonized. Legal instruments can guarantee consistency in all of these actions. The informational and legal issue of the reform in administrative and public sectors arises because of the changing social-legal values, norms and principles. They are expressed in new ways, and an objective need of dissemination emerges. Reacting to the needs and fulfilling these needs are the features of a value-oriented public administration.<sup>1</sup> However, the state alone (the public sector) cannot solve all of these questions without participation of social partners from the private, public and third sectors. Thus, the need for a social partnership emerges.

The category of “public–private partnership” was first used in 1980 in the USA and UK, when the private sector was involved in the context of defining the tendencies of urban development phenomena.<sup>2</sup> The understanding of public–private partnership later underwent various changes and tendencies due to many social factors.

A decade ago, the analysis of problems of partnership between the private and the public sectors in Lithuania could be relevant only on a theoretical level. In Lithuania, like in many other countries of Eastern and Central Europe, implementation of public–private partnerships is still a novelty. However, in recent years the institutions of these countries have undertaken many business projects in collaboration with the private sector, and attempts have been made to legally regulate the field of public and private sectors’ contractual relations. What is the nature of these contractual relations? At the moment, it may be claimed that public–private partnerships are implemented in the practice of public administration in Lithuania and the significance of such partnerships is also growing in the field of the administrative law. An analysis of scholarly and legal sources leads to the conclusion that since the adoption of the Law on Concessions, all legal subjects need a more accurate and unified concept of the public and private sectors. This concept must be legally used in the process of implementing public administrative functions. The analysed documents show that the necessity to use this concept had occurred prior to adoption of the Law because the laws applicable in the field of public administration had been inadequate and the concept itself has not been clear. In the author’s opinion, results can be satisfactory only with the involvement and connection of science, technocracy, and legal regulations—rational actions, strength-based improvement, neutralising and compensating business threats, etc.

When a public–private partnership, a social object of multifaceted research and assessment, is not sufficiently recognized in the practice of public administration, favourable conditions for corruption and misuse of official positions are created, and the state

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1 Hood, C. A. Public Management for all Seasons? *Public Administration*. 1991, 60: 3–19.

2 Kumar, S.; Jayasankar, C. *Public-Private Partnerships in Urban Infrastructure*. Kerama Calling, 2004, p. 36–37.

suffers great losses; for instance, termination of public–private partnerships and similar cases identified by the National Audit Office of the Republic of Lithuania in 2008.<sup>3</sup>

During the last decade, in many member states of the European Union and third countries the public sector has been increasingly more involved in the funding and implementation of state and municipalities investment projects for the creation of public infrastructure, development of public services, and the improvement of public services provision. Only in 2009, with the modification and supplementing of certain legal acts analysed in this article, the significance of private–public partnerships has been brought to light. Important legal acts were adopted which established the concept of public–private partnership, defined the objectives, identified inter-sectoral activities, principles, features and content of public–private agreements.

Therefore, considering the relevance of the discussed problem, the *object of the study* focuses on the understanding of public–private partnerships in Lithuania. The author broadly discusses the use of the concept of public–private partnerships. The concept must reflect the objective possibilities of such cooperation, considering social economic processes that have an effect on the implementation of public–private partnerships and consequently on the legal definition of the term. One of the fundamental pillars of understanding inter-sectoral partnership is the identification of practical objectives of cooperation, making the necessary decisions, and a clear system of values and goals in the partnership. The parties interested in partnership must have a common vision and harmonize their actions for the purpose of maximum cooperation. Unfortunately, the nature of public and private sectors differs, and this impedes cooperation. Sometimes the private sector is chosen carelessly based on the opportunity to receive funding for the project. This distorts the essence of the partnership itself. The final result of cooperation may leave the parties unsatisfied, and furthermore, fail to meet the expectations and needs of targeted consumers.

The *purpose* of this article is to reveal the essence of public-private partnership and understanding of its change in Lithuania.

The *objectives* of the paper are the following: 1. to reveal the interrelations of the legislative process and the public-private partnership issues that require regulation; 2. to present the interrelation between the strategy of private–public sectors' partnership and changes in the understanding of this partnership; 3. to outline the author's position on the spread of public–private partnerships.

*Hypothesis.* Attempts to find the meaning and essence of public–private partnerships solely through legal analysis, without regard to the social inter-disciplinary connections, has impeded the understanding of the concept and possibilities to rely on useful integral information of other social sciences. The formation of the public–private partnership concept has been impacted by the lack of an integral approach. Researchers have failed to identify connections between the legal and other social ideas and therefore, the spread of partnerships in Lithuania has been impeded.

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3 National Audit Office of the Republic of Lithuania. On the results of financial (legality) audit undertaken in the Public procurement council under the Government of the Republic of Lithuania [interactive]. [accessed 12-10-2010]. <[http://www.vkontrole.lt/auditas\\_ataskaitos.php?tipas=f&metai=2008](http://www.vkontrole.lt/auditas_ataskaitos.php?tipas=f&metai=2008)>.

*Description of the used methodology.* The method of *document analysis* was used to find information and quantitative analysis was used to investigate the concepts (frameworks), programs, applicable legal acts, documents of various institutions, and scholarly publications. These data allowed to evaluate, retrospectively, the tendencies of change in public–private partnerships.

The method of *systemic analysis* was used to identify the reasons for forming public–private partnerships and possibilities for the spread of such partnerships. The problems of administrative law are discussed as part of the general social environmental system, revealing their relation with other problematic social situations.

The method of *meta-analysis* was applied in analysing the development of public–private partnerships on the basis of the civil, administrative law, legal theory, and sociological, philosophical, and historical point of view.

The *historical* method was used to analyse the genesis of public–private partnerships and change in the relevant legislation in Lithuania.

*Case study analysis* was based on the results of a social network intervention method. The author analyses public–private partnerships as a social phenomenon in the city of Druskininkai.

## 1. The Outset of Public–Private Partnerships in Lithuania

Discussions on establishing the best ways of cooperation in the framework of public–private partnerships started only a few years ago, although one of the first legal acts in this field (the Law on Concessions<sup>4</sup>) was adopted in 1996. The first version of the Law did not define public–private partnerships. The key provisions on this kind of joint activities (partnerships) were established in the Civil Code and only later specified in other legal acts.

In the law amending the Law on Concessions (adopted on 24 June, 2003<sup>5</sup>) the term “public services”, known in other social sciences, was used for the first time. In the version of the law of 29 April, 2004,<sup>6</sup> the term “public works concession” was used. Only the 29 June, 2009<sup>7</sup> version of the Law included the term “public–private partnerships,” which has been used in other countries for some time. Meanwhile, the Law on Investments included the term “public–private partnership” since 16 June, 2009,<sup>8</sup> although the law was adopted a decade ago—on 7 July, 1999. The author considers that the use of this category in the legal acts of the Republic of Lithuania may be related to the necessity to fulfil social-economic needs. Thus, it is important to analyse and assess the causes of insufficient entrepreneurship of the public and private sectors and aim to improve the entrepreneurship under the new conditions of market globalization.

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4 Law on Concessions. *Official Gazette*. 1996, No. 92-2141.

5 Law on Concessions. *Official Gazette*. 2003, No. 70-3163.

6 Law on Concessions. *Official Gazette*. 2004, No. 73-2533.

7 Law on Concessions. *Official Gazette*. 2009, No. I-1510.

8 Law on Investments. *Official Gazette*. 2009, No. 77-3164.

According to Article 2 (15) of the Law on Investments of the Republic of Lithuania, supplemented on 16 June, 2009, the public–private partnership is described in the following way:

“Public–private partnerships” means the ways of co-operation between a state or municipal authority and a private entity as specified by laws, whereby the state or municipal authority transfers to the private entity the activity assigned to its functions, while the private entity invests into this activity and the assets required for carrying it out and receives a remuneration therefore as specified by the laws.”<sup>9</sup>

Thus, the forms of partnership between public and private sectors are laid down by this law, the Law on Concessions, and other laws.

Meanwhile, A. Abišala and partners (consultancy firm headed by former prime minister of Lithuania) formulated a broad concept of the public–private partnership in 2009. According to them, public–private partnership means any transaction between the private business and the state, ranging from public procurement transactions (procurement of long-term services) to privatisation.<sup>10</sup>

## 2. Change in the Essence of Public–Private Partnership in Lithuania

The Law on Concessions, as already noted, did not introduce the concept of public–private partnerships all at once. The National Audit Office of Lithuania in its report of 2008 stressed that after coming into force in 1996, this law was not implemented for a couple of years.<sup>11</sup>

Prior to 2009, the understanding of public–private partnership had been developed only on the level of scholarly-practical conferences. However, the interest of public sector representatives to regulate these partnerships legally could be observed at such conferences. In particular, active discussions on the topic took place in 2004–2005. D. Burgienė claimed that private subjects have an opportunity to participate in public sector projects through concession.<sup>12</sup> Based on this approach, D. Burgienė clearly argues for further opportunities for cooperation between the public and private sectors. Meanwhile, D. Gudelis and V. Rozenbergaitė relied on the Anglo-Saxon traditions and used the equivalent of the term in English: public–private partnership (3P) (in Lithuanian “viešojo ir privataus sektorių partnerystė”).<sup>13</sup> While analyzing the experience of

9 Law on Investments of the Republic of Lithuania. *Official Gazette*. 1999, No. 66-2127.

10 Abišala and partners. PPP politika ir ekonomika. Pranešimas Statybininkų asociacijai. [PPP policy and economics. Presentation to the Lithuanian Builders Association] [interactive]. [accessed 19-09-2010]. <[http://www.vilniausmetro.lt/files/Image/VPP/091210/PPP\\_politika\\_ir\\_ek\\_Abisala.pdf](http://www.vilniausmetro.lt/files/Image/VPP/091210/PPP_politika_ir_ek_Abisala.pdf)>.

11 Audit Report of the National Audit Office of the Republic of Lithuania. National audit report on public-private cooperation No. VA-P-30-5-1. National Audit Office of the Republic of Lithuania [interactive]. Vilnius, 15-01-2008 [accessed 10-04-2009]. <[http://www.vkontrole.lt/auditas\\_ataskaita.php?2136](http://www.vkontrole.lt/auditas_ataskaita.php?2136)>.

12 Burgienė, D. Praktiniai teisiniai aspektai, realizuojant savivaldybių koncesijų projektus [Practical Legal Aspects of Implementation of Municipal projects on Concessions]. Lideika, Petrauskas, Valiūnas and Partners LAWIN [interactive]. Vilnius, 2004 [accessed 04-12-2009]. <<http://www.lawin.lt/lt/docs/download/1582.php>>.

13 Gudelis, D.; Rozenbergaitė, V. Viešojo ir privataus sektorių partnerystės galimybės. [Public-private partnerships opportunities]. *Viešojo politika ir administravimas*. 2004, 8: 58–74.

foreign countries, they state that the essence of public–private cooperation is to provide services traditionally within the competence of the public and private sectors and to develop their infrastructure. L. Dičpetris on the basis of foreign country experience suggests to distinguish the categories of “public–private partnerships” (PPP) and “projects of public–private partnerships.”<sup>14</sup> The idea of the conception of public–private partnership defines different principles of public–private cooperation. The conception discusses various contractual relations (e.g. concession, lease, privatisation, etc.). The project of PPP is described as an exceptional public–private cooperation framework model which has its own structure, contractual relations, clearly described implementation and expected benefits. The conference which focused on this PPP project was organised on the initiative of the public sector (Ministry of Economy) and interested representatives of the private sector. E. Kačkus, the representative of the Department of Economics of Vilnius city municipality, in this conference presented the public–private partnership (PPP) management model projects that had PPP features and were implemented in the municipality of Vilnius city. While presenting the project ideas, the representative of public sector indicated the lack of a uniform understanding of the PPP. This could be noticed from the scheme of Vilnius city municipality that stresses contractual relations of partnership.

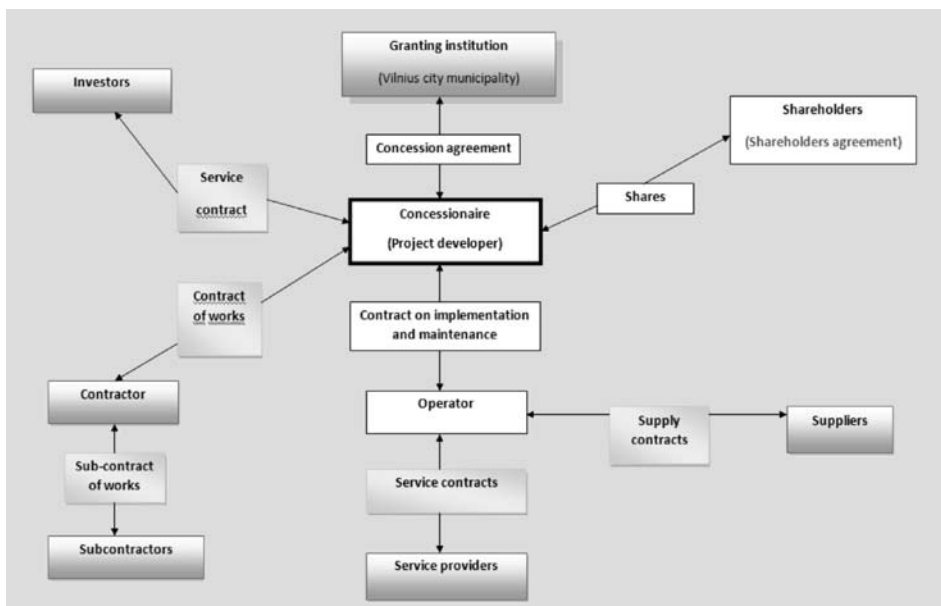


Figure 1. PPP – pilot project: framework project scheme

14 Dičpetris L. VPP projekto tinkamumo, naudos ir atsipirkimo vertinimas. Praktiniai aspektai viešajam sektoriui [Assessment of Adequacy, Advantages and Expedience of Public-Private Projects]. [interactive] Vilnius, 11-24-2004 [accessed 04-28-2009].

In assessing the position of L. Dičpetris, we may conclude that he does not equate public–private partnership with a concession. Meanwhile, I. Žiogaitė and G. Kaminskas seem to distinguish possible methods of PPP in defining them under the category of “contractual relations.”<sup>15</sup>

I. Žiogaitė and G. Kaminskas (2005) stressed that “a concession or a public–private partnership is concluded to promote the development of infrastructure; to provide public services; to administer and (or) dispose of state and municipal property [...]”<sup>16</sup> It seems that the authors use the terms “concession” and “public–private partnership” as synonymous. Presenting a slide “Concession–Public-private partnership” they state that a concession is not privatisation, lease or public procurement. In the author’s opinion, if a conception is equated with public–private partnership, it may be concluded that PPP is not privatisation, lease, nor a case of public procurement. The legislation does not define the term of the PPP, thus the understanding of the public and private sectors remains unclear. Lawyers attempt to provide their own understanding on the issue but it is not necessarily the correct opinion. The change in the understanding of the public–private partnership is ongoing. The definition of terms, their specification and use in legal provisions show that this is a creative process, and thus legal terms should reflect the objective reality of public–private partnerships.

In a seminar organized by the World Bank and the Ministry of Health (2006), D. Vaitiekūnienė,<sup>17</sup> presenting the current situation of the public–private partnerships and their prospects in Lithuania, defined the concept of public–private partnership. According to her, “public–private partnership” means cooperation of public and private sectors’ representatives based on long-term agreement, in essence aimed at providing services traditionally under the competence of the public sector and developing the infrastructure necessary for the provision of such services. D. Vaitiekūnienė distinguishes two methods of public–private cooperation: a concession and agreements on public–private partnerships. The author perceives concession as one of the ways to implement the discussed partnership, and therefore indicates the second way: agreements on public–private partnerships. She underlines that in Lithuania, the discussed partnership is not yet fully developed. The Ministry of Finance always constructively participates in the conferences on the issue, initiates modifications and supplementations of the legal acts aimed at improving the legal bases of the partnership. The proposals include legitimising the concept of public–private partnership, regulating methods of public–private partnerships, establishing the provisions on project drafting and implementing, empo-

15 Žiogaitė, I.; Kaminskas, G. Viešosios privačiosios partnerystės (koncesijos) aktualijos [Actualities of Public-private Partnership (concession)]. [interactive] Vilnius, 05-27-2005 [accessed 04-20-2009]. <<http://www.jbblegal.lt/upload/doc/lt/VPP%20prezentacija-JBB%20-presentation-v3-LTEN.pdf>>.

16 *Ibid.*

17 Vaitiekūnienė, D. Viešojo ir privataus sektorių partnerystės dabartis bei perspektyvos Lietuvoje [Public-private partnerships: the present and the future perspectives in Lithuania]. *Lietuvos Respublikos Finansų ministerija* [interactive]. Vilnius 08-06-2006 [accessed 10-14-2009]. <<http://209.85.129.132/search?q=cache:jR1WQHd8x24J:sena2.sam.lt/images/Dokumentai/Konferencijos/1%2520ministry%2520of%2520finance%2520lit%25202.ppt+Vie%C5%A1ojo+ir+privataus+sektori%C5%B3+partneryst%C4%97s+dabartis+bei+perspektyvos+Lietuvoje&cd=1&hl=en&ct=clnk&gl=uk>>.

wering legal persons to provide methodical and consultative aid on the issues of partnership.

A. Jonaitytė (2006),<sup>18</sup> while discussing public–private cooperation and its prospects in Lithuania, stated that a private funding initiative (PFI) is one of the popular PPP types in the United Kingdom. It is a long-term contract of public and private sectors on the provision of services for an established annual service price. PFI usually includes development of an object of infrastructure and administration, maintenance and support of this object. However, the category is not sufficiently clear because the interaction and the differences from “public–private partnership” are not specified. The author distinguished separate types of PFI: lease-administration, lease-construction-administration, construction-administration-transfer, purchase-construction-administration, construction-property-administration-transfer, and the like. However, the author did not provide reasons for considering these types of partnerships as private funding initiatives.

UAB „Verslo procesų valdymas“<sup>19</sup> (2006) explained that PFI is like a form of PPP. The company considers that during the first 3–5 years of funding, the private sector invests a substantial sum of money into an object of infrastructure (e.g., a hospital building), and the public sector (e.g., a municipality) accounts for it by paying to the private company instalments over a 25–30 year period. This form includes agreements on franchises and concessions where a private sector undertakes the responsibility and risk to provide public services according to specifications established in advance—development of the necessary infrastructure, exploitation of buildings, and eventually, the necessary renovation investments. In Europe, investments of private sector based on PFI contracts amount to about 10–15% of all investments into the public sector.<sup>20</sup> Most likely, A. Jonaitytė had in mind this understanding of the PFI because her further dividing into types (e.g. lease-construction-administration) may be related to the example of a hospital given in the article of UAB „Verslo procesų valdymas.“

A. Guogis and D. Gudelis (2009)<sup>21</sup> presented a new view on public–private partnership. The authors’ understanding of the public–private partnership is based on the study of management practices. In their opinion, the model of public–private interaction could

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- 18 Jonaitytė, A. Viešojo ir privataus sektoriaus bendradarbiavimas, jo perspektyvos Lietuvoje [Public-private cooperation and its perspectives in Lithuania. Seminar materials]. *Seminaro „Viešosios ir privačiosios partnerystės projektai-nuo idėjos iki realizavimo“ medžiaga*. Vilnius, 12-11-2006.
- 19 *Viešojo ir privati partnerystė-neišnaudotos galimybės ar grėsmė valstybiniam turtui?* Vilniaus miesto švietimo įstaigų rekonstrukcijos ir tolesnės priežiūros projekto pradinė ataskaita [Public-private partnership – unused opportunities or threat to national property? Initial report on reconstructions of Vilnius city education institutions and further maintenance]. UAB „Verslo procesų valdymas“ [interactive] Vilnius, 2006 [accessed 05-20-2009]. <<http://www.vilnius.lt/svietimas/VPP.pdf>>+Vie%C5%A1oji+ir+privati+partneryst%C4%97-nei%C5%A1naudotos+galimyb%C4%97s+ar+gr%C4%97sm%C4%97+valstybiniai+turtui%3F&cd=1&hl=en&ct=clnk&gl=uk>.
- 20 Studija “Lietuvos transport sistemos modernizavimo ir plėtos galimybės taikant viešojo ir privataus sektorių partnerystės (PPP) finansavimo modelį” [Study “The possibilities of modernizing and development of the Lithuanian transport system by implementing the public-private partnership (PPP) funding model”] [interactive]. [accessed 05-20-2009]. <[http://www.transp.lt/files/uploads/client/PPP\\_ataskaita\\_Galutine.pdf](http://www.transp.lt/files/uploads/client/PPP_ataskaita_Galutine.pdf)>.
- 21 Guogis, A.; Gudelis, D. Viešojo administravimo ir verslo vadybos integracijos perspektyvos: viešojo ir privataus sektorių sąveikos modelis [The Perspectives of Public Administration and Business Management Integration: the Model of Public-Private Interaction]. *Viešojo politika ir administravimas*. 2009, 28: 23–27.



be an example of modern public management, New Public Administration, and corporate social responsibility. The authors consider that the normative model of public–private sectors provides a possibility for the comprehensive evaluation of interaction between public and private sectors and its links with the New Public Management model.

It seems that the public–private partnership reflects the interaction of two areas of social sciences in the process of recognizing one and the same object. Public management helps us understand new models of partnership management and the study of law facilitates the implementation of the state economic policy and establishes legal norms for regulating such models.

A. Raipa and E. Skietrys (2009)<sup>22</sup> do not suggest linking the public–private partnership exclusively with the New Public Management. In their opinion, the outsets of such cooperation can be traced in the Roman empire. Moreover, in XVI century Spain, the state managed to attract private companies for the construction of its fleet. The above authors see public–private partnership as a midpoint between usual public procurement through public institutions and total privatisation. Their position is close to the broad understanding of such partnership. The author of this paper agrees with their conclusion that public–private partnership cases can be recognized as such in different periods of history. They can be related to arising political, economic, technological challenges and transformations in the relevant periods. A. Guogis and D. Gudelis, A. Raipa and E. Skietrys analyse the public–private partnership from the point of view of management. Thus we may recognize public–private partnership as a flexible concept that helps us understand how different branches of social science are closely related with law.

The understanding of the concept of “public–private partnership” has been fluctuating in response to social and economic changes in Europe. The European Commission indicated some criteria for the integration of partnership that define possible projects of public–private partnerships. These criteria include: the aim of the two sectors to cooperate on a long-term basis, funding of projects, sharing of risks and threats in specific fields of operation.<sup>23</sup>

Different countries also establish other objectives for such partnership. Most often the purpose of using private capital for public (society’s) needs is indicated for the provision of public services or the development (improvement) of the necessary infrastructure. It seems that the main objective of the public sector is to fulfil the interests of the citizens while undertaking public administration functions. Therefore, implementation of a public–private partnership projects is one of the ways to achieve this goal. The state is a protector of public interests that ought to harmonise the influence of various groups. The public sector has its own ethics and aims at equal partnership with the private sector which can be and must be regulated in relevant legal acts. The national Long-term De-

22 Raipa, A.; Skietrys, E. Viešosios ir privačios partnerystės socialinio poveikio vertinimo teoriniai aspektai [Theoretical Aspects of Assessing the Social Effect of Public-Private Partnership]. *Socialinis darbas*. 2009, 8(1): 11–17.

23 Guidance on the methodology for carrying out cost-benefit analysis. [interactive]. Working document No. 4 of the European Commission [accessed 09-10-2010]. <[http://ec.europa.eu/regional\\_policy/sources/docoffic/2007/working/wd4\\_cost\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/2007/working/wd4_cost_en.pdf)>.

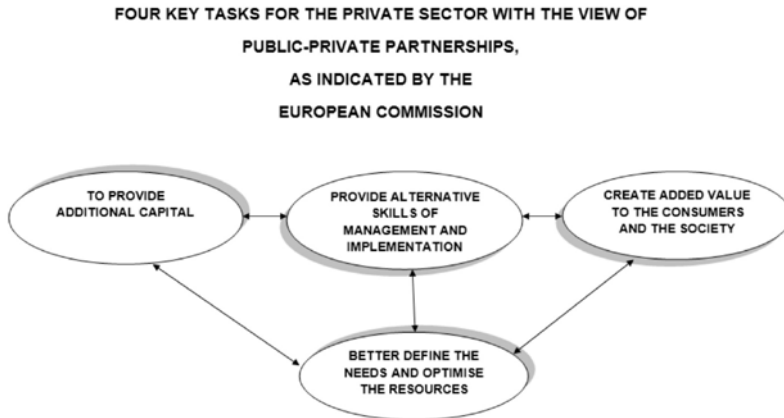


Figure 2. Four key tasks for the private sector

velopment Strategy provides for strengthening of certain state functions and transferring them to private subjects. The experience of foreign countries shows that public–private partnerships can provide significant benefits to the society and the state. The private sector invests its own funds, experience and initiative when implementing such projects. It may provide public services, improve the quality of services or create social and financial capital needed for the provision of public services. Thus the public sector, in cooperation with the private sector, must ensure implementation of the fundamental, civil, political, social and economic human rights to all citizens and residents of the state. The public sector is empowered by the private sector’s funds and initiative not only to develop the property necessary for the provision of public services (e.g., to construct roads, build or renew medical institutions) but also to authorise the private company to provide the services in relation to the property (e.g., to administer roads and buildings of health care institutions, provide health care services).

Both the legal texts and approaches of lawyers demonstrate change in the understanding of public–private partnership. It seems that the modifications of legal acts have clarified the concept of partnership but also have raised the inter-disciplinary problem of understanding this concept not much analysed in publications and conference materials. The analysis of the understanding of public–private partnership shows that it cannot be explained only according to the norms of administrative law applicable in the field of administrative legal regulation. For instance, public–private partnerships agreements are concluded according to civil law principles: the principle of contract autonomy, equality of parties, legitimate expectations, etc. Moreover, implementation of public–private partnership agreements and projects also shows the necessity to administer the activities that are being regulated. Implementation of an agreement on concession which provides for the construction of a road according to a typical cycle of management could be an

example. Joint activities of the public and private sectors are needed for the purpose of implementing planned projects—planning, organizing, promoting, control, regulation, and compensation. The two sectors must establish the rights and duties of the parties in their agreement to clarify the risk and responsibilities of the parties.

It seems that the previous lack of clarity in the concept of public–private partnership had been influenced by the absence of strategy on public–private partnership. According to the opinion of the European Economic and Social Committee (2004) on the Green Book on Public–Private partnerships and Community law on Public contracts and concessions, the Lithuanian common strategy on public–private partnerships must be harmonized with the EU legislation.<sup>24</sup> The strategy should formulate the public–private partnership’s vision, purposes, objectives, main directions, possible cooperation models, positive analysis of environmental factors, describe implementation measures and establish a unified terminology.

As regards Lithuania, the laws adopted in 2009 should facilitate the private sector’s investments into the public sector. The lack of strategy warrants the legislator to incorporate the anticipated strategic components into various legal acts. In the Strategy on Improvement and Development of Public Procurement System of 2009–2013, it is provided that public–private partnership is officially recognized and according to the European Commission Interpretative Communication (adopted on 5 February 2008),<sup>25</sup> one of the purposes of this partnership is to guarantee legal certainty and facilitate application of EU legislation on public–private partnership. In its Resolution of 11 November 2009 on Public–Private Partnership, the Government establishes the division of possible risks between the public–private partnership parties. Furthermore, in its Resolution on Implementation Measures of the 2008–2012 Strategy,<sup>26</sup> the Government provides for optimization of public and private sector resources with the view of public procurement procedures. Facilitation of public and private capital partnership projects is foreseen in the more efficient implementation of public functions, and attracting of private investments into the public sector.

Many legal acts were adopted in 2009. For instance, the Minister of Interior on 12 August issued a specified order on fourth priority State projects eligible for Funding

24 Opinion of the Committee of the Regions on the Green Paper on public-private partnerships and Community law on public contracts and concessions. [interactive]. [accessed 09-10-2010]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004AR0239:EN:NOT>>.

25 Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (IPPP). No. C(2007)6661. 05-02-2008. The document focuses on adherence to the EU legal principles. While creating a joint enterprise, the principles of non-discrimination and equality of treatment, and also the derivative principles of transparency, mutual recognition and proportionality. The Communication also discusses the cornerstones: Articles 43 EC on freedom of establishment and 49 EC on freedom to provide services. These principles are to be applied in cases where a public authority entrusts the supply of economic activities to a third party (Case C-458/03, Parking Brixen, ECR 2005, I-8612, paragraph 61). [interactive]. [accessed 11-10-2010]. <[http://ec.europa.eu/internal\\_market/publicprocurement/docs/ppp/comm\\_2007\\_6661\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/ppp/comm_2007_6661_en.pdf)>.

26 Resolution of the Government of the Republic of Lithuania of 25 February 2009 No. 189 On adoption of Implementing Measures for the Implementation of the Program 2008–2012 of the Government of the Republic of Lithuania. *Official Gazette*. 2009, No. 33-1268.

according to the 2007–2013 Human Resources Development Action Program.<sup>27</sup> The Order incorporates an implementation measure on administrative capacities' building and increasing of effectiveness of public administration. This measure promotes public–private cooperation and provides the necessary legal, institutional and administrative terms for the conclusions of such partnership.

To summarize the change in the conception of public–private partnership, the author agrees with T. Jagminas that at the present time it is important to consolidate the resources of public and private sectors with the view of public infrastructure modernization.<sup>28</sup> Therefore, long-term public–private investment plans could be guaranteed and the main directions in formation of a common public–private partnership policy should be established.

The analysis of distinctive features of the concept of public–private partnership reveals not only the relevant “legal environment” but also formulates the further purposes and objectives of legal regulation. Moreover, it shows how to use the information on a common object of cognition developed by different disciplines in creating a doctrine of administrative law on public–private partnership.

### 3. Public–Private Partnership Practice in the Republic of Lithuania

The problem of understanding public–private partnership is relevant in modern Lithuania because in adopting new laws and discussing the topic, projects can be presented in both negative and positive ways and this has an impact on the further development of the public–private sector institute in Lithuania. Thus it would be useful to summarize the past and ongoing IPPP projects in the Lithuanian practice. LEO LT (Lithuanian Electricity Organization) project has made a very negative impression on many people in Lithuania. LEO LT (Lithuanian Electricity Organization) was a national electricity company established in 2008. A private company NDX Energija owned 38.3% of shares and the state owned 61.7 % of shares. The history of the formation of LEO LT is not transparent because the group of negotiators instituted by the Lithuanian government on 21 July 2007 started negotiations with the private company NDX Energija without a public tender.

The project was presented to the Parliament and the public on 19 of December 2009, namely, after the Lithuanian Government had already finished negotiations with the private company NDX Energija from the Vilnius Prekyba group. Prior to a governmental resolution affirming the “negotiation results” and proposing a draft law to the

27 Order of the Minister of Interior of 18 August 2009 No. 1V-446 On 2007-2013 Program of human resources development 4th priority “Strengthening of administrative capacities and improving the effectiveness of public administration” implementation measure VP1-4.1-VRM-06-V “Public-private partnership” list 01. *Official Gazette*. 2009, No. 100-4193.

28 Jagminas, T. Viešojo ir privataus sektoriaus partnerystės skatinimo programa [Program of promotion of public-private partnerships. Conference materials]. 2009 gruodžio 2 d. konferencijos „Viešojo ir privataus sektoriaus partnerystė: valstybės politika ir teisinė aplinka“ medžiaga.

Parliament, the affirming decision of the Competition council and the European Commission was needed. However, the Competition council could not uphold the transaction and draft laws because the Law on Competition prohibits monopolizing the market in such a way. Thus, not daring to give a negative conclusion, the Competition council did not provide any conclusions. These infringements were established by the conclusions of Legal department of the Parliament of 31 January 2008 and conclusions of the Department on Legal Affairs of the Parliament of 16 January 2008. Both institutions indicated that because of the said principal violations, the draft law on the establishment of the national investor's company is incompatible with the Constitution. The law amending and supplementing the Law on the Nuclear Power Plant was adopted urgently on 1 February 2008. The Constitutional Court of the Republic of Lithuania explained on 2 March 2009 that establishing LEO LT does not constitute monopoly banned under the Lithuanian Constitution. The ruling of the Constitutional Court states that the absence of a public tender with the view of establishing LEO LT does not contradict the Constitution. The Constitutional Court found only a few insignificant violations which did not form sufficient grounds for recognizing LEO LT formation as "unlawful". However, Egidijus Šileikis, a judge of the Constitutional Court, presented a dissenting opinion, in which he claimed that LEO LT was established unlawfully (it must be noted that the dissenting opinion does not have a binding legal force). The company LEO LT was dissolved in 2009.

LEO LT is a negative example of a public–private partnership. Meanwhile, there can also be good examples of partnership, as shown by the case study of Druskininkai. The analysis of implemented IPPP projects in Druskininkai city has revealed good practice experience. In 2000, the city was virtually inactive economically, the level of employment was critical and in 2010, Druskininkai is one of the fastest developing cities in Lithuania.

### 3.1. Short Analysis of Druskininkai City in 2000

Level of unemployment during winter—30%; annual occupation of sanatoriums and hotels—30%; numbers of guests—39.4 people per year; the number of unemployed after the dissolution of liquidated companies—3665 persons.

Ričardas Malinauskas became the mayor in Druskininkai municipality in 2000 and a vision of development of the city was adopted after an economic-social analysis, giving priority to private businesses that would want to invest into renovation of the resort city's infrastructure and creation of modern centres for the attraction of consumers. The vision of resort city development and project ideas were presented through various media measures, exhibitions and fairs. Druskininkų gydykla (health resort Druskininkai) was renovated as part of an investment project in 2003. The municipality granted 2.9 million litas and private funds provided 5.4 million litas, the joint project value was 8.3 million litas. After implementation of this municipality-initiated investment project, entrepreneurs became more interested in other desolate buildings near the health resort which had been abandoned for about 30 years. With the view of renovating Druskininkai infrastructure, long-term tenancy agreements were concluded instead of privatisation. A

modern sport centre was opened (project value 2.3 million litas) in 2002, and this encouraged a local businessman to open up a 3-star hotel nearby. In 2003, under a long-term tenancy agreement for 99 years, UAB “Kortas” reconstructed a cultural heritage object (the health resort of a Russian Czar). The joint project value was 21.25 million litas and 20.93 million litas were received from European structural funds. A 4-star hotel “Europa Royal Druskininkai” was opened up in 2006. Private investments have increased three-fold and as the result of public–private partnerships and the old town of the city has changed beyond recognition.

Within a short period of time, Druskininkai gained the status of one of the most popular resort cities in Lithuania because of good city administration and expedient and effective use of the European structural funds. Evaluation of investments into Druskininkai city development reveals that the municipality allocated 28.28 million litas for various stages of construction and outfitting of a water park, while other funds were received from PHARE (10.87 million litas), ERDF (15.49 million litas), the operator’s funds (20.647 million litas), private funds (25 million litas), and others. It has been calculated that 80 million litas of public investments attract 300 million litas and more in private investments, which is almost four times more. After the implementation of other investment projects, the investments into municipality real estate in 2000–2006 increased by 60 times and the flows of customers grew by more than four times.

Such good examples in implementing investment projects increase trust in the public sector.

## Conclusions

1. The author concludes that the research conducted affirms the paper’s hypothesis. The analysis of the origin and change of the public–private partnership’s content reveals the objective need for this cooperation in Lithuania. The amendment and supplementation of the Law on Investments with the category of “public–private partnership” and supplementation and adoption of new laws demonstrates the need to clarify the concept of public–private partnerships. At first public–private partnership was interpreted much broader than its purpose allowed, related in many cases with undertaking of joint economic risk and mutually important financial obligations. The legal category of public–private partnership was included belatedly, only on 16 June 2009, while the Law was adopted a decade ago.

2. Implementation of public–private partnerships is still a novelty in Lithuania, like in many countries of Eastern and Middle Europe, although in recent years public institutions of these countries implement a larger number of business projects in cooperation with the private sector. On the one hand, there is a lack of a uniform and consistent policy on the strategy of implementation of public–private partnerships in Lithuania. On the other hand, legal acts are being adopted one after another and systemic direction is lost, even if one of the first legal acts establishing guidelines for public–private partnership, was adopted in 1996 (the Law on Concessions). To this date, there is an ongoing search

for a more precise and uniform concept of public–private sectors for all legal subjects and the necessity of its legal use in implementing public administration functions.

Public–private partnership is not sufficiently recognized as a social object of multifaceted research and assessment, thus corruption and misuse of powers is fostered in public administration practice and the state suffers great losses. In Lithuania, public–private partnership is impeded by laws and negative public view of joint project implementation as a method for non-transparent privatization. The analysis of the cooperation problem shows that in the nearest future it is important to conceptually draft and adopt a strategy on the implementation of public–private partnership in which the directions and limitations of activities aimed at harmonizing the actions of relevant institutions would be clearly defined, and their functions and responsibilities firmly established. The strategy must be in line with changes in social policy, the market situation and must incorporate the possibility to adjust to any further changes in this field. The strategy should include the mission of the main activities, its purposes and objectives. The principle of the rule of state that “state institutions shall serve the people,” which is established in the Constitution, must be respected. Thus, drafting of the strategy must be public and proper conditions should be established for discussion on all possible public–private partnership initiatives and limitations thereof.

3. Upon legitimizing the public–private partnership’s concept by law, all applicable legal acts must be evaluated. The point of reference should be the grounding of this concept and harmonization with other terms included in other legal acts. All terminology must be revised in order to avoid inaccurate use of the public–private concept’s content.

4. After an analysis of the positive and negative aspects of public–private partnerships, the need and the state of legitimizing of public–private cooperation, the author suggests considering the possibility of legally regulating certain forms of public–private partnership in Lithuania in more detail. We should take note of the opinion shared by many researchers, who underline the legal contractual relations of partnership: concession, shareholders, investment services, contract of works, sub-contract, supply contract, service contracts, as a minimum between the awarding institution and concessionaire (project developer).

Thus, these two sectors should cooperate by undertaking infrastructure development projects, supported by state aid and private funding and at the same time sharing a certain risk and responsibility.

5. The IPPP practice in the Republic of Lithuania has shown both positive and negative aspects. However, it is important to take into account both the mistakes of negative practice and the advantages of good practice with the view of developing the IPPP in Lithuania into a strong legal institute that fosters the effective establishment of a public–private cooperation system. Properly drafted IPPP projects would help maintain the state’s competitive abilities and facilitate a positive public view.

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## VIEŠOJO IR PRIVATAUS SEKTORIŲ PARTNERYSTĖS LIETUVOJE SUVOKIMAS

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**Santrauka.** *Straipsnyje nagrinėjama viešojo ir privataus sektoriaus partnerystės sampratos (toliau – sampratos) vartojimas Lietuvoje bei jos kaita administracinėje teisėje, vykstant ekonominiams, politiniams ir kitiems socialiniams pokyčiams. Šiame straipsnyje, analizuojant mokslines publikacijas, teisės aktus, konkrečių konferencijų medžiagą, parodoma viešojo ir privataus sektorių sampratos genezė teisės teorijoje, legislatyvinėje veikloje. Siekiama atskleisti, kad iki dabar vyrauja viešojo ir privataus sektoriaus tikslesnės bei vieningos sampratos visiems teisės subjektams paieška ir jos teisinio vartojimo būtinybė, įgyvendinant viešojo administravimo funkcijas. Papildant viešojo ir privataus sektorių partnerystės suvokimą, konkrečiais pavyzdžiais teisinėje praktikoje siekiama įvertinti sampratos orientacinius, funkcinčius bei skiriamuosius bruožus, nustatyti tinkamą viešojo bei privataus sektorių partnerystės sąvokos apibrėžimą ir dėl jo pritari, nusakyti sampratos suvokimo vertę lemiančius veiksnius. Straipsnyje pateikti praktiniai pavyzdžiai suponuoja mintį, kad viešojo ir privataus sektoriaus partnerystės suvokimas priklauso nuo konkrečiai atliktų projektų naudos, užtikrinant viešąjį interesą. Analizuojant sampratos suvokimo kaitą, pabrėžiama, jog vėluoja įstatymų leidyba, atskleidžianti šios sampratos teorinį suvokimą.*

*Straipsnyje buvo iškelta hipotezė, kad viešojo ir privataus sektorių partnerystės prasmės, esmės paieška vien teisinėje erdvėje, neatsižvelgiant į esančius socialinius tarpdalykinius ryšius, apskunkino šios sampratos suvokimą, galimybę daugiau remtis praturtinančių ją kitų socialinių mokslų integralia informacija, taip pat stabdė partnerystės sklaidą Lietuvoje. Autorės požiūriu, viešojo ir privataus sektorių partnerystės kategorijos kilmės ir turinio kaitos analizė atskleidžia tokio bendradarbiavimo objektyvųjį poreikį Lietuvoje. Pakeistas ir papildytas kategorija „Viešojo ir privataus sektorių partnerystė“ investicijų įstatymas bei papildyti ir nauji priimti kiti teisės aktai parodo viešojo bei privataus sektorių sampratos aiškumo poreikį Lietuvoje. Pati viešojo ir privataus sektorių partnerystės teisinė kategorija atsirado kiek pavėluotai – 2009 m. birželio 16 d., nors įstatymas priimtas prieš dešimtmetį. Pabrėžiama, kad įstatymu įteisinus viešosios ir privačios partnerystės sąvoką, turėtų būti įvertinti visi galiojantys teisės aktai. Čia atskaitos taškas būtų šios sąvokos pagrindimas bei suderinimas su kitais teisės aktuose galiojančiais terminais.*

**Reikšminiai žodžiai:** *viešasis ir privatus sektoriai, viešojo ir privataus sektorių partnerystė, koncesija, viešoji paslauga.*

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