The public-private partnership institution. A theoretical-legal study.

The term of a legal institution is derived from the Latin word institutiones. This term meant a publication generating the very basic, and at the same time most important information related to law, of informative and educational nature. The modern understanding of law division into private and public law has become vastly complicated and in many cases it is difficult to consider some legal institutions as a part of a predefined branch of the law, as well as branches of the law itself as parts of private or public law. Hybrid legal institutions are a new construct, which revolutionised the Polish legal order by creating a third area, i.e. the private-public law instead of the previous, dichotomic division of law, based on the distinguishing between public and private law only.

The public-private partnership is an excellent example of a hybrid legal institution. In the modern public management system, both public administration and local governments ever more frequently and eagerly delegate the execution of public tasks to private entities..

The first chapter of the dissertation provides an introduction to the discussed topics. The considerations begin with a presentation of the society in a social-linguistic aspect. It is followed by a presentation of transformations occurring within the society since World War I, until creation of trans-national corporations. This chapter presents the historical types of societies - traditional, industrial and post-industrial. The considerations of this chapter end with an analysis of the influence of the post-industrial society on the law and convergence of the legal institution.

The second chapter is dedicated to the basic assumptions related to the legal institution indicated in the title. It presents the nature of the public-private partnership, as well as numerous definitions of this term resulting from normative acts, as well as original definitions provided by scientific experts.

Chapter three presents theoretical and legal aspects of the public-private partnership. The considerations begin with the term and structure of the legal relationship. It discusses the topic of the civil-legal, administrative-legal relationships and of the hybrid legal relationship using the public-private partnership as an example. This is followed by discussion dedicated to the term and the structure of general clauses.

Chapter four is related to the practical topic of public-private partnership agreement negotiations. Public-private partnership agreement negotiations take part as a part of private partner selection modes, provided for according to the Public Orders Law Act, Act on licences for construction works and services and the Act on public-private partnership. The public-private partnership team and the tender committee are auxiliary bodies participating in the negotiation procedure. The considerations in this chapter end with an analysis of the term and of the subject of negotiations, as well as of the possible negotiation strategies.

The next, fifth chapter is dedicated to the legal nature of the public-private partnership agreement. The doctrine faces a dispute regarding classification of the public-private contract partnership as a civil-legal or an administrative-legal contract. A public entity and a private partner are the parties to the partnership agreement. The public entity status can be obtained by public finance sector bodies, legal persons created for the specific purpose of meeting public needs, other than industrial or commercial in nature, as well as by groups of units of the public finance sector and by public law entities. The private partner, on the other hand, should be understood as a business or as a foreign business.

Chapter six presents the conditions and circumstances of investment execution in the public-private partnership formula.

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