

Selected aspects of PPP: Experience of Poland and Kazakhstan

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Abstract: In the article the government role in economic development (especially in classical theory of economy and institutionalism) and the establishment of contract relations with subjects of economy are examined. The mechanisms and forms of PPP, such as renting, contracts, and concessions are described as well. The results of comparison of organizational and legal grounds of PPP creation in Poland and Kazakhstan are given in this article.

Wybrane aspekty PPP: doświadczenie Polski i Kazachstanu

Abstrakt: W artykule zostały opisane: rola rządu w rozwoju gospodarki (a szczególnie w teorii ekonomii klasycznej i instytucjonalnej) oraz ustalanie stosunków umownych między podmiotami gospodarki. Ponadto są opisane mechanizmy i formy PPP, takie jak wynajem, umowy, koncesja, a także porównanie podstaw organizacyjno-prawnych instytucji PPP w Polsce i Kazachstanie.

Introduction

Mechanisms of government intervention in the economy are quite diverse; however, they depend on the basic postulates of economic development. Depending on the purposes of government regulation, means of their achievement, as well as the degree of state's intervention in economy, in the scientific literature it is accepted to establish two models of state regulation — classical and neoclassical economics.¹ One of the representatives of a classical school is Adam Smith — the author of *In-*

¹ A.A. Alimbaev, *Gosudarstvennoe regulirivanie ekonomiki*, Moskwa 1999, p. 154.

quiry into the Nature and Causes of the Wealth of Nations. In his opinion, market economy does not require state intervention.

The followers of the classical theory consider state influence pernicious for economy since it breaks market mechanisms, and believe that its intervention is necessary only to support the self-regulatory ability of the market. This model was popular until the Great Depression (1920s–1930s), which affected the economy of Western countries and manifested itself in setbacks in production and in mass unemployment. It was at this point that the neoclassical theory, the father of which was John Maynard Keynes, appeared. Keynes's theory is based on a conclusion that the size and dynamics of social production and employment is defined not by factors of supply, but factors of demand, and that is why it has been named "effective demand theory."² Effective demand includes two components: personal and industrial (investment) consumption.

Basic methods of government influence on the economy

All mechanisms of state influence on the economy proposed by various schools were based on the basic postulates of economy which have been introduced even by the classics (three conditions of self-regulation of the market). In this case the basic characteristics of economy were not called in question, but only their insufficiency was shown, and the mechanisms of the government intervention which should return balance to the market and in such way give it the opportunity of further existence were developed.

The institutionalists were the first who doubted the characteristics of economy. From the point of view of the classical theory, the person is rational by nature, i.e. makes rational decisions. From the point of view of the institutional theory, the person does not always carry out rational actions in abundance of information, limited access to it, and insufficient ability to process it. People act under the influence of subjective (human) factor and may not realize the market norm. Institutionalism assumes registration of various activity functions in the institutions. In the opinion of institutionalists, the individual will start carrying out the function if there are corresponding institutions in the system.

There are various methods of the state influence. The methods of direct influence are those "that oblige the subjects of economy to make decisions based not on an independent economic choice, but on the state instructions."³ On the contrary, by methods of indirect influence, e.g. the state leaving a choice in decision-making to economic subjects, simultaneously giving incentives "to turn them to the decisions which correspond with the economic policy purposes."⁴ With their (incentives) help the state creates favorable conditions in those branches

² Ibid., p. 160.

³ Ibid., p. 138.

⁴ A.M. Zheltov, G.N. Vlasov, *Gosudarstvennoe regulirovanie ekonomiki: uchebnoe posobie*, Sankt Petersburg 1998, p. 315.

in the development of which it is interested the most. On the whole, indirect methods are softer than direct ones, and disrupt natural market situation less. At the same time, the effects of direct influence are quicker than those of the indirect one.

In the literature⁵ the administrative, economic and socially-psychological (institutional) methods of regulation are presented.

1) Administrative methods of regulation are basically connected with the influence on legislative frameworks for the activity of entrepreneurs. The purpose is the creation of optimal legal standards for a private sector. This method's function is to maintain stable legal conditions for a business activity in the competing environment, to warrant property rights, and to ensure freedom of decision-making. Administrative measures are subdivided into measures of interdiction, permission, and compulsion. In case of application of the administrative method the basis of action of economic actors is the fear of punishment for infringement of the ordered norm of behavior and action.

2) Economic methods are basically connected with an influence on expenses and incomes of economic agents. Their purpose is to provide stimulus to the activity of economic agents (businessmen). Their function is designation of reference points for the development of national economy. Economic measures are subdivided into monetary, fiscal and social policy. They exert influence through agent's will to receive a benefit, i.e. through stimulation. Monetary policy is directed at regulating the volume of money supply. Fiscal policy concerns taxes and the state expenditure. Social policy is directed at the formation of the nominal and real incomes that allow for a dignified existence of citizens.

3) Socially-psychological (institutional) regulation methods are connected with the fact that the state policy represents the system of organizationally formalized actions. Therefore, it is necessary to develop a system of organizations serving national economy. The result of application of the method is coordination and simplification of the procedures of interaction in economy. These methods exert influence through increasing the education of economic subjects.

Table 1. Methods of state regulation of economy

Method	Example
Administrative	The legislation on innovative business; state's financial support by means of budgetary financing of individual branches, manufactures, enterprises; norms of safety precautions and production quality standards.
Economic	Preferential taxation of scientific activity; grants to education and free courses, granting of credits to a small-scale businesses; encouraging development of new branches of economy and types of manufacture.
Institutional	Definition of strategic directions of development of the state; creation of an innovative infrastructure; international exhibitions and presentation.

Source: own elaboration.

⁵ Ibid., p. 223.

The mechanisms of public-private partnership

In the economy of some developed and in the last decades also developing countries there has been a special form of interaction of business and the authorities. It is a question of partnership of the state and a private sector, usually designated by the term public-private partnership (PPP). PPP represents the institutional and organizational alliance of the government and private business for the purpose of realization of socially significant projects in a wide spectrum of fields of activity — from development of strategically important branches of economy to granting of public services on a country scale or in separate territories. Rapid development of diverse forms of PPP in all regions of the world, their wide spreading in most of the different branches of economy allow to treat this form of interaction of the state and business as a characteristic feature of the modern mixed economy.⁶ The developing partnership, unlike traditional administrative relations, creates its own base models of financing, property relations, and methods of management. The questions connected with redistribution of property competences inevitably arising in the course of development of mainly administrative-imperious relations between the state and business and partnership relations fixed by corresponding agreements of the parties are thus essentially important. Moreover, some settled forms of partnership, for example concessions, are quite often regarded as some kind of indirect privatization or its high-grade alternative, i.e. are treated as an intrusion into the system of property relations. In the strict sense the partnerships in truth institutionally transform the fields of activity traditionally concerning the authority of the state, but do not remove them completely out of its control. Accordingly, the division of property competences between the state and private sectors of economy within the limits of partnership usually concerns not all competences into which the sovereign right of the title proprietor breaks up in economic circulation, but only some of them. The question is about such key competences as the right of control over the use of actives, the income right, the management right, and also the right to change the capital cost of objects of agreements and the right to transmit proprietary competences to other persons.

Models, forms and mechanisms of PPP

Depending on the character of specific goals achieved through the PPP, the whole set of existing and arising forms of partnerships could be subdivided into separate types (models). According to the purposes of PPP, there are different organizational models, models of financing and cooperation. In many cases part-

⁶ *Chastnoe-gosudarstvennoe partnerstvo: sostoyanie i perspektivy razvitiya v Rossii: Analiticheskij doklad*, Moskwa, Instytut ekonomiki Rossiyskoy Akademii Nauk 2006, p. 14.

nerships use the forms which are based on advantages of different models and their combination.⁷

In case of organizational models the deep intrusion into property relations as a rule does not occur, the cooperation of public and private partners is carried out at the expense of attracting the third parties, transmission of separate functions and contract obligations, using the possibilities of transfer of objects to external management. Organizational model includes also currently the most widespread type of PPP — concessions. As regards the financing models, it is necessary to rank such forms as commercial employment, rent, all kinds of leasing, the preliminary and integrated project financing. The cooperation model represents every possible form and method of consolidation of efforts of some partners which are responsible for separate stages of the general process of creation of a new use value as a public good. Often such cooperation demands the organization of difficult structures, including holding companies, the construction of objects and their operation, especially in the sphere of an industrial and social infrastructure.

In the last years in the EU there have been many documents prepared which mention the questions of PPP.⁸ In the Green Book *The public-private partnership and the community legislation under the state contracts and concessions*, published in 2004, it is said: “The term public-private partnership (PPP) is not defined at Community level. In general, the term refers to forms of cooperation between public authorities⁹ and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.”¹⁰ In individual EU countries their own definitions of the public-private partnership are given. In Great Britain, with a very wide occurrence of PPP, this form of managing is treated as a “a key element in the Government’s strategy for delivering modern, high quality public services and promoting the UK’s competitiveness. They cover a range of business structures and partnership arrangements, from the Private Finance Initiative (PFI) to joint ventures and concessions, to outsourcing, and to the sale of equity stakes in state-owned businesses.”¹¹

⁷ R.R. Hoeppner, *Public Private Partnership — Ein Leitfaden für öffentliche Verwaltung und Unternehmer*, hrsg. vom Bundesministeriums für Wirtschaft und Arbeit, 2. Ed., Eschborn 2003. Available at: <http://www.bmwa.bund.de/Redaktion/Inhalte/Downloads/Leitfaden-PPP,property=pdf.pdf> (date of access: 18.12.2013).

⁸ Green Paper on services of general interest. COM (2003) 270, 21.5.2003. European Parliament Resolution on the Green Paper on services of general interest, 14.01.2004 (T5-0018/2004).

⁹ Public authorities are usually understood as federal (national), regional and local authorities.

¹⁰ Green Paper on public-private partnerships and community law on public contracts and concessions, Brussels, 30.04.2004, p. 3.

¹¹ *Public Private Partnerships — the Government’s Approach*, London, The Stationary Office, 2000, p. 6.

In Russian and Kazakh scientific literature and in statutory acts of the last few years the various treatments of PPP are also cited. One of the successful definitions focusing attention on its legal sides is given by M.V. Vilisov: “The public-private partnership is a legal mechanism of the coordination of interests and maintenance of equality of the state and business within the limits of realization of the economic projects directed on achievement of the purposes of the government.”¹² However, from our point of view, the definition would be more accurate, had it not contained the indication of “equality” of the state and business. Generally, the problem of equality of the parties in PPP contracts is quite difficult, ambiguously treated in the legislation and judiciary practice of various countries.

PPP in Poland and Kazakhstan

Review of the legislation

The experiences in realization of PPP around the world are various and demand careful research of both positive and negative aspects and extrapolation of experience in the world. As an object of analysis, the experience in realization of the PPP projects on the territory of Poland and Kazakhstan has been selected.

Table 2. Centers of PPP in Poland and Kazakhstan

Criteria	Poland	Kazakhstan
Legal basis	The PPP Act adopted by the Parliament on 19 December 2008 and the Concession Act adopted by the Parliament on 9 January 2009 were announced in the Journal of Laws No. 19 on the 5 February 2009. The Statute of the PPP Center of 23 February 2009	Lack of the PPP Act. Code of Corporate Management “PPP Center of Kazakhstan” of 2008.
Legal form	PPP Centre was founded by 41 entities, including banks, law firms, consulting companies, firms, regional development agencies, foundations, associations, chambers and business agencies.	Joint-stock company. The only shareholder is the Government of the Republic of Kazakhstan represented by the Ministry of Economic Development and Trade of the Republic of Kazakhstan.

¹² M.V. Vilisov, Gosudarstvenno-chastnoe partnerstvo: politiko-pravovoj aspekt, *Vlast* 2006, No. 7, pp. 19–25.

Aims of activities	Promoting the idea of PPP and knowledge on this subject. Creating the conditions for reducing the time of projects preparation — development of PPP good practices, standards and procedures. PPP trainings addressed to the authorities and local governments. PPP projects database in Poland. Creating a platform, the space of contact with the public entities and private partners. Collecting and disseminating the experiences of countries where PPP is developing smoothly. Monitoring the development of PPP investment on the basis of preparation of proposals for regulatory changes.	Providing methodological assistance and methodological implementation of concession projects. Ensuring high quality and expert assessment of economic concessions and investment projects, financed by the state budget. Developing of recommendations for the approved structures and interested state agencies to improve the system of institutions in the area of PPP. Economic evaluation of concession proposals. Monitoring and evaluation of investment projects, financed by the state budget. Organization and conducting of seminars, trainings, conferences and other projects of the PPP development.
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Source: own elaboration based on: *Base of PPP projects* — <http://pppbaza.pl>, Kazakh centre of Public-Private Partnership — <http://kzppp.kz/ru/project/table> (date of access: 18.12.2013).

The elements of PPP in the RK have been realized since 1991 with acceptance of the 1st law on concession. However, the difficult period of reorganization, changing of structure and government priorities, and also the policy of general privatization realized at that time, made it impossible to develop such institution as concession. Already in 1993 the law on concession became invalid. The questions of interaction between the state and private sectors have always been topical and already in 2006 the law on concessions was introduced again in the state. In addition, the legislation in the field of concession has been improving according to best international practice. So in 2008 and 2010 the amendments were inserted into the concession legislative concerning the state support and increasing of the concession appeal, cancellation of compulsion of release of infrastructural bonds. In 2011, the *Program of development of public-private partnership in Republic Kazakhstan for 2011–2015* was accepted.

It became the important step on the way to create a legal ground for the introduction in the country of concession mechanisms, one of the kinds of public-private partnership. Despite the previous attempts of using concessional schemes for realization of infrastructural projects, the absence of legislative and institutional bases prevented the adequate and large-scale application of PPP mechanisms.

The concession in Poland is a relatively new form of interaction following the introduction of the first law on concession in 2005 and it has received the second

opening in 2008. Until 2005 it was possible to speak about two models of interaction in Poland.

The model based on the laws defining the principles of interaction of the public-private partnership, for example the Act of October 27, 1994 on paid highways and national road fund.¹³

Also the model based on the Act of December 20, 1996 on municipal economy,¹⁴ which authorizes the bodies of territorial self-government to realize the activity in the sphere of municipal economy according to the Civil Code, as well as to the rules of the state social order.

The institutional ground for the realization of PPP in Poland and Kazakhstan not only became the legal base, but also created the centers of public-private partnership.

The Public-Private Partnership Center in Kazakhstan was created in 2008 within the limits of realization of the *Strategy of industrial-innovative development of Kazakhstan until 2015*. Also the annual speeches of the President of Kazakhstan on the necessity of transition from raw manufacture to manufacture of products of final manufacture and innovative development of the country became an occasion to create such center. It is necessary to notice that there is no law on PPP in the state, there is only the strategy of development.

In Poland, the first act on PPP was passed in December 2003 and has not been accepted as an idea of creating PPP Center in a legal form of a joint-stock company. The center should have received the status of a budgetary organization created by the Ministry of Economy. The principal causes of a failure of the project of creating PPP were excessive bureaucracy and etatization of the PPP process.

Let us return to the comparison of activities of the PPP Centers in Poland and Kazakhstan.

Firstly, there is a difference in the legal form of the centers. In Poland, it has the form of an independent institute, and in Kazakhstan it is a joint-stock company. Let us refer to the world practice, where it is accepted (more often) that the PPP Centers have the form of a noncommercial organization. „Nonprofit organization (abbreviated as NPO) is neither a legal nor technical definition but generally refers to an organization that uses surplus revenues to achieve its goals, rather than distributing them as profit or dividends. While not-for-profit organizations are permitted to generate surplus revenues, they must be retained by the organization for its self-preservation, expansion, or plans. NPOs have controlling members or boards.”¹⁵

PPP mechanisms are realized in market economy and are recognized to be market mechanisms. A market institution created by the state body and operated only by the people appointed by the state cannot really be named a market institution.

¹³ Journal of Laws of 2004, No. 256, item 2571 as amended.

¹⁴ Journal of Laws of 1997, No. 9, item 43 as amended.

¹⁵ G.M. Grobman, *The Nonprofit Handbook: Everything You Need to Know to Start and Run Your Nonprofit Organization* (Paperback), White Hat Communications, Charlottesville 2008, p. 10.

In this case, it is possible to designate the so-called state monopoly for a market institution. As regards the history of formation of market institutions in Kazakhstan and, in particular, of institutions of industrial-innovative development, all of them were created with a 100% state participation in management, and only had co-founders when it comes to financial resources. In Poland another approach to formation of the Center, which is based on participation of civil society in its management, is observed.

Secondly, it is necessary to note the openness of the Center to representatives of civil society, non-governmental organizations, associations, funds, businessmen, etc. "The founders of the Center of PPP are banks, legal organizations, businessmen, regional organizations of development, funds — altogether 41 state and private organizations, associations and economic partnerships."¹⁶ Kazakhstan Center of PPP has no such possibility.

Thirdly, we will designate the basic mission (purpose) for which these centers have been created in the analysed countries. The main task of the Kazakhstan center is the examination of PPP projects. The main task of the Polish center is the creation of special conditions which would improve the PPP process. The conditions may be: conditions for interaction of private and public sector, conditions promoting solving the problems of realization of the PPP contracts, etc. These conditions act as original platforms of interaction of the state and private sector.

Besides, we cannot talk about correctness or incorrectness of such approach. However, coming back to the theory of the market economy formation, the main function of the creation of conditions for realization of activity by economic entities is given to the state and only after that their regulation, examination and monitoring follows.

Within a market economy the decisions about what will be produced, in what amounts and what kind of technical methods will be used, as well as for whom will it be produced (the so-called cardinal questions of economics), are made by independent subjects, guided by self-interest and by the principles of rational management. Such decisions may be modified by the government through the determination of tax rates, the imposition (or changing) of the duties, the setting of minimum or maximum prices, minimum wages, the restrictions of currency fluctuations, the evolution of the insurance system, etc.¹⁷

Finally, the realization of PPP projects may be considered from the perspective of the laws on project management. In the management theory it is noticed that the project type organizations demand the special organizational form which should promote the realization of projects in the best way. The joint-stock company has a rigid structure of management and is subject to control of the shareholders meeting.

¹⁶ The PPP Act resolved by the Parliament on 19 December 2008.

¹⁷ N.L. Marenkov, *Rynoch'naya ekonomika*, Moskwa 2003, p. 425.

The board of directors of the PPP Center in the RK consists of officers of the Ministries and Agencies, in particular the Ministry of Development of Economy and Trade, Agency of the President of the RK, the Ministry of Finance, Agency of Regulation of Natural Monopolies, etc.

In Poland, the management of the PPP Centre is carried out by the representatives of all founders accepted by the founders meeting.¹⁸ We can designate that the state administration has no big influence on the Board of the Center of PPP.

Analytic database

The first projects which have been named “concessions” were the projects of transition into a joint-stock company of “Intergaz the Central Asia,” the gas-transport system of Kazakhstan and transition into a concession of the hydropower stations of Shulbinsk, Ust-Kamenogorsk and Buhtarminsk cities.

Later, the concession was applied to the projects implemented in a transport infrastructure and power: building of the railway “Sphere — Ust Kamenogorsk” and power line “Northern Kazakhstan — Aktyubinsk region.” Currently, there are 27 PPP projects in Kazakhstan (Figure 1). We have to note that the first PPP project in Kazakhstan appeared in 2005 before the legislation on concession.

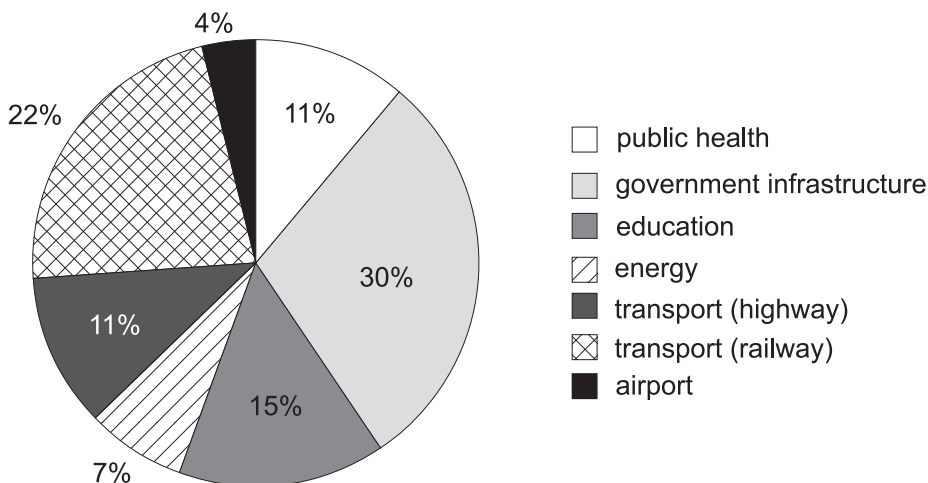


Figure 1. The structure of the PPP projects in Kazakhstan by sectors up-to-date, the number and percentage of projects

Source: Kazakhstan PPP Centre, <http://kzppp.kz/ru/project/table> (date of access: 18.12.2013).

¹⁸ The Statute of the PPP Center of the of 23 February 2009 — <http://www.centrum-ppp.pl/start,1> (date of access: 18.12.2013).

Only 3 out of 27 PPP projects are at the operational stage. For 6 projects (2 in the field of electric power industry and 4 in transport) the concession agreements have been signed. Other projects are at different stages of negotiation or feasibility study. It is necessary to notice that the implementation of PPP projects is basically carried out through concession. A lack of other PPP forms in Kazakhstan became a base for the development and enactment of a new law¹⁹ in this sphere. The main objective of the new law is the introduction of new PPP forms to the Kazakhstan practice, including Build, Own, Operate (BOO), Build, Operate, Transfer (BOT) and Design, Build, Finance, Operate (DBFO).

In Poland, the PPP activity, measured by the number of tender notices and by the number of the signed PPP/concession agreements, does not allow for optimistic conclusions that the scheme is rapidly gaining acceptance, rather the data testify to a steady, yet slow growth.²⁰

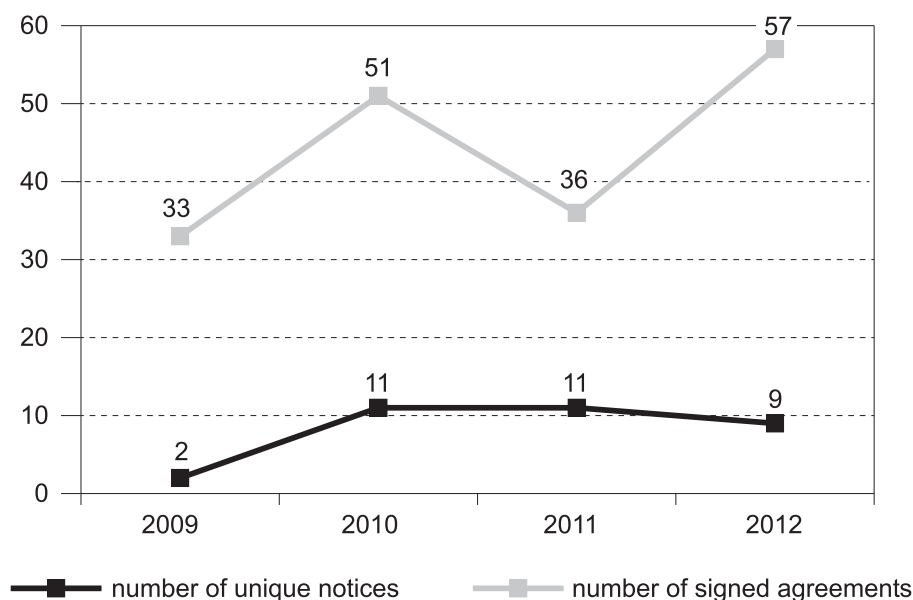


Figure 2. The notices based on the PPP Act in Poland in the years 2009–2012

Source: Base of PPP projects — <http://pppbaza.pl> (date of access: 18.12.2013).

¹⁹ The Statute of the Republic of Kazakhstan of 4 July 2013 No. 131-V ZPK (Zakon Respubliki Kazakhstan ot 4 iulya 2013 g. No. 131-V ZPK *O vnesenii ipmenenij v nekotorye zakonodatelnye akty RK v svyazi s vnedreniem novykh form PPP I rasshireniem ego primeneniya*).

²⁰ Report on the analysis of the existing data — analysis of written documents, including previous analyses and legal acts related to PPP in Poland. Centre for PPP Foundation. 2012.

The year 2012 brought 57 unique project notices. Despite the larger amount of notices, in proportion to 2011, (a growth from 36 in 2011 to 57 notices) this cannot be taken as a trend. Based on the data from the years 2009–2012, we can observe that the number of notices fluctuates approximately from 30 to 60 per year. The basic weakness of the Polish PPP market is the number of PPP project cancelations. In 2009–2012 only 19% of all PPP notices resulted in concluded agreements.

Conclusion

The activities of the PPP Centers in the territory of Poland and Kazakhstan differ not only in historical, legal, social and economic conditions, but also in application of world experience. However, on the basis of the research carried out in this area it is possible to outline the general tendencies and problems.

One of the basic problems of formation and development of PPP in presented countries is the shortage of a corresponding political climate and understanding by the heads of state of the essence of partnership. Particularly in Kazakhstan the organizational and legal changes frequently have a secondary character in relation to political support of realization of these or other institutional changes. The realization of PPP projects in Poland and in Kazakhstan somewhat follows the world tendencies, and, on the other hand, it is the necessity of decision of problems connected with quality of public goods and services. The degree of quality of the public goods and services in the modern world becomes the indicator of the quality of life of the population and, hence, the level of social and economic development of the country.

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Summary

The PPP is a complex phenomenon which embraces social, economic, politic, legal and other spheres. It is necessary for PPP centers to emerge as they facilitate the understanding of the PPP role in the economic development and promoting growth. The statuses of these centers vary and depend on the whole PPP policy of a given country. The comparison of the basic law concerning PPP centers in Poland and Kazakhstan reveals the diverse approaches to it in these two countries.