

Georgian Young Lawyers' Association



PUBLIC-PRIVATE PARTNERSHIPS

(Trends in Georgia)



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CONTENTS

1. INTRODUCTION	3
2. METHODOLOGY	4
3. FINDINGS	5
4. PROJECTS IMPLEMENTED IN THE FRAMEWORK OF PUBLIC-PRIVATE PARTNERSHIP	5
4.1. <i>The Chancellery of the Government of Georgia</i>	6
4.2. <i>The Ministry of Economy and Sustainable Development of Georgia</i>	8
4.3. <i>The Ministry of Labor, Health and Social Protection</i>	9
4.4. <i>The Ministry of Education and Science of Georgia</i>	9
4.5. <i>The Ministry of Interior of Georgia</i>	11
5. CONCLUSION	13

1. INTRODUCTION

According to the information released by the Ministry of Economy and Sustainable Development of Georgia, certain measures were planned in terms of establishing and developing public-private partnerships (hereinafter referred to as PPPs) in Georgia. The conference discussing the form of public-private partnership was held already on December 7-8, 2013, in Kobuleti and representatives of the Cabinet of Ministers of Georgia attended the event arranged under the initiative of the World Bank and the Ministry of Economy and Sustainable Development of Georgia.¹ Forms of relationship of public-private sector, examples of partnership, necessary financial mechanisms for setting up partnership relationships and legal and institutional framework for developing such partnership were discussed at the conference. Drafting of the relevant legislative framework was also planned in the framework of the conference.²

The report of the Organization on Economic Cooperation and Development approved several months before holding the foregoing conference on September 25, 2013, also focuses on public-private partnerships in Georgia. As the third monitoring report mentions *“Most SEOs operate under the law on Entrepreneurship, and some under the Law on Public-Private Partnership (PPP) where PPP boards are chaired by the Prime Minister and are composed of other ministers.”*³ Since the conference organized by the Ministry of Economy and Sustainable Development of Georgia entailed elaboration of legislation regulating public-private partnerships and its implementation in practice, the report of the monitoring carried out before the conference can not make reference to the law of Georgia on public-private partnership. Accordingly, when the similar legislation framework is absent in Georgia, the motivation of the civil servants while making such statements becomes unclear. Most importantly, when those statements

¹ <http://www.economy.ge/ge/media/news/sajaro-kerzo-partniorobis-formis-ganxilvisadmi-mizrvnili-konferencia>;

² <http://www.economy.ge/ge/media/news/sajaro-kerzo-partniorobis-formis-ganxilvisadmi-mizrvnili-konferencia>;

³ <http://www.oecd.org/corruption/acn/GEORGIAThirdRoundMonitoringReportENG.pdf> - Organization for Economic Cooperation and Development, Anti Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan – Third Round of Monitoring (Georgia), 2013, p.102;

formed one of the grounds of the monitoring report.⁴ In view of the existing vague conditions, in the course of working on the research, the Georgian Young Lawyers' Association (later GYLA) mainly aimed:

- To determine PPP practice in Georgia on the example of the Ministries and the government administration;
- To analyze concrete cases, which are considered by administrative agencies as cooperation in the framework of PPP.

2. METHODOLOGY

In the course of working on the research GYLA retrieved relevant public information from the Ministries of Georgia (save for the offices of the state ministers) and the administration of the Government of Georgia. Requested information included list of projects implemented in the framework of public-private partnership, their brief description and contracts made for establishing public-private partnerships. After receiving necessary information, it was processed and assessed, while information provided from administrative agencies about projects implemented within PPP has been reviewed individually.

⁴ <http://www.oecd.org/corruption/acn/GEORGIAThirdRoundMonitoringReportENG.pdf> - Organization for Economic Cooperation and Development, Anti Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan – Third Round of Monitoring (Georgia), 2013, p.102;

3. FINDINGS

Following key findings were observed as a result of the research outcomes:

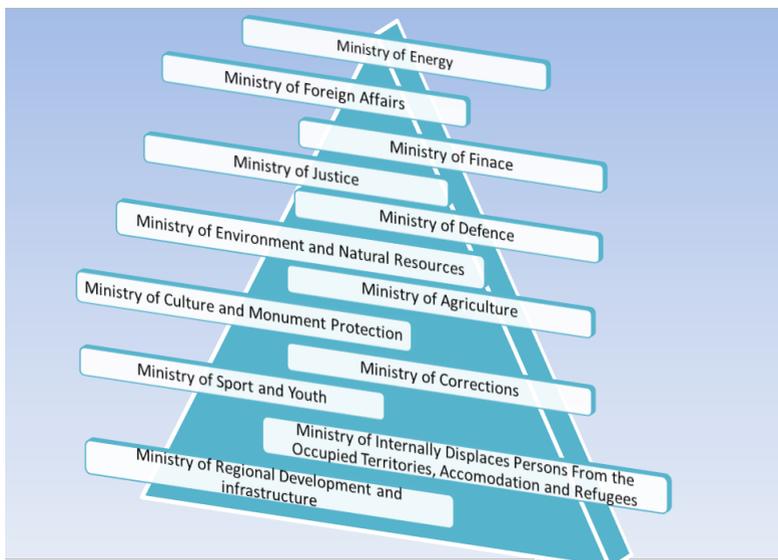
- Georgia reveals no readiness in terms of introducing PPP and the government has not implemented any meaningful activities in that direction at this point;
- Majority of the observed public agencies misunderstand the essence of PPP and some activities which according to their opinion are carried out under PPP fail to meet objectives of the institute;
- For effective implementation of PPP international practice focuses on elaboration of relevant legislative framework and implementation of institutional changes.

4. PROJECTS IMPLEMENTED IN THE FRAMEWORK OF PUBLIC-PRIVATE PARTNERSHIP

According to the World Bank explanation, “PPPs are typically medium to long term arrangements between the public and private sectors whereby some of the service obligations of the public sector are provided by the private sector, with clear agreement on shared objectives for delivery of public infrastructure and/or public services.”⁵ PPPs are typically used for implementation of large scale projects in the fields such as infrastructure, environment protection, healthcare and etc. In parallel to the forgoing interpretation of public-private partnership, it is important to find out Georgia’s vision about functioning of the institute or its essence, in general.

Public information retrieved in the framework of the research revealed that majority of public agencies has not implemented similar projects. Those agencies will be presented in the below diagram, while other who submitted certain information in this respect will be analyzed separately.

⁵ <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> ;



4.1. The Chancellery of the Government of Georgia

With a view to find out information about projects implemented in the framework of PPPs, GYLA applied to the Chancellery of the Government of Georgia along with the Ministries.⁶ It should be noted that unlike other state agencies, in response the Chancellery of the Government of Georgia requested from GYLA submission of application with concrete information.⁷ GYLA has sent an additional application to the Government Chancellery and explained the concept of PPP.⁸ Afterwards, the Chancellery of the Government submitted information about two activities implemented in the framework of PPP:

⁶ GYLA's Letter#-04/179-14 of April 30, 2014

⁷ Correspondence # 16464 of May 19, 2014 of the Government Chancellery of Georgia

⁸ GYLA's application #c-04/363-14 of July 1, 2014;

1. **Establishment of non-commercial legal entity – Solidarity Foundation of Georgia**

According to the information provided by the Chancellery of Georgia, the Foundation has been established as per government order #1022 of May 30, 2014. The legislative ground for its establishment is the Civil Code of Georgia. As provided by the Statute the key objective of the Foundation is mobilization of alternative (non-budgetary) resources with participation of public/private sector and the state for especially vulnerable population or individuals facing the risk of catastrophic social expenses and directing the resources to priority social needs. According to the structure of the Foundation, it has a Supervisory Board, a director and a special commission. Grants, voluntary donations/contributions or incomes received through grants, as well as other incomes permitted by the Georgian legislation, including those generated by economic activities may be the source of funding. It should be noted that unlike other activities implemented within PPPs, it is explicitly provided in this case that *establishment of the Foundation is a consolidated, flexible and transparent mechanism of cooperation between private and public sector (public-private partnership)*.⁹

2. **The Contract Made between the LEPL Social Service Agency and the Liberty Bank** – According to the contract, in the period of July 1, 2014 – December 31, 2014 the Liberty Bank undertakes an obligation to ensure distribution of social disbursements free of charge, including:

- distribution of funds to the beneficiaries free of charge;
- opening of an account and preparation of the plastic card free of charge;
- bringing of a pension to a pensioner on the place of residence free of charge (in certain cases);
- free of charge service to the pensioners on bank transfer operations in other banking institutions.

The contract is identical to already made document between the So-

⁹ Explanatory letter of the draft government order on setting up a non-commercial legal entity Georgian Solidarity Fund;

cial Service Agency and the Liberty Bank on paid banking service. However, as opposed to its predecessor, the new contract contains some novelties and undertakes obligation to carry out paid banking services free of charge.

4.2. The Ministry of Economy and Sustainable Development of Georgia

GYLA submitted some applications to the Ministry of Economy and Sustainable Development of Georgia about public-private partnerships.¹⁰ Part of the applications concerned the projects implemented under the aegis of PPP, while another part concerned post-conference activities conducted in Batumi under initiative of the World Bank. As it follows from provided materials: “ Investment and Export Policy Department of the Ministry possesses no information about activities implemented after the PPP conference held in Kobuleti on December 7-9. Further, it has no information about planned measures for elaboration of the legal/institutional framework for development of PPP.¹¹

As for the projects implemented within PPP, the Ministry of Economy and Sustainable Development pointed out the contract made with organizers of the international nutrition products and non-alcoholic drinks exhibition “GULFOOD 2014”. As a result, 9 Georgian companies were given chance to present their products at the international exhibition held on February 27-29, 2013 in Dubai. The objective of participation at the exhibition was to attract the new trade partners for Georgian Companies, to make business relationships with them and to increase export on the market of the United Arab Emirates. According to the information provided by the Ministry of Economy and Sustainable Development of Georgia, within PPP the state has reimbursed part of the exhibition costs, while the rest amount, approximately 40%, was covered by participant companies.¹²

¹⁰ GYLA's applications of March 5, 2014 #c-04/80-14, April 30, 2014 #c-04/169-14 and April 30 #c-04/188-14;

¹¹ The correspondence #08/2955 of May 19, 2014 of the Ministry of Economy and Sustainable Development of Georgia;

¹² The correspondence #08/1666 of March 10, 2014 of the Ministry of Economy and Sustainable Development of Georgia ;

4.3. The Ministry of Labor, Health and Social Protection

Though at this point, the Ministry of Labor, Health and Social Affairs has not implemented projects in the framework of public-private partnership, it submitted additional information about ongoing activities for elaboration of PPP general conception which will further be used in terms of concrete projects implemented in the field of healthcare. In addition, submitted information notes that intensive activities has been carried out for elaboration of investment conditions of public-private partnerships in the healthcare field.¹³

4.4. The Ministry of Education and Science of Georgia

As provided by the correspondence¹⁴ of the Ministry of Education and Science of Georgia, following activities were carried out by the agency in the framework of public-private partnership:

- The state program for development of infrastructure of vocational education – “Vocational Education for Employment” was approved by the government order #113 of March 12, 2008. The program aimed increase of the role of private sector in the field of vocational education that would have promoted preparation of adequately trained human resources for meeting the demand of labor market. For achieving the project objective, state property (real property and movable property) should have been transferred in ownership of natural persons and legal entities of private law under some conditions (arranging of vocational institutions).

With a view to implement project envisaged activities, the joint commission of the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Education and Science of Georgia was set up on May 23, 2008. As a result, on the basis of business-plan submitted within the program state property was transferred to some legal entities of private law: “Prof Unit LLC”,

¹³ Correspondence # 01/40018 of May 15, 2014 of the Ministry of Labor, Health and Social Protection;

¹⁴ Correspondence #0 14 00322621 of May 27, 2014 of the Ministry of Education and Science of Georgia;

“Miller and the Company”, “Demetre 96”, Independent gymnasium “Shavnabada”.

- On August 2, 2013 under coordination of the Ministry of Education and Science of Georgia and support of the “Liberty Bank”, a conference was held about involvement of a private sector in vocational education. It aimed introduction of long term strategy and action plan for development of vocational education, as well as submission of recommendations to public for involvement of private sector in vocational education.
- On December 19, 2013 under initiative of the Ministry of Education and Science of Georgia and the professional college “Specter” second conference “the role of public sector in vocational education” was held for involvement of private sector. Representatives from educational institutions, international and local organizations, 50 businessmen, social partners and various field associations attended the conference. GIZ and partner companies: Knauf, Caparoli and Heidelberg cement were partners of the event.
- On August 29, 2013 the Memorandum of Cooperation was made between the Ministry of Education and Science of Georgia, the Liberty Bank and 12 educational institutions implementing vocational education programs. According to the document, the Ministry of Education and Science of Georgia ensures involvement of the Company in the process of revising qualification framework and professional standards and in different events planned for development of vocational education. Further, in the framework of the Memorandum, with support of the Liberty Bank a festival “Vocational Education for Employment” was arranged on September 13, 2013. On April 8, the festival was held for the second time. 33 agencies, including state and private institutions, implementing vocational programs took part in the festival.
- On March 14, 2014 under initiative of the Department for Development of Vocational Education of the Ministry of Education, a working meeting was held with representatives of the private sector. PPP alternative models were discussed at the meeting with participation of 20 representatives of large and medium-size business. A special questionnaire was distributed among

invited guests and they had an opportunity to write down their opinion about acceptable forms of cooperation.

- On April 17, 2014 the Ministry of Education and Science of Georgia and vocational educational institutions made a Memorandum of Cooperation with “Robert Bosh”, “Gino Paradise” and “Energopro Georgia”. The Memorandum aimed promotion of vocational education in Georgia, equipping workshops of educational institutions with modern technique, internship of vocational students, involvement of private sector in the process of revision of qualification framework and professional standards and etc.

Along with the foregoing information, the Ministry of Education and Science of Georgia also submitted memorandums of cooperation made between different agencies and the Ministry.

4.5. The Ministry of Interior of Georgia

GYLA applied to the Ministry of Interior with request of public information already on April 30, 2014¹⁵, however, despite expiration of the legislative term, no response followed. GYLA managed to acquire needed information only through litigation in a court with correspondence of February 4 and 18 of 2015.¹⁶

According to submitted information, several contracts, memorandums of cooperation and understanding appeared in the framework of projects implemented under the aegis of PPP implemented by the Ministry.

Due to a large number of similar agreements, it is impossible to review each of them in the framework of the research, though there are certain aspects which deserve attention. In particular, part of the contracts and memorandums of understanding and cooperation is made with Georgian and foreign public agencies, while others are made with private law entities.

From memorandums of cooperation made with public agencies of Georgia we should mention the one made with the Ministry of Inte-

¹⁵ GYLA's application # c-04/176-14 of April 30, 2014

¹⁶ MIA correspondence #250620 and # 362403 of February 4 and February 18, 2015;

rior, the Ministry of Justice, Prosecutor's Office of Georgia, the Ministry of Finance and the Monitoring Service of the Ministry of Finance aiming increase of effectiveness of interagency cooperation among law-enforcement bodies. Further, we should stress agreements made with educational institutions of Georgia¹⁷ and private law entities¹⁸ which mainly aim conduct of educational activities, development of archival business, ensuring transparency of archives, modernization/digitalization of archive and conduct of researches on the basis of archival materials.

As for the contracts made with public/private agencies of foreign states¹⁹ we mainly observed examples of cooperation for training law-enforcement representatives, foreign exchange training programs and study tours for sharing best practices and for combating crimes.

¹⁷ GIPA, Grigol Robakidze State University, Ilia State University, Caucasian University, Sulkhan-Saba Orbeliani University and etc;

¹⁸ The Foundation Caucasian Dialogue, the Foundation for the Development of Public Health and Medical Science, the Academy for the Research of the Soviet Past, IDFI and etc;

¹⁹ Educational Center of Armenia Police, Cultural Center of Cherkezia, the training center of Georgia for public safety; USA memorial museum of Genocide; Huveri University, Danilovgradi police academy, Unit II/5 of Federal Internal Affairs of Austria Republic; Security Defense Academy, National Police Academy of Turkey

5. CONCLUSION

Following key findings were made after analysis of information submitted in the research:

- **Most Ministries have not implemented projects in the framework of public-private partnership, while activities carried out by the rest of them fail to meet the concept and forms of public-private partnership;**
- **Mostly, public agencies understand public-private partnership literally and consider any relationship between an administrative agency and a public sector as such, notwithstanding its content;**
- **There were cases when contracts made between administrative agencies were considered as public-private partnerships, which illustrates wrong understating of the institute by public sector.**

Moreover, if appropriateness of implementing different projects within PPP will become active in the agenda, the state should work out relevant legislative framework and determine a competent agency for examination and development of issues related to implementation of the projects. Further, in case of introducing public-private partnership in Georgia as an institution, already existing international best practice and its pros and cons should be taken into account.