

MODEL OF PUBLIC-PRIVATE PARTNERSHIP IN THE CRITICAL INFRASTRUCTURE PROTECTION OF MONTENEGRO

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Abstract: Aware of the fact that an effective system of critical infrastructure protection creates preconditions for the normal and undisturbed functioning of the wider social system, Montenegro has made significant efforts in recent years, both in terms of normative definition of that sector and in finding optimal mechanisms for protection of national critical infrastructure. These efforts should not be understood solely as responding to current trends in the field, but also as a necessity, that is, an obligation to align national legislation and practice with the *acquis communautaire* in the process of accession of this country to the EU. All this also represents a discontinuity with an earlier state in which national critical infrastructure was viewed solely from the perspective of the armed forces and the needs of the state's defense system. Therefore, the objective of the work is presentation of public-private partnership in the critical infrastructure protection of Montenegro.

Keywords: Montenegro, critical infrastructure, critical information infrastructure, public-private partnership, private security sector, public sector

INTRODUCTION

The functioning of everyday life in modern society is based, among other things, on highly developed infrastructure, especially in the areas of management and control of energy supply, provision of drinking water sources, transport, maintenance of information technology systems, telecommunications

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and others. The processes of globalization and technological revolution have made infrastructure systems very complex and interdependent, but at the same time extremely important for modern society. In this sense, the infrastructure that provides the basic functions of the state is as important as the infrastructure systems that enable the provision of goods and services to the population. One of the increasingly common modern models in the field of critical infrastructure protection implies cooperation and partnership of the state with private actors.

THEORETICAL FRAMEWORK

The term “infrastructure” itself can be defined as “the basic framework of a system or organization” while a multitude of definitions can be used for the phrase “critical infrastructure”, because the term “critical” is variable and difficult to define. Despite the complexity of the definition, the notion of critical infrastructure is usually defined in one of two ways. The first way consists of listing all vital infrastructures (The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, United States Government, Washington, 2003). From the scientific point of view, another approach is especially important, as it defines criticality as a result of specific characteristics. In this case, certain (relational) properties of the system are determined, because the given system is critical in relation to other systems or entities. Namely, the system is critical for the second system when the first is necessary in order for the second to continue the work. Thus, the German National Critical Infrastructure Protection Strategy defines criticality as a relative measure of the consequences of a disruption or failure of a function related to the delivery of goods and services to society (Bundesministerium des Innern Nationale Strategie zum Schutz Kritischer Infrastrukturen, Bundesministerium des Innern. Berlin, 2009, p.7). In this sense, critical infrastructure is the infrastructure which is needed to continue the operation of other major technical and / or social systems or which is needed to provide goods or services that are considered vital to the functioning of modern society (Lukitsch, Mueller, Stahlhut, Engels, 2018: 12). From the above, we can see that the essential problem in defining the term is the term criticality. In this regard, it is important to determine that “a certain system is critical if it provides routine functions, if there are no practical possibilities of rapid replacement, sudden dysfunction that causes non-trivial damage, and if it is built into integrated systems” (Egan, 2007: 5).

Most infrastructure researchers use the terms “criticality” and “critical” in a descriptive sense, similar to its use in political discourse. In doing so, some authors take as a starting point services to the population (water supply, energy, etc.) and to economy that are considered necessary, which is why the technical systems that provide these services are marked as critical infrastructure (Moteff, Copeland, Fischer, 2003: 5-7). In a scientific approach there is a historical or developmental perspective, starting from a set of vital goods and services and following how in certain societies or time periods certain services were considered increasingly important, which is why criticism is the result of collective preferences (Hogselius, 2013: 5-7).

Trying to define the cooperation of the public and private sector in the realization of public services in a unique and generally acceptable way is not an easy task, for which there are numerous reasons. Initially, the concept of public-private partnership primarily included urban construction projects that facilitated joint development and reconstruction of problematic urban areas. Today, it has become a very heterogeneous concept, which critics say has evolved in the direction of all possible new or known forms of cooperation between the public administration and the private sector (Swapnil, Sachin, 2017: 3792-3793). The concept of connecting the public and private sectors in theory and practice is denoted by the unique name of public-private partnership, or its acronym PPP. The Inter-



national Monetary Fund defines public-private partnership as “a contractual relationship in which the private sector takes over the provision of infrastructure and services traditionally provided by public administration” (Public-Private Partnerships, Prepared by the Fiscal Affairs Department International Monetary Fund, 2014, p. 4, <https://www.imf.org/external/np/fad/2004/pifp/eng/031204.pdf>). World Bank offers a much broader definition of the term, according to which “public-private partnership projects relate to investment and service delivery traditionally provided by the public sector, with the private sector assuming much of the risk and the public sector retaining an important role in providing services or taking significant risks. project” (A World Bank Resource for PPP in Infrastructures, <https://ppp.worldbank.org/public-private-partnership/>). The European Commission (EC) has defined a public-private partnership as “investment projects transferred to the private sector that it has traditionally carried out or funded by the public sector” (European PPP Expertise Center (EPEC), PPP Guide, p. 1, <http://www.eib.org/epec/g2g/intro2-ppp.htm>). The European Commission’s Green Paper document explains the most important elements of public-private partnership. The European Commission, in its Guidelines for Successful Public-Private Partnerships, European Commission, March 2003, http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf) defined the term as “a partnership between the public and private sectors for the purpose of implementing a project or service traditionally provided by the public sector”, which is characterized by the division of investments, risks, responsibilities and profits among partners. In addition, a public-private partnership is characterized by a relationship that involves sharing power, work, support and (or) information with others in order to achieve common goals and (or) mutual benefits (Kernaghan, 1993: 59-63). In this way, the relations between organizations are especially emphasized, as well as cooperation and common goals. Despite the fact that for many this phenomenon is a novelty, it already has a long tradition in many countries (Sarsengali, 2016: 1113-1114).

ORGANIZATIONAL AND INSTITUTIONAL ASPECT OF CRITICAL INFRASTRUCTURE PROTECTION IN THE EUROPEAN UNION

The EU Council Directive (2008/114 / EC) emphasizes three specific requirements that European Critical Infrastructure owners and operators must meet. The first requirement stipulates that each defined European Critical Infrastructure must have an Operator Protection Plan in place that identifies the critical infrastructure resources of the European Critical Infrastructure, as well as security measures to protect the infrastructure concerned. The subject protection plan should be established within one year after the infrastructure has been determined as such, with the obligation of regular updating. In connection with the above, the second obligation is to make a Hazard Assessment. The third obligation arising from the Directive is that the owners and operators of a particular European Critical Infrastructure must appoint liaison officers, responsible for communication on safety issues between the owner (operator) and the competent authority of the Member State. In addition, each Member State must establish a “communication mechanism” between the relevant authority of the Member State and the liaison officer for the purpose of exchanging information on identified risks and threats to European Critical Infrastructure (Lindstrom, 2009: 47). From the aspect of management and practical implementation at the EU level, the protection of European Critical Infrastructure is a process that is divided into phases of identification, designation and protection of European Critical Infrastructure.



Table no. 1: *Phases of management and regulation of European critical infrastructure protection*

Identification	Application of sectoral criteria Application of cross-criteria Application of the definition of critical infrastructure Application of cross-border elements Identification of potential critical infrastructure and transition to the next phase
European critical infrastructure	Informing Member States that may be affected by critical infrastructure Involvement in bilateral discussions with these Member States Agreement with Member States that may be affected Determining critical infrastructure and moving on to the next phase
Determination of European critical infrastructure	Checking the existence and development of an operator safety plan Regular review of the operator's security plan Checking the existence and development of security officers Reporting to the European Commission every two years on risks and threats to critical infrastructure

(The Review of the European Programme for Critical Infrastructure Protection (EPCIP). Commission Staff Working Document, SWD(2012) 190 final. Commission of the European Communities, European Commission, Brussels, 2012, r. 8, http://ccpic.mai.gov.ro/docs/epcip_swd_2012_190_final.pdf)

PUBLIC-PRIVATE PARTNERSHIP MODEL IN CRITICAL INFRASTRUCTURE PROTECTION OF MONTENEGRO

The Government of Montenegro has decided to use the subject model more intensively through the privatization process. In the explanation of the mentioned decision of the Montenegrin government, it was pointed out that when there are areas (resources) in which the state does not act efficiently enough and where significant budget funds are not allocated for revitalization of a certain sector, it is more convenient to “delegate” a certain area to companies that are willing to invest the necessary financial resources to achieve a certain goal. On the other hand, legal provisions protect national interests and prevent the permanent allocation of such resources and infrastructure to private companies. In practice, the number of concluded public-private partnership agreements has been on the rise in the last few years. In addition to the above, there are numerous stakeholders in Montenegro who, with their capacities, can play a significant role in providing comprehensive and structural responses to current security threats. Namely, economic reasons and the dynamics of social changes have caused the reduction of the state monopoly in the field of security. Although the private security industry in Montenegro started operating in 1992, which is relatively early compared to the surrounding countries, the full development of the sector began in the late 1990s (Keković, 2013: 182-183).

National Security Strategy of Montenegro

The strategy is the basis for other strategic documents and plans in the field of security. When analyzing the strategic interests of Montenegro, the provisions related to “protection of natural and all other resources and potentials of Montenegro” are especially important. Although the mentioned provision



is quite broad in its scope and content, so that it can include critical infrastructure, viewed as a set of national resources that are important not only for the functioning of the state and society, but also represent national resources. As an important national interest, the Strategy recognizes the protection of critical infrastructure primarily from the angle of “encouraging cooperation between state institutions, civil and private sector, in order to strengthen civilian readiness to respond to security challenges, risks and threats.” In this way, the subject strategy puts in the foreground the partnership of different structures, all with the aim of strengthening the capacity in the protection of critical infrastructure. In addition to the above, the National Security Strategy places special emphasis on the protection of the state’s information infrastructure and security system (National Security Strategy of Montenegro, Official Gazette of Montenegro, No. 085/18). The National Security Strategy has an indirect approach to the issue of public-private partnership. This is manifested in the parts of the text that refer to the unity of action in response to modern challenges, risks and threats, which, among other things, implies the cooperation of state and civil bodies, institutions and organizations. In addition to the above, the Strategy defines the concept of civilian readiness, which should enable cooperation between state institutions and the private sector, given that modern security challenges require a response from the entire society. The special unit of the Strategy, which refers to the national security system within the special elements of the system, includes, among others, private security agencies and security services. This is also the usual way in which the private security sector is most often mentioned in that document as an element of the structure of national security (National Security Strategy of Montenegro, Official Gazette of Montenegro, No. 085/18).

Law on Protection of Persons and Property

The Law on Protection of Persons and Property is crucial in the implementation of the concept of public-private partnership in the protection of critical infrastructure, given that it regulates issues of importance for the performance of its protection. On the other hand, in order to apply this concept, the law in question should undergo the largest number of changes within the national legislation. Namely, a special article of the existing law refers to the obligatory protection of facilities, and Montenegro, in the meantime, has started the process of adopting the Law on Critical Infrastructure (Law on Protection of Persons and Property, Official Gazette of Montenegro, No. 43/2018, Art. 13). This creates a mismatch between these laws, which may negatively affect the functioning of the private sector in the protection of critical infrastructure. Similar applies to the larger majority of articles of the Law on Protection of Persons and Property, which regulate the activity of protection, the meaning of basic terms and the like, and which should contain the concept of critical infrastructure harmonized with the new special law. In addition, the Law on the Protection of Persons and Property requires the use of weapons in the protection of critical infrastructure, given that the law defines their use in physical protection and protection of goods in transport (Law on Protection of Persons and Property, Official Gazette of Montenegro, No. 43/2018, Art. 16). The current Law on Protection of Persons and Property contains provisions that are particularly important from the point of view of implementation of the concept because it opens the possibility of establishing an operational center for the need of performing protection. This is especially important for the adequate exchange of real-time information between persons engaged in the provision of protection services of critical infrastructure and the competent state authorities. This opens the possibility of permanent coordination not only on the issue of critical infrastructure protection but also on a much wider scope, which can positively affect the creation of trust between the public and private sectors. Given the fact that the critical infrastructure is very diverse in terms of security, the establishment and operation of the operational center should not be generalized by law, but rather offer opportunities to show creativity in each case in its operation, all



in order to increase critical infrastructure security (Law on Protection of Persons and Property, Official Gazette of Montenegro, No. 43/2018, Article 17). Although the above provisions of the Law have their general justification, for the application of the concept of public-private partnership it is especially important to establish conditions for protection of critical infrastructure by the private sector. This also stems from the general importance of critical infrastructure, which is why security arrangements cannot be left to private sector actors who do not have adequate capacities and resources. In order to achieve this, one possibility is that a special provision of the law contains specific criteria that must be met by the private security sector in order to participate in the protection of critical infrastructure. The current provisions of the Law on Protection of Persons and Property provide general conditions (Law on Protection of Persons and Property, Official Gazette of Montenegro, No. 43/2018, Articles 18, 20), however, those related to more detailed elaboration are missing on opportunities (capabilities) of the private sector to participate in the protection of critical infrastructure.

Critical Infrastructure Act

The Draft Law on Critical Infrastructure of Montenegro has been drafted in the spirit of European regulations in this area. The analysis of the Draft Law shows that the legislator has opted for a sectoral approach in the identification of critical infrastructure. In this regard, eight sectors of critical infrastructure have been defined, with the possibility of further expansion open. One of the basic objections to the proposed legal solutions is the inclusion of environmental protection as a sector of critical infrastructure.

Table no. 2: *Proposal of the sectors and subsectors of critical infrastructure of Montenegro*

SECTOR	SUBSECTOR
ENERGY	<ul style="list-style-type: none"> - production and distribution of electricity - oil refining, storage and distribution - gas storage and distribution
TRAFFIC	<ul style="list-style-type: none"> - road traffic - railway traffic - air traffic - maritime traffic
WATER SUPPLY	<ul style="list-style-type: none"> - drinking water supply - water quality control - water supply control
HEALTH CARE	<ul style="list-style-type: none"> - medical emergency services - medical care - production and distribution of drugs
FINANCE	funding
INFORMATION AND COMMUNICATION TECHNOLOGIES	<ul style="list-style-type: none"> - ICT software - ICT communications and hardware
FOOD	<ul style="list-style-type: none"> - food production and distribution - food safety - commodity food stocks
FUNCTIONING OF STATE AUTHORITIES	<ul style="list-style-type: none"> - public administration system and law enforcement - emergency services - military infrastructure



By introducing a coordinator for the protection of critical infrastructure, security plan, etc., Montenegro has harmonized its national legislation in this area with European standards, and in particular with Directive 2008/114 / EC. However, the main shortcoming that can be objected to the legislator is the lack a specific ministry which would have jurisdiction regarding the issue of critical infrastructure.

Law on Public-Private Partnership

At the moment, the Draft Law on Public-Private Partnership is in the procedure of consideration and adoption in the Parliament of Montenegro. The proposed solutions of the new legal act, among other things, systematically regulate issues related to contractual investment between a private and public partner. In this way, a synergy of the authority of public institutions and the expertise and knowledge of the private sector is achieved, with the aim of building and reconstructing public infrastructure, as well as performing public works and providing public services. In this legal text, the main goal of the public-private partnership is to increase the quality of services for the end user, because without this segment, the public-private partnership does not have the elements of a quality contract and project. The new law elaborates in detail the procedure for concluding a public-private partnership contract - from the idea to the realization of the project that ends with the contract. In this regard, according to the provisions of the Draft Law, public-private partnership contracts are concluded for a period of 3 to 30 years. In addition, it is important to note that the mentioned draft law brings novelties in the institutional framework in the entire Montenegrin investment policy. This primarily refers to the formation of a new body - the Investment Agency of Montenegro, which is positioned in the system in accordance with the Law on Public Administration and which as such represents a further step in public administration reform and unification of bodies dealing with different policy segments in this area. Namely, in addition to the prescribed scope of work related to public-private partnerships, the Agency will also unite the existing bodies in the field of investment policy. The significance of the new law is also in the fact that it precisely defines the issues related to the preparation of tender documentation and justification analysis, and that it elaborates the entire procedure through which the proposal of one project passes to the final adoption. It is also important that the legislator especially emphasized the importance of the public interest, since the analysis of justification that accompanies each public-private partnership project is its important segment.

Organizational aspect

From the aspect of critical infrastructure protection, the organization consists of various entities involved in this process. This largely determines the complexity and imposes the need for constant coordination of activities. A special challenge is to choose the best protection model that suits national needs. In addition, when establishing such a model, the possibility that it may prove in practice to be inappropriate or inadequate should not be ruled out. From the aspect of the topic of this paper, the Coordination Body for Critical Infrastructure Protection is of special importance in Montenegro, but as a permanent body, as well as the private security sector engaged in critical infrastructure protection.



Critical Infrastructure Protection Coordination Body

With the draft Law on Critical Infrastructure, Montenegro has envisaged a Coordination Body for Critical Infrastructure Protection. Although the scope and content of the Coordination Body's work is diverse, we can conditionally classify them into several basic functions: planning, coordination, control, reporting and information. We can conclude that the Coordination Body must have sufficient capacity to achieve the set goals. Its organizational structure must be established on the basis of division of labor, grouping of tasks, delegation of authority and responsibility and appropriate coordination and control mechanisms.

Private security sector in critical infrastructure protection

The private security sector in the protection of critical infrastructure in Montenegro should be subordinated to the Coordination Body and the Ministry of Interior. In terms of legal authority, the process of obtaining a certificate for performing critical infrastructure security activities, as well as losing the right to engage in those activities, is the responsibility of the Ministry of the Interior. When it comes to the competencies of the Coordinating Body, its role in this domain is primarily to exchange information that is important for the provision of protection of critical infrastructure with the private sector. However, it is necessary to regulate the obligations of the private sector more precisely in this area, especially when it comes to the development of plans necessary for the protection of critical infrastructure. In other words, it is necessary to regulate in more detail the organizational aspects of the private security sector in critical infrastructure protection, define the minimum capacities and resources, as well as the relations of private sector actors with other entities in the field. In that way, conditions will be created for more efficient functioning of the private security sector, but also for more adequate control in the field of critical infrastructure protection. The private security sector in Montenegro is obliged to harmonize its work and action plans with the National Security Strategy of Montenegro. This primarily refers to the defined challenges, risks and threats from the aspect of critical infrastructure in each specific case of security and protection. In addition, the private security sector must have prepared work plans in case of regularity, state of emergency and state of war, as set out in the National Security Strategy. In this sense, there must be a set of predefined measures to be taken in each of these cases. This largely determines the very organization of critical infrastructure protection. The public-private partnership agreement is of special importance for the organization and activity of the private security sector. The contract in question determines, among other things, the obligations of the private sector engaged in the protection of critical infrastructure. In this regard, it is advisable that this contract also regulates the obligations in case of application of technical and fire protection measures. The contractual obligations defined in this way are also important from the aspect of exercising control over the private security sector and creating a responsible relationship between the entities of that sector in terms of the assumed obligations.

CONCLUSION

There is no doubt that an efficient system of critical infrastructure protection creates preconditions for the normal and uninterrupted functioning of the wider social system. In accordance with this fact, great efforts are being made in Montenegro in order to identify and implement adequate mechanisms for critical infrastructure protection. Aggravating factors in this regard are primarily related to a wide



range of vital sectors that include critical infrastructure, such as traffic, transport, energy production and distribution, information and communication systems, health services, water and food supply systems and the like.

The European Union attaches great importance to norms, standards and policies in the field of critical infrastructure protection and today represents one of the key actors in this field at the international level. Issues of functioning and coordination between the member states of the European Union in that domain have been regulated by the EU Directive on the Protection of Critical Infrastructures since 2008. The mentioned normative act can be viewed as an appropriate model that provides opportunities for taking over certain solutions in the protection and functioning of critical infrastructure in Montenegro. Despite the need for greater opportunities for private sector participation in critical infrastructure protection, the limiting factor is that Montenegro does not have a legal framework to support the implementation of this concept. In that sense, the adoption of the Law on Critical Infrastructure should be accompanied by amendments to the current law relating to private security. One of the reasons is the inconsistency of the conceptual apparatus between the two mentioned legal acts, which can have negative consequences in their application. That is why it is important to adopt a new law on private security, which would include the possibility of involving the private security sector in the protection of critical infrastructure.

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