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## **LEGAL REGULATION OF PUBLIC-PRIVATE PARTNERSHIP IN THE HEALTHCARE**

**Abstract.** *The article analyzed the scientific literature related to the issues of regulatory and legal regulation of public-private partnership implementation. As a result of the analysis, it should be noted that national scientists who have researched the legal aspects of the implementation of public-private partnership projects in various spheres of socio-economic relations indicate that public-private partnerships are a fairly new phenomenon in the field of legal relations. The study identified the need to regulate the relationship between participants and consumers of public services, which are implemented through an appropriate form of public-private partnership and ensure appropriate public effect for the state and economic effect for the enterprise, which is a private partner. The legal mechanism and legal regulation of the implementation of public-private partnership projects has its own specificity in the field of health care, because it is implemented in the strategically important sphere of public administration, whose main purpose is to ensure the health of the nation. In the course of the research, different branches of law and the directions of their classification were analyzed, as a result it should be noted that the legal regulation of public-private partnership is not regulated by one branch of law. This situation is connected with the fact that the sphere of legal regulation does not fall within a certain branch, it is caused by the combination of different spheres and types of social relations. As a result of this research, a model of identification of legal regulation of public-private partnership in different*

*branches of law was formed and their characterization was given in the context of their influence on the order of formation and implementation of public-private partnership projects in the field of health care in different forms of their implementation. In the next phase of the study, the regulatory acts governing public-private partnership issues were analyzed. The regulation of public-private partnerships in the field of health care was divided into the following groups of legislation: fundamental, special, economic, sectoral. In accordance with these groups of legislation, legal acts were defined. Analyzing the components of the regulatory framework for the formation and implementation of public-private partnership projects, its features were identified. After analyzing the works of scientists on improving the regulation of public-private partnership, the directions of improvement of the legal mechanism of public administration in the sphere of health care, implemented through public-private partnership, were identified.*

**Keywords:** *public administration, public-private partnership, legal regulation, health care, legal mechanism.*

**Problem statement.** The basis for the development of any mechanism of public administration in the field of social function, in particular in the field of health care, is the system of legal regulation. The legal mechanism is one of the key in public administration, because it determines the parameters of public-private partnership and areas of interaction between partners. In the context of the formation of the legal mechanism of public administration, the regulatory function of the state is realized. The legal mechanism for the implementation of public administration through public-private partnership projects in the field of health care covers various areas of law, which complicates the actual process of formation and implementation of such projects. It should be noted that the legal mechanism of public administration of health care through the implementation

of public-private partnership projects is at the intersection of interests of various stakeholders, because it should regulate both the satisfaction of their interests and their place in the management of projects, a new form of interaction between the state and business in partnership. "Progressive economic development, increasing corporate social responsibility have become prerequisites for the introduction of public-private partnership as a new legal form of market interaction. It is aimed at ensuring a balance of socio-economic interests of different segments of society and real participation of social partners in the development and implementation of socio-economic policy within the legal forms established by the state on the basis of equal, normative-defined cooperation. [1]

**Analysis of recent research and publications.** Due to the fact that the legal mechanism and system of regulation of public-private partnership projects is at the intersection of different sciences, we have analyzed recent research in two scientific fields: first, the science of public administration: I.P. Dubok, V.I. Shandrik, T.I. Pakhomova, F.V. Uzunov, A.C. Zaskalkin, S.A. Kvitka, L.V. Serhienko, A.A. Mytnyk, S.V. Simak, I.S. Bila, M.Z. Masyk, S.M. Vovk, O.P. Fomenko, K.L. Frolina, A.F. Melnyk and others; secondly, legal sciences: O.M. Vinnyk, V.D. Strukova, O.E. Simson, V.O. Vozna, O.B. Kyshko-Yerli, D.S. Bondarenko, A.M. Zakharchenko, V.A. Ustymenko, Ye.I. Bilokur and others.

**The purpose of the article** is to investigate the legal regulation of public-private partnerships in the field of health care.

**Presentation of the main research material.** Domestic scholars who have studied the legal aspects of public-private partnership projects in various spheres of socio-economic relations note that public-private partnerships are quite new phenomena in the field of legal relations, for which "The state is called to pursue a clear foreign and domestic policy public-private partnership, based on their functions, which means the main socially significant areas

(parties, types) of state activity at a particular historical stage of development of society "[4].

The issue of legal regulation of public-private partnership is that it is necessary to regulate the relationship between its participants and consumers of public services, which are implemented by the appropriate form of public-private partnership (joint activities, concessions, property management, other agreements (including lease)) and the corresponding social effect for the state and the economic effect for the enterprise that is a private partner". A feature of legal relations in the field of PPP is a combination of imperative and dispositive rules of law. In this regard, the variety of legal forms of partnership provides an opportunity for all economic entities to exercise the constitutional right to freedom of economic activity. Forms of public-private partnership are formed as a result of the division of legal relations into several types according to the method or set of methods of legal regulation" [4]. Thus, the state as a participant in a public-private partnership project is the bearer of public interests, which must be met within the existing parameters established by law. In turn, the private partner is the bearer of only private interests and must carry out its activities within the current legislation. In fact, the legal mechanism for the implementation of public administration through public-private partnership should ensure the regulation of the following object components:

- first, the functional role of the state in its classical sense (performing the functions of regulation, management, control, security);
- secondly, the place of the state in the management of the processes of formation and implementation of public-private partnership projects as a full-fledged business partner;
- thirdly, the activity of the enterprise, which is a private partner both within the project and actually;
- fourth, the processes of implementation of public-private partnership projects as a separate entity.

The healthcare sector has a special range of stakeholders, which requires a specific system of legal support for the implementation of public-private partnership projects in the healthcare sector. The specifics of the legal regulation of public-private partnership projects in the field of health care is as follows:

- there is a transformation of the system of legal regulation of health care in the country in part: financial (budget financing of health care), permitting (licensing of health care facilities operating on the basis of public-private partnership) mechanism of public administration;

- there are changes in regulations related to the process of forming a public-private partnership project in the field of health care. In particular, the provisions on technical and economic evaluation of the project are subject to change, as the evaluator must assess not only the economic effect for both the state and the private partner, but also the social effect, which is determined by improving the quality of medical services;

- the system of regulation of the processes of formation of public-private partnership projects is being improved based on the sectoral peculiarities of the healthcare sphere. This primarily concerns the procedure for selecting applicants for public-private partnership projects in the field of health care, as they will be subject to special requirements that are specific to the subjects of medical services;

- the system of legal regulation of the process of implementation of the public-private partnership project as a special business entity in the field of health care is changing. This applies primarily to economic processes related to the implementation of medical services in various forms of project implementation: concession (modernization processes and economic processes of the concessionaire); joint activities (the order of interaction of participants and distribution of their labor participation in services in the field Health Care); rent (the order of use of state and/or communal property for realization of services in the field of health care); property management (specifics of state

and/or communal property management for the implementation of health care services). An important object of legal regulation at the stages of implementation of medical services in the field of health care is the processes of using resources of both public (state and municipal property) and private (financial, personnel, material and other resources of a private partner) and borrowed (credit funds);

- establishment of special requirements for medical services implemented on the basis of public-private partnership. In particular, the requirements to the financial side (calculation and price of the service) are put forward to a greater extent, because the quality of medical services must meet the licensing requirements, and due to the attraction of private capital the quality must increase;

- settlement of relations between the participants of the public-private partnership project. This applies to the following facilities: operations for the acceptance and transfer of state and municipal property in the field of health care; operations related to the concessionaire's settlements with the state, related to the project implementation (concession payments, rent payments, distribution of financial results); acceptance of transfer-results of project implementation at the end of the contract.

In general, the defined provisions require: identification of areas of law related to the implementation of the public-private partnership project; study of modern provisions regulating the processes of formation and implementation of public-private partnership; formation of a general legal model of public-private partnership; formation of directions for improvement of public-private partnership in the field of health care.

In legal science, there are different approaches to the selection of the field of law, due to the different set and content of criteria (Table 1).

**Table 1****Criteria for the division of law in the field in the scientific literature**

<b>Source</b>	<b>Criteria</b>
<i>1</i>	<i>2</i>
<b>Ye.V. Kuzmina</b> <b>[6, p. 62]</b>	1) The subject of legal regulation 2) Method of legal regulation
<b>A.A. Shapovalov</b> <b>[10, p. 66-67]</b>	1) sectoral legal regime; 2) closed legal regulation; 3) homogeneity of social relations; 4) sectoral conceptual apparatus; 5) own way of legal regulation; 6) has its own objects and subjects of legal relations, which are characterized by subjective rights and legal obligations
<b>D. M. Azmi</b> <b>[2, p. 87]</b>	1) the content of the law (subject of legal regulation, material indicator); 2) prevailing principles of law; 3) method of legal regulation (formal, legal basis); 4) functions of legal influence; 5) conventional attitude to a particular legal array (link) as a branch of law
<b>R.M. Dudnik</b> <b>[3, p. 64]</b>	a) normativity (any industry consists of rules, is a set of rules of law that ensure its status as a legal phenomenon); b) connection with the state (all norms included in the field of law bear the imprint of the mechanism of law-making established by the state, express the national will, in addition, the field of law is determined by the historical type of statehood, its content depends on the form of the state and other qualities) ; c) universally binding (norms of any branch of law apply to all subjects regardless of their attitude to law, arise, develop, change and cease to operate on common law grounds, their application is ensured in necessary cases by coercive force of the state); d) formal certainty (the content of the norms of any branch of law acquires the form (source) of law officially established by the state).

The presented features of identification of branches of law also determine the directions of their classification. Classically in jurisprudence distinguish the following classification features and types of branches of law:

- fundamental (basic) branches of law, which include branches of law that are primary and determine the initial provisions of law (general legal regimes and methods of legal regulation) and as a result are the basis of other types of branches of law. These types of branches of law include the following: constitutional, civil, administrative, criminal, civil procedure, criminal procedure law;

- special branches of law are determined by the specifics of the areas of legal regulation of various types of social relations. This group includes such areas of law as labor, land, family, medical;

- complex branches of law are characterized by the relationship of different branches of law in certain areas of public relations. Examples of such branches of law are the following: economic, environmental, maritime, financial.

All the above types of law are also classified on the basis of subordination in the legal regulation of material - branches of law that regulate a particular type of social relations; procedural - branches of law that determine the procedure for the implementation of substantive law and its derivatives.

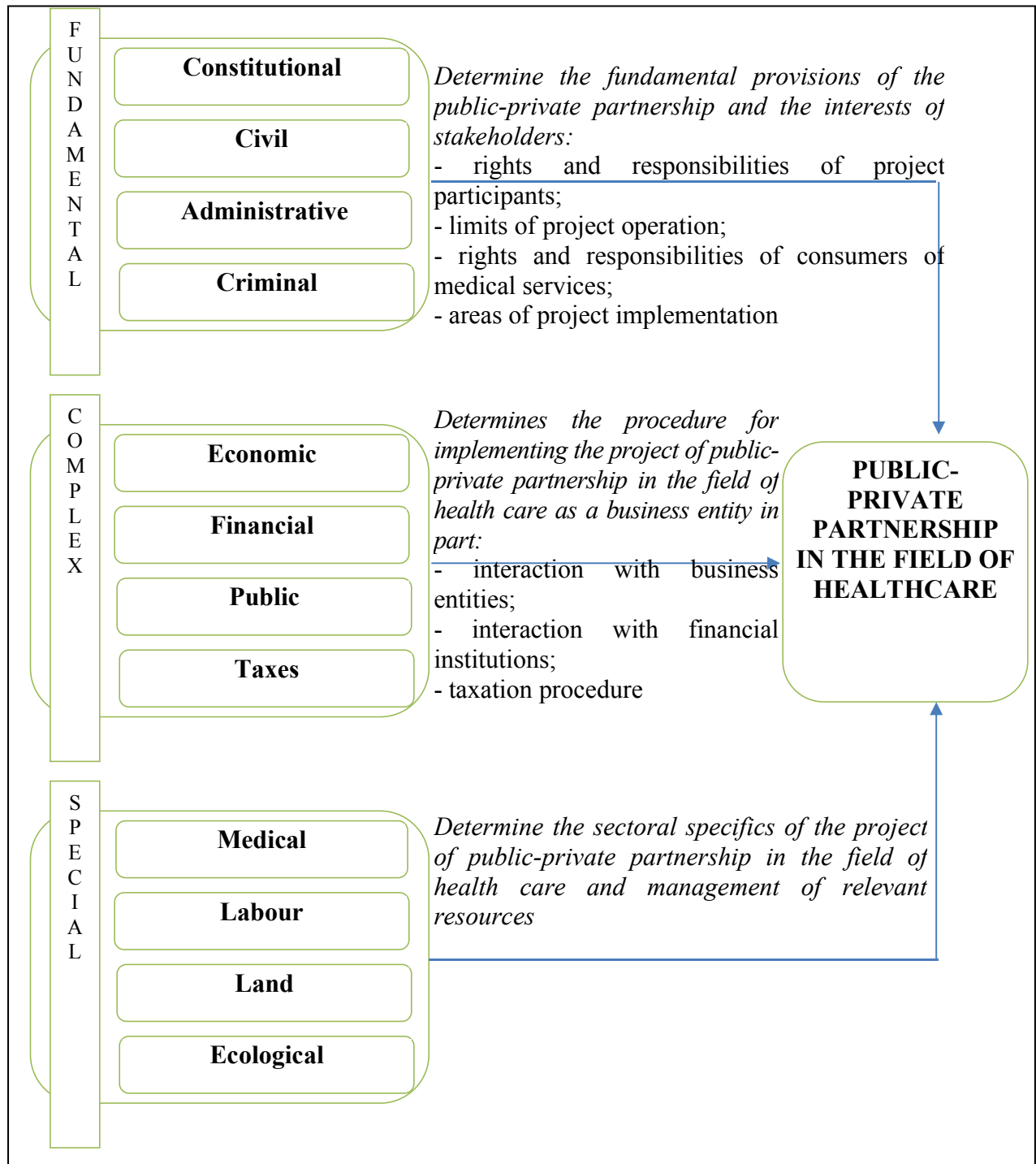
Definitions of the field of law are not exhaustive and develop in the context of different historical conditions. Accordingly, the legal regulation of public-private partnership is not regulated by one branch of law, because the above features of the formation of the field of law and classification features of this area of legal regulation does not fall under a particular industry, due to a combination of different areas and types of public relations. According to the specified we offer the following model of identification of legal regulation of public - private partnership on various branches of law (fig.1).

Based on the above, we will characterize these areas of law in the context of their impact on the formation and implementation of public-private partnership projects in the field of health care in various forms of their implementation.

Fundamental areas of law determine the fundamental provisions of the public-private partnership and the interests of stakeholders: the rights and responsibilities of project participants; limits of project operation; rights and responsibilities of consumers of medical services; areas of project implementation. In particular, constitutional law determines the constitutional rights of participants and consumers of medical services; civil law determines the procedure for concluding public-private partnership agreements; administrative law regulates the procedure of public administration of public-private partnership in the field of



health care, as well as the interaction between private and public partners; criminal law - sets the limits of what is allowed in the implementation of the project of public-private partnership, as well as criminal liability for violation of the law.



**Fig.1. Legal regulation of public-private partnership: identification of the impact of branches of law**

Fundamental areas of law determine the fundamental provisions of the public-private partnership and the interests of stakeholders: the rights and responsibilities of project participants; limits of project operation; rights and responsibilities of consumers of medical services; areas of project implementation. In particular, constitutional law determines the constitutional rights of participants and consumers of medical services; civil law determines the procedure for concluding public-private partnership agreements; administrative law regulates the procedure of public administration of public-private partnership in the field of health care, as well as the interaction between private and public partners; criminal law - sets the limits of what is allowed in the implementation of the project of public-private partnership, as well as criminal liability for violation of the law.

Complex branches of law determine the procedure for implementing the project of public-private partnership in the field of health care as a business entity in part: interaction with business entities; interaction with financial institutions; taxation procedure. In particular, economic law - regulates economic processes that take place in various forms of public-private partnership in the field of health care; financial law - determines the procedure for managing financial resources and interaction with financial institutions in terms of lending, financing and other types of financial transactions; Tax law - regulates the procedure for taxation of transactions carried out within the project of public-private partnership in the field of health care, as well as the procedure for accrual and payment of concession fees, provided that the project is implemented in the form of a concession.

Special branches of law determine the sectoral specifics of the project of public-private partnership in the field of health care and management of relevant resources, in particular: labor, natural and others.

Each branch of law defines a set of regulations governing the formation and implementation of public-private partnership. We will not dwell on all

components of these areas of law, but will determine only the specifics of the legal regulation of public-private partnership in Ukraine.

"The state organizes its regulatory activities in the field of partnership with the private sector in three main areas. First, it develops the strategy and principles on which business relations with society in general and with public authorities in particular operate. Second, it creates an institutional environment for the development and implementation of partnership projects. Third, it is directly involved in the organization and management of public-private partnerships, developing forms and methods, as well as its specific mechanisms. When implementing PPP projects, the state gets the opportunity to freely and effectively implement its functions through control, regulation and observance of public interests "[4].

"Ukrainian legislation contains a wide range of areas and sectors of PPP, including: search, exploration of mineral deposits and their extraction, production, transportation and supply of heat and electricity, distribution and supply of natural gas, construction and operation of transport infrastructure, engineering, water collection, treatment and distribution, health care, tourism, waste treatment, real estate management, etc. At the same time, world experience shows that, as a rule, the state normatively defines a limited number of areas and forms of PPP implementation, which, in turn, allows efficient use of public resources and direct them to solve the most acute problems and, consequently, effectively to settle emerging social relations "[1, p. 29]. One of the most pressing problems in Ukraine today is the quality of health care and the health of the nation.

Khusainov R. studying domestic and foreign experience of legal regulation of public-private partnership proposed a classification of models of legal regimes of public-private partnership by the criterion of the structure of legal support of public-private partnership, which is presented in table. 2.

**Table 2**

**Classification of models of legal regimes of public-private partnership  
according to R. Khusainov [5]**

<b>Model description</b>	<b>Characteristic</b>	<b>Countries where the model is implemented</b>
<i>1</i>	<i>2</i>	<i>3</i>
The model, which is characterized by the absence of specialized comprehensive regulations in the field of PPP	PPP projects are regulated by general legislation, including acts on public procurement	Austria, Kazakhstan, Malta, the Netherlands, Switzerland
The model of the minimum balanced legal regulation of separate aspects of PPP (including - concessions) by means of set of branch regulatory legal acts in the absence of special complex profile regulatory legal act in the field of PPP	Under the alternative name - a model of special legislation, differentiated regulation of PPP relations in some areas of the economy	Azerbaijan, Belarus, Great Britain, Germany, Denmark, Spain, Italy, China, New Zealand, Czech Republic, Chile, South Africa
Model, which is characterized by the presence of a special comprehensive profile legal act (acts) in the field of PPP (model of unified special legislation governing public-private partnerships in all areas of the economy).	Known varieties: - provides for the presence only at the central (federal, if the state is a federal system) level of a special profile legal act in the field of PPP and providing acts; - provides for the presence of both central (federal) and at the regional level of special profile regulations in the field of PPP and providing acts; - provides for the presence only at the regional level of special profile regulations in the field of PPP.	Australia, Argentina, Belgium, Brazil (attributed to two models - the third and fourth), Guatemala, Honduras, Greece, Egypt, Zambia, Ireland, Canada, Kenya, Colombia, Kyrgyzstan, Latvia, Mauritius, Mexico, Pakistan, Peru, Portugal, Russia, Romania, Serbia, Slovenia, USA, Tanzania, Ukraine, Uruguay, France, Croatia, South Korea, Japan.
The model, which is characterized by a certain redundancy (excessive multiplicity, oversaturation) of legislation in the field of PPP	Numerous acts on PPPs at the regional level duplicate federal legislation, which for the most part do not introduce anything substantially new, while extending their regulations on PPPs to the municipal level	Бразилія

According to this classification, Ukraine belongs to the third group, ie the countries of regulatory and legal support for the implementation of public-private partnership projects, provides for a separate legal act, in particular in Ukraine - the Law of Ukraine on Public-Private Partnership. In addition to this

legislative act, the processes of formation and implementation of public-private partnership projects are regulated by a set of other regulations that apply to both purely public-private partnership and implementation processes in general. All regulations are determined by the above suppressed branches of law. In general, the entire system of domestic legal regulation of public-private partnership in the field of health can be divided into the following groups of legislation:

- fundamental legislation governing public relations in the country, including relations between the state and business, business and society, society and the state;
- special legislation governing the formation and implementation of public-private partnership projects;
- economic legislation governing economic processes and management of individual objects of the public-private partnership project;
- sectoral legislation governing the specifics of public-private partnership projects in the field of health care.

The following regulations can be identified for all the above groups of legislation (Table 3).

In general, analyzing the components of the system of legal regulation of the formation and implementation of public-private partnership projects, it is necessary to point out the following features:

- the current regulations on the regulation of public-private partnership in Ukraine do not fully reflect the specifics of their implementation in various sectors of the national economy, in particular do not take into account the sectoral specifics of health care;
- the system of regulatory and legal support regulates only the general issues of implementation of public-private partnership projects, bypassing the specifics of certain forms of its implementation. In particular, only public-private partnership projects implemented in the form of concessions are regulated today, all niche forms are not regulated, which causes a set of problems in the implementation of certain types of projects;

Table 3

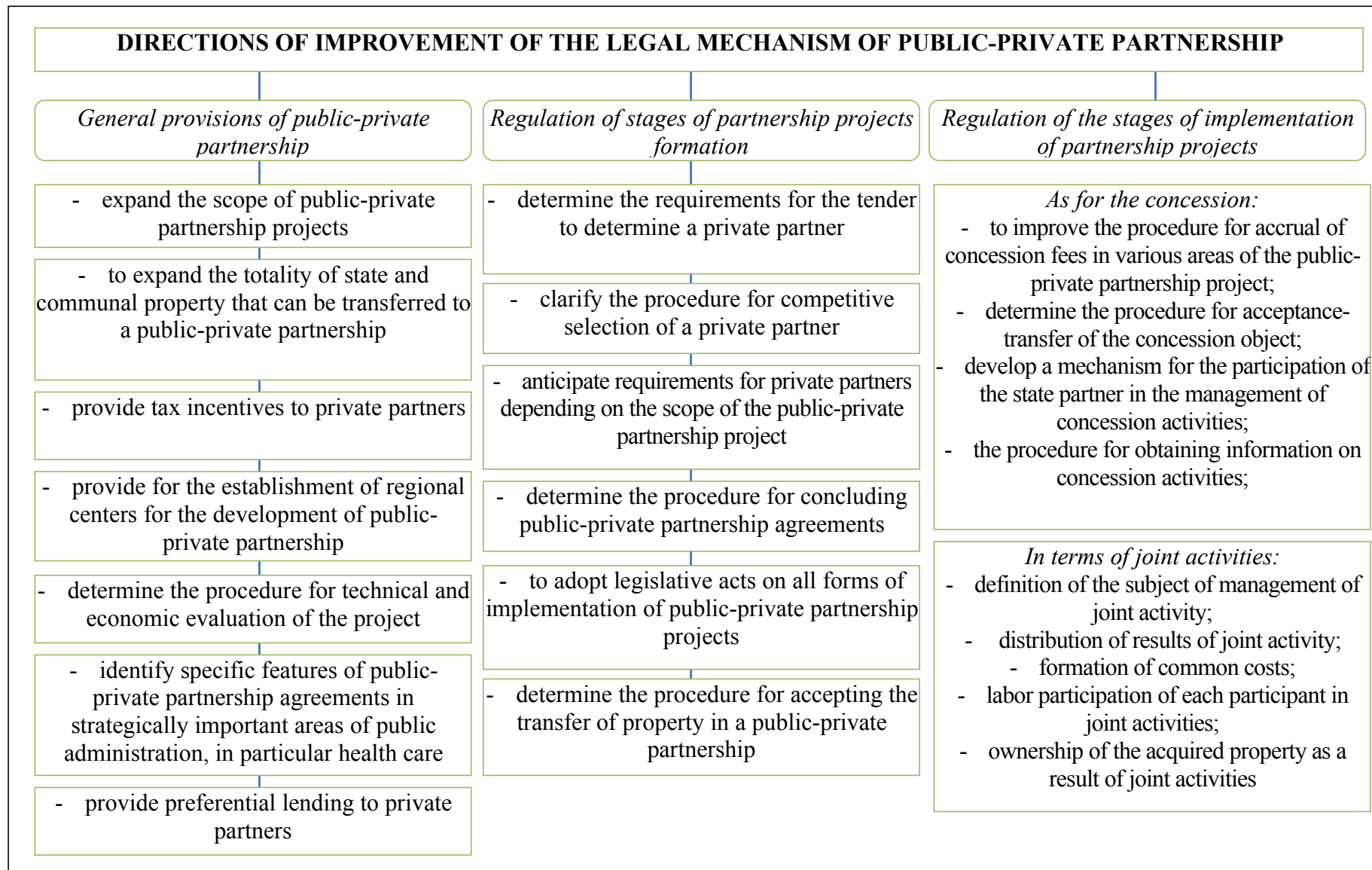
**The structure of legislation governing public-private partnerships in  
Ukraine**

Legislation group	Regulations	Characteristic
<i>1</i>	<i>2</i>	<i>3</i>
<b>Fundamental</b>	Constitution of Ukraine	regulates public relations in the country, including relations between the state and business, business and society, society and the state
	Civil Code	
	Administrative Code	
	The Criminal Code	
	Administrative Procedure Code	
<b>Special</b>	<i>Laws:</i>	
	Law of Ukraine "On Public-Private Partnership"	Determines the order of formation and implementation of public-private partnership projects and forms of their implementation
	Law of Ukraine "On Concession"	Regulates the relationship between the concessionaire and the concessionaire and the procedure for implementing a public-private partnership project in the form of a concession
	<i>Resolutions of the Cabinet of Ministers of Ukraine:</i>	
	Some issues of organization of public-private partnership	
	About the statement of the Methodology of identification of risks of realization of public-private partnership, their estimation and definition of a form of their management	
	About the statement of the Procedure for granting by the private partner to the state partner of the information on performance of the contract concluded within the limits of the public-private partnership	
	About the statement of the Procedure for replacement of the private partner under the agreement concluded within the limits of the public-private partnership	
	About the statement of the Methodology of calculation of concession payments	
	<i>Orders of ministries:</i>	
	Some questions of the analysis of efficiency of realization of public-private partnership	
	About the statement of Methodical recommendations concerning application of the Methodology of identification of risks of realization of public-private partnership, their estimation and definition of a form of their management	
	The procedure for keeping records of the results of joint activities on the territory of Ukraine without the creation of a legal entity	
	Methodical recommendations on accounting of joint activity without creation of a legal entity	
	<b>Economic</b>	Economic Code
Tax Code		
Land Code		
Law of Ukraine On Licensing of Economic Activities		

<i>1</i>	<i>2</i>	<i>3</i>
<b>Branches</b>	Fundamentals of Ukrainian legislation on health care Law on Combating the Spread of Diseases Caused by Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV Law on Ensuring Sanitary and Epidemic Welfare of the Population Memorandum on blood donation and its components Memorandum on transplantation of organs and other anatomical materials to humans Memorandum on psychiatric care Law on protection of the population from infectious diseases Law on Medicines Law on the fight against tuberculosis Law on Narcotic Drugs, Psychotropic Substances and Precursors Law on Child Protection ", Law" On Resorts ", etc.	Regulates the specifics of public-private partnership projects in the field of health care

- at a fairly low level today there are provisions governing the procedures for forming a public-private partnership project in part: the definition of the subject of technical and economic evaluation of the project; methodology of such assessment; formation of requirements for participants in the competition to determine a private partner; the procedure for acceptance-transfer of property as a result of concluding a relevant agreement on public-private partnership;

- the order of interaction between public and private partners as a result of realization of public-private partnership in various forms, in particular: in part of joint activity (definition of the subject of management of joint activity, distribution of results of joint activity, formation of joint expenses, labor participation of each participant activities, ownership of property acquired as a result of joint activities and others); in the part of the concession (the order of transfer of property in the concession, the order of formation of permits to gain access to state secrets, if any in the use of the relevant object of the concession; participation of the state partner in the management of concession activities; concessions, the procedure for termination of the concession agreement, etc.).



**Fig. 2. Directions for improving the legal regulation of public-private partnership in the field of health care**



This determines the areas of improvement of the legal mechanism of public administration in the field of health care, which is implemented through public-private partnership (Fig. 2).

**Conclusions from the study and prospects for further exploration in this direction.** Thus, these areas of improving the legal regulation of public-private partnerships in the field of health provide for the improvement of existing and the formation of new regulations, in particular:

- the following are subject to improvement: the Law of Ukraine on Public-Private Partnership, the Civil Code, the Commercial Code, the Law of Ukraine on Concession; Law of Ukraine on Management of State Property; Law of Ukraine on Local Self-Government in Ukraine; Law of Ukraine On Licensing of Economic Activities; Tax Code, Land Code; Budget Code; Fundamentals of Ukrainian legislation on health care;

- develop regulations: Law of Ukraine on Joint Activities; Procedure for technical and economic evaluation of public-private partnership projects; Criteria for a private partner in various areas of public-private partnership projects.

Based on the above study, we have developed a legal mechanism for implementing a public-private partnership project, which provides areas for improving the legal regulation of general provisions, stages of formation of a public-private partnership project and its implementation. These areas are determined based on the urgent need to develop public-private partnerships in the field of health. The development of a regulatory system will take into account the specifics of the implementation of public-private partnerships in the field of health care.

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