
The Enhancement of the Legal Framework for the Capital Project Realization in the Public Sector of the Republic of Serbia

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Abstract

Given the importance of capital projects regarding socio-economic development and societal progress in general, this paper focuses on the analysis and enhancement of the legal framework for the capital project realization in the public sector of the Republic of Serbia. Capital projects that are financed or co-financed from national revenue, European Union funds, and funds of international institutions and other countries are subject to strict legislation that more closely regulates different segments, thus creating a general legal framework for the capital project realization. In the Republic of Serbia, there are laws, regulations and rules that directly or indirectly relate to the realization of capital projects, the most important of which are the Budget System Law, the Law on Public Procurement, the Decree on Capital Project Management, and regulations on special procedures within the framework of capital project management. Taking into account their importance and effectiveness, supported by a more or less appropriate institutional framework, the paper provides a detailed analysis of the state of the legal framework and the possibility of its enhancement in accordance with the prevailing trends and examples of good practice in project management. The paper also presents potential solutions for the transformation of planning, organizing, implementing, and monitoring the progress of capital projects, i.e., identifies opportunities for improving the current situation through the centralization of responsibility for management, evaluation, and audit of capital projects, on the one hand, and legal regulation, personnel training and provision of strategic projects, on the other. Therefore, the paper's most important contribution is reflected in the removal of existing obstacles and the increase in the degree of efficiency in the realization of capital projects based on a better and more adequate legal and methodological framework.

Keywords: legal framework, public expenditure, public sector transformation, law on capital projects, managing capital projects

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Realization of capital projects generates social and economic development, fortifies the strategic and political position of the state and solves numerous social, economic, environmental and other issues, of course, only if capital projects are carried out consistently, in line with national interests. The legal framework can be an incentive or a deterrent to the realization of capital projects, and the aspiration of all modern states is a proactive legal framework that supports the realization of capital projects and enables the execution of all activities that are necessary to attain benefits and achieve goals.

The appropriate legislation that governs the field of capital projects in the Republic of Serbia was adopted only a few years ago, making it difficult to analyze the broader social, economic, legal, and other effects of its implementation, but simultaneously leaving room to determine the gap between the current and desired (necessary) state, i.e., to find a solution for the enhancement of the legal framework for capital project realization. It must be considered that this legislation never exists independently, i.e., that it depends to a greater or lesser extent on the laws and bylaws that govern the budget system, public procurement, public administration, use of natural resources, and the like, meaning that the legal framework for the capital project realization represents the sum and interaction of all the mentioned regulations. Also, in the context of the legal framework for the capital project realization, the European Union is an extremely important factor, since it directly and indirectly affects the legal system of the Republic of Serbia and shapes its legislation, administration, and finances. Funds, banks, and other financial institutions of the European Union, which support the realization of numerous projects in the Republic of Serbia, significantly contribute to emerging legislative changes in the field of capital projects.

Bearing in mind all of the above, detailed examining the concept, role and importance of capital projects emerges as an

imperative to understanding legal aspects of capital projects and enhancing the quality and effectiveness of capital projects' deliverables. Therefore, we will provide a comprehensive analysis of the legal framework for the capital projects realization in the Republic of Serbia, with a predominant focus on the current legislation and trends arising in this field. The aim is to identify and present the most important solutions for improving the legal framework and general ability to meet the purpose of capital projects. Identifying and explaining the economic and financial indicators of capital project efficiency (net present value, internal rate of return, etc.) is not the subject of research.

The Concept, Role, and Importance of Capital Projects – Legal, Social and Economic Aspects

Undertaking any investment venture in the public sector, regardless of its purpose and form, requires taking into consideration the interests of the wider population and presupposes alignment with national interests as well as with the interests of a certain union of states, international institutions and/or economic organizations (e.g., the European Union, the World Bank, etc.).

Accordingly, capital projects in the public sector can be defined as projects that institutions and organizations of the public sector implement in order to bolster the social, economic, political and other potentials of a society through the investment of significant financial resources in the construction of infrastructure, production facilities and various types of immovable property, into the replacement and modernization of equipment, production processes and existing infrastructure, as well as in the development of science, technology, intellectual capacities, human capital and other intangible assets (Fitzgerald, 1978; Trotman-Dickenson, 1983; Jovanović, 2013). Hence the importance of capital projects in the public sector, which represent the driving force of society in all areas of life and work whose progress is dependent on the allocation of public funds.

Capital projects in the public sector are characterized by a high level of complexity – planning, decision-making, funding, project

appraisal and justification, as well as numerous other procedures and processes, are significantly different from the prevailing approach to capital projects in the private sector. Given that capital projects in the public sector are mostly financed from public funds or from international funds, all mentioned aspects of capital projects are subject to strict legislation and control, which further complicates their realization. Of course, the essence of the legislation of this field is the transparency and control of expenditure (i.e., the realization of planned benefits), but also the provision of support for the successful and timely realization of capital projects.

All in all, the implementation of capital projects creates the necessary conditions for the smooth functioning of society what makes capital projects a key factor for realizing the social and economic potential of a country in which legal framework is one of the crucial success drivers (Holmes, 2014; Brasili et al., 2022).

A Systematic Review of the Legal Framework for the Capital Projects Realization

The most important piece of legislation regulating the field of capital projects in the Republic of Serbia is the Decree on Capital Project Management (hereinafter referred to as “the Decree”) (Vlada Republike Srbije, 2022), adopted in July 2019. The Decree has been officially implemented since January 24, 2020, and so far, it has undergone only one amendment, which came into force on April 1, 2023. Before this Decree, the Decree on the content, manner of preparation and assessment, and monitoring the implementation and reporting on the implementation of capital projects (Vlada RS, 2017) was in force, with implementation beginning on January 1, 2018, but due to inefficiency and low deployment level was soon replaced by the new Decree that is still in force.

The Decree defines the basic concepts and elements of capital projects such are project life cycle, project scope, feasibility study, performance indicators, etc., and establishes responsibility for planning, realization, managing, and decision-making thus defining the role of the ministry responsible for financial affairs, of relevant

ministries, the capital project management unit, and the capital investment commission. Essentially, the Decree reflects the need for legal, planned, efficient and economical public expenditure and as such more closely regulates the preparation, assessment, and selection of projects and project ideas, as well as financing, implementing, reporting on, and evaluating capital projects. All the mentioned processes are necessary to turn the initial idea into the desired economic, social, political, and other benefits, with mandatory adherence to the principles of transparency and legality embodied in the Decree, through following the laws arising from it and other laws and bylaws which regulate the budget system and the areas (sectors) of capital project realization.

Perhaps the most important benefit of the Decree may be observed as a fact that its provisions apply to all capital projects that are partially or fully financed from public revenues or from the funds of the European Union, other countries, and international institutions, as well as to all projects whose realization requires any kind of guarantees given by the state. Other pros of the Decree are establishment of the Capital Investment Commission, an important organization which decides on the priority, initiation, and termination of capital projects thus providing strategic confirmation of the relevance of capital projects, as well as the establishment of the capital projects database which is under the authority of the Ministry of Finance. The Decree also provides project proponents with responsibility for executing operational tasks related to capital project planning, organization, control, and management, and introduces the capital project management unit which is organized at the level of the project proponent and can be permanent or temporary depending on the value, duration, and number of capital projects. These units are also responsible for maintaining the capital projects database at their own level (e.g., autonomous province and local self-government).

However, there are some alarming issues concerning the Decree that remain present regardless efforts to improve its efficiency. First, the Decree is accompanied by excessive list of regulations which prescribe and more closely determine the implementation of various

activities in the domain of capital project preparation, evaluation, budgeting, recording, control, and monitoring. Although these regulations provide guidelines for complete, quality, and timely fulfillment of legal, economic, financial, and methodological requirements, they are missing the opportunity to effectively communicate the purpose of capital projects to those affected. Second, the Ministry of Finance has the greatest accountability for the implementation and enhancement of the Decree and the role of other ministries is usually diminished or imperceptible. On the contrary, other ministries, especially those that govern the fields of civil engineering, transport, infrastructure, environmental protection, mining, energy, agriculture, economy, public administration, etc., should be extensively involved in the deployment and development of the Decree. And finally, the laws that govern forementioned fields apply to capital projects as well, which results in increased complexity and need for ambidexterity in managing capital projects.

It is important to note that the provisions of the Decree do not apply to capital projects in the field of security and defense, which by their nature are more delicate and often require a significantly increased degree of secrecy, and to public-private partnerships and concessions that are subject to the Law on Public-Private Partnerships and Concessions (Narodna skupština Republike Srbije [Narodna skupština], 2016), thereby, the Decree is exempted from additional alignments with these highly sensitive matters.

Before proceeding with analysis of the legal framework for the realization of capital projects, we emphasize the indisputable impact that the Public Investment Management Office had on the implementation of the Decree. This institution, primarily established in 2015, carried out professional, administrative, and operational tasks within the projects of renovation and improvement of public facilities (Vlada RS, 2015). With the adoption of the Amendments to the Law on Ministries (Narodna skupština, 2022a), it ceased to exist in that form and transformed into the Ministry of Public Investment responsible for the initiation and realization of projects financed from the pre-accession funds of the European Union.

The Alignment of the Capital Project Realization with Other Laws and Regulations in Force

The legal framework for the capital project realization in the Republic of Serbia depends to a significant extent on the Budget System Law (hereinafter referred to as “the Law”) (Narodna skupština, 2021) and the Law on Public Procurement (Narodna skupština, 2019) which unambiguously affect the implementation of the Decree and capital projects in general.

Namely, the Law recognizes capital projects and regulates the procedures for planning, preparation, adoption, and execution of the budget, which are undertaken at the republic, provincial and local levels, and which as such are fully applied to capital projects. For capital projects to be realized, the principles, rules and procedures defined by the Law must be implemented, with a particular emphasis on complying with the budget calendar and limitations regarding the assumption of obligations, which must not exceed the funds approved for the current and at most the next two budget years. The situation is almost identical with the Law on Public Procurement (Narodna skupština, 2019) which does not distinguish capital projects as a separate category, but capital project proponents are certainly obliged to adhere to the provisions and principles of this law if they are the public funds beneficiaries or in any other way subject to its application. Therefore, the main concern is the appreciable lack of binding between the Decree and other laws in force that emerges not as much from the legal issues as from inability to apply them simultaneously in everyday practice. Some of the possible solutions to this concerns are personnel development and establishment of capital projects oriented institution that governs all aspects of the legal alignments.

There are also other factors that can affect the legal framework for the capital project realization in the Republic of Serbia, and among them are the effects of the Law on Public-Private Partnerships and Concessions (Narodna skupština, 2016) and of other laws which are not explicitly mentioned in the paper, as well as operations of independent and non-governmental organizations,

international institutions, development agencies, etc.

On How to Enhance the Legal Framework for the Capital Projects Realization

The Law, the Law on Ministries, and the Decree are the three most important acts that regulate and relatively well cover the field of capital projects in the Republic of Serbia. Although the forementioned legislation has a positive effect on the success of capital projects realization, in practice we still face broken deadlines, budget overruns and the impossibility to meet the objectives which were the reason why the project was initiated. Therefore, a significant enhancement of the legal framework for the capital project realization is necessary, and every next move should be aimed at creating better conditions for planning, implementation, monitoring, and evaluation of capital projects. Recommendations for enhancing the legal framework for the capital projects realization could be classified as follows:

- 1) To expand the powers of the Ministry for Public Investment.
- 2) To establish an institution such as the State Project Management Office.
- 3) To deploy and employ the state methodology for capital projects.
- 4) To deploy and employ the state strategy for capital projects.
- 5) To raise the legal force of the Decree to the level of a law.

Initially, by adoption and implementation of the Decree and establishing the Ministry for Public Investment, progress has been made in terms of ensuring the strategic relevance of capital projects and recognizing their importance for the economy and society. However, it is necessary to expand the powers of the Ministry for Public Investment and for it to have a greater role in regulating capital projects, facilitating capital projects assessment, selection and evaluation procedures, removing bureaucratic obstacles, and projectification and digitization of public administration (Godenhjelm et al., 2015; Nograšek & Vintar, 2015).

A potential solution for improving the realization of capital

investments is the establishment of a state institution for capital projects similar as the Supreme Audit Institution (Narodna skupština, 2018). Essentially, such an institution – e.g., State Project Office (SPO), State Project Management Office (sPMO) Supreme Project Office (also abbreviated as SPO), etc., would be the link between the Ministry for Public Investment and other ministries, on the one hand, and capital project proponents and managers, on the other. Accordingly, the State Project Office would perform operations related to the methodological approach to capital project management, the consistent implementation of the Decree and regulations in practice, training civil servants and all individuals involved in the realization of capital projects, revising the indicators of capital project efficiency and strategic relevance, proposing legislative and procedural changes, collaborating with state bodies and international institutions, and publishing statistical and other information of public importance that refers to capital projects.

It is important to note that this institution would differ from the former Public Investment Management Office in terms of its powers, organizational structure, and strategic role, which would place it among the most powerful state institutions. Furthermore, the scope of the State Project Office could be extended to include capital project database management, which is currently under the jurisdiction of the Ministry of Finance. Considering that the current legislation does not recognize the role of the project manager and project competencies as well as drawing on the Law on Civil Servants (Narodna skupština, 2022b), these issues could potentially be dealt with by the State Project Office. And, of course, the State Project Office should be headed by top experts in project management, as well as by experts in all fields of vital importance for the functioning of the economy and society, in which capital projects are undertaken.

Following the trends in the European Union, the Republic of Serbia could get an official state methodology for project management, which would consolidate all regulations that have stemmed from the implementation of the Decree, i.e., facilitate the implementation of various actions and procedures, while practical guidelines, project

competencies and project experiences would be formed accordingly. The European Commission has developed its own project management methodology – the PM2 Project Management Methodology, which helps individuals and organizations to efficiently manage their projects (European Commission, 2021). Although the methodology itself is not legally binding, its application is recommended for both public and private sector projects, thereby considering its general adoption in the Republic of Serbia would have a positive impact on capital projects management and realization.

Based upon the long-term benefits that developed countries enjoy from strategic approach to capital projects, the adoption of a strategic document such as, e.g., the EU's Cohesion Policy, would contribute to the stable and equal allocation of public funds, better comprehensibility of national goals and interests, greater coordination of the operations of various relevant ministries and more adequate achievement of project results (Kołodziejwski, 2023). Bearing in mind the efforts of the European Union to speed up the transition to a low-carbon economy, linking the Decree and the Energy Sector Development Strategy of the Republic of Serbia for the period by 2025 with projections by 2030 (Narodna skupština, 2015) should be a priority to establish a legal framework for the realization of projects in the domain of clean technologies, sustainable development, and preservation of the environment and natural resources. The same practice should be applied to all other strategies, programs and action plans concerning the circular economy, sustainable urban development, digitization of public administration, etc.

Raising the legal force of the Decree to the level of a law, such as laws governing the field of state audit, civil servants, or public administration, would possibly create conditions for the development of a state project management methodology and establishment of the State Project Office. We must also highlight the need for greater acknowledgement of the capital project specificities in the Law and Law on Public Procurement (Narodna skupština, 2019) which are still insufficiently flexible and only in certain situations allow for the collective planning and approval of the budget for all project activities.

If we consider the growing impact of information technologies on public administration, accompanied by the requirements for the automation and digitization of the processes in public administration, the aforementioned legislation will have to adopt a more open, agile approach and enable more proactive budget planning and execution. Also, the systems of quality control of control over the spending of public funds will have to adapt to new conditions which require higher levels of projectification of the public administration, readiness for continuous improvement and responsiveness to changes (Lappi & Aaltonen, 2017; Blixt & Kirytopoulos, 2017; Gomes et al., 2019; Jałocha, 2019).

Conclusion

Although guided by the needs of society and the specificities of capital projects, the legislation governing this field in the Republic of Serbia is partially adapted to the current situation and trends, that is, to specific requirements and examples of good practice in capital project realization in the public sector.

The fact that the Ministry for Public Investments has been established and that the Decree on Capital Project Management is being implemented is encouraging but we believe that there is still significant room for improvement of both the legal and methodological framework for capital project realization in the Republic of Serbia. In the future, we can expect continued changes in the legal framework under the influence of requirements for sustainable development and digitization of public administration, and the intensification of international collaboration and EU accession activities will play a very important role in this. Also, accepting the official methodology of the European Commission is one of the possible options that would enhance the legal and methodological framework for the capital project realization in the public sector, and is likely to occur if the forementioned activities take more significant role in everyday political and economic circumstances within the country.

Given that the form, jurisdiction and general existence of ministries vary according to composition and structure of the government,

this paper proposes the formation of an independent institution – the State Project Office which would deal with operational tasks related to capital projects and, in the event of Ministry for Public Investment being abolished, with ensuring the capital project strategic relevance, improving the legal framework for the capital project realization and collaboration with international institutions. The establishment of the State Project Office would ensure continuity in capital project realization and monitoring, and the principles of objectivity and transparency would be integrated into the capital project decision-making and reporting processes. Also, the State Project Office would, with compliance to the laws that govern the training and competencies of civil servants, increase the knowledge, skills and abilities of all individuals, organizations and institutions involved in capital project realization, with special focus on capital project unit members and relevant project managers.

Finally, further enhancement of the legal framework for the capital project realization can be expected with each subsequent (positive) change in laws and other pieces of legislation which will, in some manner and to a certain degree, affect the Decree and regulations, that is, various segments of capital project management.

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Unapređenje pravnog okvira za realizaciju kapitalnih projekata u javnom sektoru u Republici Srbiji

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Sažetak

Polazeći od važnosti kapitalnih projekata za društveno-ekonomski razvoj i napredak društva uopšte, rad se fokusira na analizu i unapređenje pravnog okvira za realizaciju kapitalnih projekata u javnom sektoru u Republici Srbiji. Kapitalni projekti koji se finansiraju ili sufinansiraju iz javnih prihoda, fondova Evropske unije i fondova međunarodnih institucija i drugih država podležu strogoj pravnoj regulativi koja bliže uređuje različite segmente stvarajući tako opšti pravni okvir za realizaciju kapitalnih projekata. U Republici Srbiji postoje zakoni, uredbe i pravilnici koji se direktno ili indirektno odnose na realizaciju kapitalnih projekata, a najznačajniji su Zakon o budžetskom sistemu, Zakon o javnim nabavkama, Uredba o upravljanju kapitalnim projektima i pravilnici o pojedinačnim postupcima u okviru upravljanja kapitalnim projektima. Uzimajući u obzir njihovu važnost i delotvornost, podržanu više ili manje odgovarajućim institucionalnim okvirom, u radu se daje detaljna analiza stanja pravnog okvira i mogućnosti unapređenja u skladu sa vladajućim trendovima i primerima dobre prakse u upravljanju projektima. U radu se prikazuju i potencijalna rešenja za transformaciju planiranja, organizacije, realizacije i praćenja progressa je kapitalnih projekata, odnosno, identifikuju se mogućnosti za unapređenje aktuelnog stanja kroz centralizovanje odgovornosti za upravljanje, evaluaciju i reviziju kapitalnih projekata, sa jedne strane, i pravne regulacije, edukacije kadra i obezbeđivanja strateške relevantnosti projekata, sa druge strane. Stoga, najvažniji doprinos rada se ogleda u otklanjanju postojećih prepreka i povećanju stepena efikasnosti realizacije kapitalnih projekata zasnovanih na boljem i adekvatnijem pravnom i metodološkom okviru.

Ključne reči: kapitalni projekti, pravni okvir, javna ulaganja, transformacija javnog sektora, uredba o upravljanju kapitalnim projektima, upravljanje kapitalnim projektima