

Reflections on some aspects of how the Public-Private Partnerships are building the Country: the Albanian case in a comparative view

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Abstract

Public-Private Partnerships are one of “the hottest” topics in Albania at the moment for their wide application and the problems related to them. In recent years, Albania is increasingly using these forms of Public-Private cooperation, to help to develop the country both in terms of infrastructure and services. Due to the great importance

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of their application, national political actors and international bodies are becoming more and more alert to the problems that these forms of cooperation are showing, in order to be able to solve the most acute and immediate problems in this direction, also in the framework of membership of Albania in the EU. For this purpose, this paper analyzes some aspects of the legislation and operation of PPPs in the country in a comparative view with the legal framework of the EU and some European countries.

In this paper, are used several scientific methods such as the analytical, comparative and data collection methods also taking into account the primary and secondary sources.

The conclusions and recommendations of this paper are related to the positive evolution that this institute has already had and should have in Albania in terms of legal regulation and increased transparency of PPPs procedures, but also to the problems that appear in relation to corruption in tender procedures, the weakness of institutions, the lack of the capacity of the PPC and the Administrative Court to deal with the large number of appeals in this field etc.

Keywords: *Public-Private Partnerships (PPP in Albania), EU legal framework on PPPs, PPP regulation in Member States*

Introduction

The present work is intended to offer a reflection on some of the most important aspects on the theme of Public-Private Partnerships (PPPs) in Albania in a comparative view with the EU *acquis* and the main European States. The goal of this paper is not to exhaustively analyze all the aspects related to PPPs, since it is impossible to analyze them in one article, but to bring a general overview of the local legislation, to highlight the main problems that are evident currently in this field. The comparison with some of the most developed countries in Europe may seem a little courageous, but in the historical context in which we are, when Albania intends to become part of the EU, it must necessarily implement the EU legislation and must follow the best legal practices of the EU the Member States even in the legal framework regarding Public-Private Partnerships. The countries taken into consideration are Great Britain³, Spain, France, Germany, and Italy. In fact, it is not easy to define the volume of transactions carried out in PPPs in the various European countries, as there are no uniform classification criteria for such operations that allow comparison. However, it is possible to use the available data to try some comparisons, albeit at an indicative level. The comparison of

³ Even though Great Britain is not a member state since January 31, 2020, it has been analyzed as one of the first countries where the Public- Private partnership form of cooperation has been used



the available data together with the analysis of the regulatory peculiarities of the Member States taken into consideration may constitute an important contribution to the national debate on the critical issues of a regulatory nature that do not favor the “fair” participation of privates in the construction of infrastructural public works.

In Europe, PPPs have been used mainly for infrastructure, and in terms of project value they have been more concentrated in the transport sector. However, the education and healthcare sectors dominated in the mid-2000s. Meanwhile, in the European and global Emerging Markets and Developing Economies (EMDEs), PPP investments in infrastructure have been mainly concentrated in the energy sector, followed by transport. Since 2020 we have had an increase in the number and value of user-financed projects in Europe by type of PPPs (Martijn, J.K., Sun, M. Y., Lindquist, W, Mooi, Y. N., Ozturk, E.O., Selim, H., Khachatryan, A. 2023).

The theme of infrastructure financing has recently taken particular importance at a European level, especially in developing countries such as Albania also in consideration of the contribution that the infrastructural development is potentially able to offer to the resumption of the competitiveness and to the economic growth.

Vast and substantially uniform sources support, in fact, the existence of a causal link between a country’s infrastructural endowment and the economic development. On the other hand, there is a lively debate about the fact that infrastructure financing must take place with public investments: creative accounting mechanisms can mask in the form of public investment, costs that should be classified as current expenditure, also public investments could displace other potentially more productive investments. In this sense, the adoption of Private-Public Partnerships could help to identify the best mix.

The debate on these issues, together with the generalized contraction of public investments in recent years, partly due to the need to contain public spending imposed by the Treaty of Maastricht in 1992, has fed a growing interest in Europe toward alternative models for financing public works and towards forms of Public Private Partnership (PPP). With this expression we intend to refer to all those “forms of cooperation between public authorities and the business world that aim to guarantee the financing, construction, renovation, management or maintenance of an infrastructure or the provision of a service” (European Commission, Green Paper, 2004, 327 of 30 April 2004).

According to Birn Albania-Concessions Database, there result 219 Concession Contracts in Albania of 15 Contacting Authorities of a total value of 4.276,21 million Euros. If we consider a division of Public-Private Partnership projects by category we can say they are divided in natural resources and services. In the category of natural resources 95.3% of them are contracts that have as their object the construction of Hydropower plants, 4.2% the mines and 1% other. While in

the category of Services, 62.1% of them belong to the Logistics and Transport sector, 13.8% to the environment sector, 13.8% to the health sector and 10.3% to the financial and economic sector⁴.

Public-Private Partnership in Albania

What is a Public-Private Partnership?

According to Art. 8, Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019 “On concessions and public-private partnership”, “Public-Private Partnership is a form of long-term co-operation regulated by a contract between the public partner who is the contracting authority, and the private partner that can be one or more economic operators. In this contract, the private partner undertakes the obligation to provide public services to the users of services within the scope of the public partner’s competencies and/or the obligation to provide the public partner with the prerequisites for providing public services to service users and/or activities within the scope of its competences”.

In this context, the private partner has several obligations related to the financing, design, construction/reconstruction/renovation, operation, and maintenance of the new or existing public infrastructure facility.

In relation to the fulfillment of the above obligations, the private partner usually assumes risks related to the realization of the objectives of the Public Private Partnership. However, the risks are shared between the parties, where each of them usually assumes the risks related to the respective tasks.

The method of remuneration of the private partner is defined in the contract and includes, in addition to regular direct payments from the public partner, the rights to use public works or public service as well as other forms of financial support.

Depending on the remedies, as well as the breakdown of the main risks inherent, a Public-Private Partnership in Albania can be realized in one of the following forms: Public works with concession; Concession of public services; public works contract; a public service contract.

Also, in Albania, Concessions/Public-Private Partnerships can be given for the realization of the works and for providing services for many sectors and purposes. In transport (rail system and rail transport such as the rehabilitation of railway infrastructure Fier-Ballsh, Fier-Vlora, ports e.g. the construction of a yacht port in the city of Durres and in Shengjin, airports e.g. Mother Teresa International Airport which is the biggest concession of a value of 73+ million euros, roads such as the improvement, construction, operation and maintenance of Arbri road,

⁴ Partneritetet Publike Private në Shqipëri, <http://ppp.reporter.al/> (last accessed 2 July 2023)



tunnels, bridges, parking such as the construction of underground Rinia Park in Tirana, public transport); production and distribution of electricity and heating energy such as the construction of the hydropower plant on the river Devoll; water production and distribution, treatment, collection, distribution and management sewage, irrigation, drainage, canal and dam cleaning; waste management, including collection, handling, transfer and depositing them; telecommunications; science and education such as improving the educational infrastructure in the municipality of Tirana; tourism, entertainment and hotel; culture and sport; health such as the free checkup health service and the hemodialysis service; social services; prisons and judicial infrastructure; rehabilitation of land and forests; industrial parks, mines and similar infrastructure for support; business; housing; building of public administration, information technology and infrastructure database; distribution of natural gas; rehabilitation and urban and suburban development; agriculture⁵ (Law No. 125/2013 Amended by Law No. 88/2014, Law No. 77/2015 Law No. 50, dated 18.07.2019 “On concessions and public-private partnership”)

Law No. 125/2013 Amended by Law No. 88/2014, Law No. 77/2015 Law No. 50, dated 18.07.2019 “On concessions and Public-Private Partnership” also determines that the procedure for granting Concessions/Public-Private Partnerships is implemented in accordance with the principles of transparency, non-discrimination, proportionality, efficiency, equal treatment, reciprocity, and legal certainty.

But are these principles applied in Albania? From the broad debate about the PPPs, often not only political actors in the country but also important financial authorities in the world have denounced cases of violation of procedures contrary to the law which have implicated the investigative authorities responsible for conducting investigations in relation to scandals in word.

Among these, we can mention the case of Dunwell Haberman, which through its subsidiary in Albania „DH Albania“ won a tender of about 20 million dollars for one of the segments of the „Unaza e Madhe“ in Tirana. The company is suspected of having committed two falsifications to secure the contract in Albania. The first time by falsifying the date of creation; in Dalaware the company was registered on June 25, 2018, while in Albania it has filed documents, as if it existed since June 1998. The second document, which is suspected of being falsified, is a certificate from the Secretary of State that the firm has no fiscal obligations to the state. The spokesman for the Secretary of State, Doug Denison, told VOA that there was no request from the firm for the certificate, nor was any document issued⁶.

⁵ Partneritetet Publike Private në Shqipëri, <http://ppp.reporter.al/> (last accessed 2 July 2023)

⁶ Skandali me tenderin për Unazën, edhe Delaware nis hetimet, (12 July 2018) <https://top-channel.tv/2018/12/07/skandali-me-tenderin-per-unazen-edhe-delaware-nis-hetimet> (last accessed 2 July 2023)

Another case that has caused a stir in the Albanian media is that of the tender for supervision for the reconstruction of the health centers for 2023. SPAK's investigations into corruption with the tender of the Ministry of Health have so far led to the imprisonment of four suspects together with the Secretary General of this Department. The prosecution announced that it has arrested the administrator of the company, 'DRICONS', and the engineer who are accused of corruption as they are the people who intervened by giving the Secretary General of the Ministry of Health, 330 thousand ALL in bribes to influence her to announce the winner in the tender for the reconstruction of health centers. The winner of the tender with a limited fund of ALL 805 thousand was announced on June 1, while SPAK intervened on June 2 when the bribe was given⁷.

During the year 2022, the Special Structure against Corruption and Organized Crime (SPAK) registered 422 criminal proceedings in the field of corruption, a figure that marks an increase from the previous year with 83 more proceedings, or about 65.6% of the criminal offenses registered. Article 258 of the Criminal Code „Violation of the equality of participants in public tenders or auctions“ has the highest number of registered criminal proceedings with 92 registered criminal proceedings⁸.

Concession/Public Private Partnership contract and the procedures for granting concessions/public-private partnerships

The Public-Private Partnership contract is considered „a public work contract or public service contract, which meets the conditions, which define it as a Public-Private Partnership, and which is signed between the contracting authority on the one hand and the economic operator selected as the most successful bidder“.

In the Republic of Albania, the responsible institution that guides and harmonizes the activities for the development of Concessions and Public-Private Partnerships is the Ministry responsible for the Economy⁹, which coordinates the work with the Unit for handling Concessions/Public-Private Partnerships, assists the contracting authorities and performs other related functions with the study, monitoring, and analysis of European and international trends in the field of PPPs.

⁷ I dha 330 mijë lekë ryshfet Sekretares së Përgjithshme të 'Shëndetësisë', ndalohet administratori dhe inxhinieri i kompanisë që fitoi tenderin, (2 July 2023) <https://shqiptarja.com/lajm/i-dha-330-mije-leke-ryshfet-sekretares-se-pergjithshme-te-shendetesise-per-nje-tender-ndalohet-administratori-dhe-inxhinieri-i-kompanise-qe-fitoi-tenderin> (last accessed 2 July 2023)

⁸ Spak, 422 procedime për korrupsion, dominojnë tenderat – 208 të pandehur, 92 dosje për procedura prokurimi, 86 për shpërdorim detyre (22 April 2023), <https://scantv.al/spak-422-procedime-per-korrupsion-dominojne-tenderat-208-te-pandehur-92-dosje-per-procedura-prokurimi-86-per-shperdorim-detyre/>, (last accessed 2 July 2023)

⁹ Art 9.1of Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019



Also, an important role is played by the Ministry Responsible for the Finance, which evaluates, approves, and monitors concession projects and their implications from a financial point of view¹⁰.

Another very important actor is the Public Procurement Agency¹¹, which monitors the compliance with the competitive procedures of Concessions/PPP after signing the contracts, taking administrative measures, and setting fines in case of violations. The Concession and PPP Projects Selection Committee¹² is another body that is in charge of selecting Concession/PPP projects. Meanwhile for the examination and granting of the Concession/Public-Private Partnership, the contracting authority, in coordination with the Concessions Handling Agency (ATRAKO)¹³, creates the Commission of the Concession/Public-Private Partnership.

The contracting authorities who can undertake a procedure for granting Concessions/Public-Private Partnerships are the line ministries and the local government units¹⁴. Currently, in the database of concessionary and Public Private Partnership projects signed by the Albanian government during the period 2004-2020, there are 15 Contracting Authorities (Kamez Municipality, Tirana Municipality, Vlore Municipality, Ministry of Education, Sports and Youth, Ministry of Interior, Ministry of Agriculture, Food and Consumer Protection, Ministry of Economy, Trade and Energy, Ministry of Energy and Industry, Ministry of Finance and Economy, Ministry of Infrastructure and Energy, Ministry of Environment, Ministry of Public Works, Transport and Telecommunications, Ministry of Health¹⁵).

According to Artt. 23-32 of the Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019 “On concessions and Public-Private Partnership”, the Concession/PPP contract is drawn up in writing and signed by the representative of the contracting authority and the bidder selected as the most successful. All Concession contracts and Public-Private Partnerships, provided in the Republic of Albania are registered in an electronic database.

The law stipulates that the Contracting Authority must wait for the expiration of the period for accepting complaints before concluding the contract. If the successful bidder withdraws from the contract or does not submit the required guarantees and instruments within the specified time, then the contracting authority may make a new decision to award the contract to the next ranked bidder.

¹⁰ Art 10 Ibidem

¹¹ Art 11 Ibidem

¹² Art 12/1 Ibidem

¹³ Art 18 Ibidem

¹⁴ Art 13 Ibidem

¹⁵ Partneritetet Publike Private në Shqipëri, <http://ppp.reporter.al/> (last accessed 2 July 2023)

The contract defines the rights and obligations of the parties. It must be drawn up in accordance with the tender documents, with the information contained in the contract notice, with the selected bidder and the contract award notice. Another element of this contract is the concession fee, which is paid in the manner specified in the concession contract. Also, the Concession/PPP contract has a certain term and according to the law in force, this term cannot be longer than 35 years.

The procedure for awarding Concessions/Public-Private partnerships begins with the publication of the contract announcement and ends with the publication of the winner's announcement for awarding the contract or with the decision to terminate the contract awarding procedure. In awarding Concessions/Public-Private Partnerships, the contracting authority can use several forms of procedures that are defined in the law. In order to continue the process of selecting the winner, at least one valid offer must be accepted. The evaluation criterion for awarding the Concession/Public-Private Partnership contract is the most economically favorable offer, based on various criteria related to the object of the Concession/Public-Private partnership, which include quality, technical merits, aesthetic, functional and environmental characteristics, management costs, cost-effectiveness, provision of services after delivery of products and technical assistance, delivery date and period of delivery or period of completion of works, price of service for final beneficiaries, amount of concession fee.

The regulatory framework at the Community level

The absence of uniform discipline

Increasingly, the public sector is seeking the cooperation of the private sector in the realization of public works and public services. This is due to the lack of economic resources and appropriate technology. This cooperation has materialized with the growth of Public-Private Partnerships that are also widely used in Europe, especially in the last 20 years.

The debate launched in Europe about the Private-Public Partnerships related to the financing of infrastructures and/or the management of related services has not yet led to the elaboration of a uniform discipline at a community level and uncertainties remain in the classification of some operations. The term "Public-Private Partnership" was first encountered through the provisions of Regulation (EU) 1303/2013 which defines the common rules applicable to the European Investment Structure. It was defined as a form of cooperation between public bodies and the private sector, aimed at improving the provision of investments in infrastructure projects or other types of operations, the provision of public services



through risk sharing, the pooling of private sector expertise or additional sources of capital. (Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013)

Let us recall that the European Commission itself questions about the adequacy of the Community law to the specific characteristics of the PPP. In this regard, the International Monetary Fund, focuses on the importance of a correct evaluation of Public-Private Partnership operations in national public accounts, concluding that it is necessary to evaluate in real and substantial terms, rather than formal, the impact of this type of operations on public budgets¹⁶.

However, the European institutions have always encouraged the development of PPPs in the EU. In this context, we cannot leave without mentioning the (Green Paper) published in 2004 where we have a definition of PPPs which are considered as “forms of cooperation between public authorities and the business world that aim to guarantee the financing, construction, renovation, management or maintenance of an infrastructure or the provision of a service”.

The Green Paper of 2004 sets out the guidelines of the phenomenon, in compliance with the principles of competition and equal treatment imposed by the Treaty and the Community Directives on procurement. With reference to contractual PPPs, the European Commission has made some interesting considerations in terms of concessions and finance of projects, legal institutions that correspond to the standard model of PPP for the duration of the relationship, the financial commitment of individuals, and risk-sharing.

There are different models applied in the individual Member States and in any case regulated differently. The Commission is particularly concerned with ensuring that these forms of cooperation are not in any way evasive of competition rules; the search for greater flexibility in the awarding procedures finds the limit in respect of the community principles enshrined in the Treaty and in the secondary Community law.

First of all, Public-Private Partnerships are characterized by the relatively long duration of the relationship, which includes cooperation between the public partner and the private partner in various aspects of a planned project. Most of the PPP contracts last 20 to 30 years, some of them last less while few of them last more than 30 years¹⁷.

Regarding the way of financing the project, they are usually partially financed by the private sector, often through complex agreements between different actors.

The public partner usually determines the objectives to be realized for the public interest, the quality of the services to be offered, the prices, taking over

¹⁶ Public-Private Partnership Legal Resource Center, <https://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-international-monetary-fund>, (last accessed 2 July 2023)

¹⁷ Public- Private Partnership Legal Resource Center. Introduction, https://ppp.worldbank.org/public-private-partnership/PPP_Online_Reference_Guide/Introduction, (last accessed 2 July 2023)

the supervision and monitoring of the realization of these objectives. Meanwhile, it is the private sector that plays the role of the economic operator by designing, completing, implementing, and financing the project. Regarding the distribution of risks between the public partner and the private partner, usually, the private partner is the one who bears the risks of the PPP even though the latter is not mandatory.

Concerning to the concessions - characterized by the direct link between the private and the final user, under the control of the public partner - the Green Paper indicates that a complete Community discipline is not imminent, similar to that of public procurement, mainly due to the diversity of the national disciplines and for the continuing will of the States to maintain an important role in this area.

The Community law of public procurement does not know a specific definition of project financing which is accompanied with an autonomous and specific discipline, while it regulates the procurement of public works and the public works concession. Project finance is clearly distinguished in the Green Paper by the classical concession model, of which it now represents a variable rich of autonomous characteristics. Among the different types of contractual PPPs, project finance can be part of the contract model Design Build, Operate, Transfer (DBOT), in which the private operator designs, builds, finances totally or partially, and manages a public work that, at the end of the contractually agreed period, is sold to the entity. The Green Paper refers to the Private Finance Initiative, which represents primarily a British application.

In fact, even the Green Paper does not provide a proper juridical definition of the Partnership. What is contained in the Green Paper represents, if anything, an analytical description of the phenomenon, born from a concrete observation of the practice that seeks to highlight the points of contact with the law of public contracts and concessions.

The purpose of the Community Legislation is not to define legal categories, but to recognize the experiences of cooperation between the public and private sectors in Europe, focusing on the specification of competition rules. Regarding the terminology, considering the different forms of public-private partnerships, the same formulation of the contractual partnership refers to both the concession and the so-called Private Finance Initiative (PFI) of Anglo-Saxon origin.

The need to maintain a greater budgetary discipline, at the local and national levels, has given a strong contribution to the growth of the PPP market and its diffusion as an alternative solution for financing public works. In fact, they offer a great accounting advantage to governments, making it possible to transform higher present expenses into higher expenses (or lower revenues) in the future, and for the way in which public budgets are built considering the first and not the latter, that represents an immediate relief for financial management.



In here, it deserves to mention the decision of EUROSTAT of 11 February 2004 concerning the accounting treatment in national accounts of contracts signed by the public administration within the framework of partnerships with private companies, which have as their object the creation of specific infrastructures (assets), intended for public use and the subsequent provision of services, generated using the same. The decision applies only in cases where the State is the main acquirer of the goods and services provided by the infrastructure, whether the request comes from the same public party or comes from third parties. For the purposes of the off-balance accounting of PPPs and, therefore, of its classification as a private investment, the transfer of risks is the key element. The decision, in this regard, establishes that the assets related to these forms of PPP should not be classified as public assets when two conditions are met: the private partner assumes the construction risk; the private partner assumes at least one of the two risks of availability and demand (New decision of Eurostat on deficit and debt Treatment of public-private partnerships 18/2004, 11 February 2004).

With the 2014/23 directive, the issue can be considered definitively overcome as the new discipline also includes grants, including those where the main payer is the public administration.

The decade between the 2004 Green Paper and the new 2014 Public Contracts Directives was marked by an intense debate, but no proposal was fully accepted and approved. Other issues have been abandoned or radically reconsidered.

Finally, it can be said that since the Commission does not consider a legislative instrument related to PPPs as a more efficient instrument, PPPs will be carried out on the basis of national laws implementing the Classical Directive, the Utilities Directive, or the provisions implementing the Concessions Directive (Bogdanowicz, P., Caranta, R. and Telles, P., 2020).

The Regulation in some Member States of the Public-Private Partnership contract

Some EU countries are interested in regulating the phenomenon of Public-Private Partnerships before ours. Not all legal systems, however, have a proper legal definition of a Public-Private Partnership contract. Also, not all countries have adopted special laws for PPP and some countries such as France, Spain, Germany have multiple PPP or concession laws, which regulate specific sectors. Meanwhile, most PPP contracts in EU member states are governed by EU directives on the award of concession contracts (Martijn, J.K., Sun, M. Y., Lindquist, W, Mooi, Y. N., Ozturk, E.O., Selim, H., Khachatryan, A. 2023).

Also in different European countries, the PPPs definition is different. Whatever their definition, however, in Public-Private Partnership relations, the basic

objective for the public party is the selection of the best contractor and the best offer, as well as after the conclusion of the contract, its execution according to the predetermined conditions.

Already since the early nineties, the United Kingdom has begun to involve individuals in the construction of public works of greater complexity in order to reduce the costs in charge of the public sector and increase the efficiency in the construction of infrastructure. According to data, the UK was the first country in the world to develop the concept of Public-Private Partnerships¹⁸. With more than 700 in operation with a total capital value of £57 billion the PFI/PF2 project has been the predominant form of PPP in the UK¹⁹. In the UK there is no specific law for PPPs. They operate according to the general legal framework of the United Kingdom, of contracts, commercial companies, competition, and tax law, which applies to PPPs as well as to other projects. The legislation gives the appropriate powers to the local government and public bodies to promote PPPs²⁰.

In France, in 2018, a decision was made to reshape and modernize the French PPP legal framework as there were around 30 different texts governing PPPs. The PPP Code was finally decreed at the end of 2018 through Decree No. 2018-1074, dated November 26, 2018, Decree No. 2018-1075, dated December 3, 2018 and Decree No. 2018-1225, dated December 24, 2018. The PPP Code entered into force on April 1, 2019. Since then, there have been no major changes in the legal framework of PPPs²¹. In Germany, there is no organic regulation of Public-Private Partnerships²². Also the simplification law on Public-Private Partnership, so-called ÖPP-Beschleunigungsgesetz, which entered into force on 7 September 2005, did not lay down specific rules for project financing and Public-Private Partnerships but merely modified the previous regulatory framework introducing a series of elements of simplification and greater flexibility, including the introduction of the institute of competitive dialogue, aimed at encouraging and promoting the realization of works according to the public-private partnership scheme. The *Projektfinanzierung*, therefore, is governed mainly by the general provisions on public procurement and related sector regulations, with regard to the urban, building and environmental aspects of the project to be carried out.

¹⁸ PPPs, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266818/07_PPP_28.11.13.pdf, (last accessed 2 July 2023)

¹⁹ Managing PFI assets and services as contracts end, Comptroller and Auditor General (5 June 2020), <https://www.nao.org.uk/reports/managing-pfi-assets-and-services-as-contracts-end/> (last accessed 2 July 2023)

²⁰ The Public – Private Partnership Law Review: United Kingdom (20 April 2023), <https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/united-kingdom> (last accessed 2 July 2023)

²¹ A general introduction to public-private partnerships in France (20 April 2023), <https://www.lexology.com/library/detail.aspx?g=71d0142a-c112-4b55-8bf4-f68d0773b371#:~:text=In%20France%2C%20public%E2%80%93private%20partnerships,activity%20each%20year%20on%20average> (last accessed 2 July 2023)

²² Public Private Partnership Legal Resource Center (13 January 2022), <https://ppp.worldbank.org/public-private-partnership/library/ppp-laws-concession-laws-germany> (last accessed 2 July 2023)



As for the more strictly contractual profile, the German practice knows different contractual models, used according to the needs that actually need to be met. Among these the most important is the c.d. Betreibermodell or DBOT (Design, Build, Operate, Transfer) of the Anglo-Saxon model. In Spain, In Spain, PPP constitutes a type of public policy that involves cooperation between a public entity and a private partner with the aim of implementing, financing, and managing public infrastructure including facilities, services and utilities. (Law 9/2017) in force since March 2018 changed the classification of the previous Spanish public procurement law where there were three main types of PPP contracts: public works concession contracts; public service management contracts; and partnership agreements between the public and private sectors. Also, on December 30, 2020, the government approved Royal Decree-Law 36/2020 establishing urgent measures for the modernization of public administration and the implementation of the government's recovery, transformation and resilience plan. Being a decentralized state made up of 17 regions, the three institutional levels are included in the PPP²³.

In Italy the Public-Private Partnership (PPP) is commonly referred to forms of cooperation between public authorities and private entities, with the purpose of financing, constructing and managing infrastructures or providing services of public interest: the law no. 11/2016 laying down the principles underlying the new Code of Conduct, by marrying the principles provided by the latest Directives 2014/23/EU, 2014/24UE, 2014/25UE on Public Procurement, already aimed at the ambitious objective of public-private integration in order to increase the resources available and to acquire innovative solutions also from a financial point of view, with specific reference to financial project institutions and financial leasing of public and public works.

Conclusions and Recommendations

In this paper, we have analyzed some aspects of the legal regulation and operation of PPPs in Albania in a comparative perspective. This work was carried out considering the current legislation of Albania the EU legal framework and the legislations of some European countries, taking into consideration primary and secondary sources.

Firstly, let us highlight some of the factors of the development of the phenomenon in Albania in the last 20 years. The use of PPP models allows for an improvement of the effectiveness of the intervention planning phase and of the general quality of the built infrastructure and of the services provided, as well as to determine

²³ The Public-Private Partnership Law Review: Spain (20 April 2023), <https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/spain>, (last accessed 2 July 2023)

the introduction of mechanisms that stimulate an effective competition between private parties in infrastructure construction and management costs. It also grants the provision of Infrastructure and Services accelerated through the mobilization of the private sector capital. Using PPPs we will have an improved level of public management because the government has time to focus on the management instead of concentrating on the requirements related to the operational aspect of the service insurance.

There are different models of Private Public Partnerships applied in the individual Member States and in any case regulated differently. In the case of Albania in a comparative view with the best models of the EU countries according to our analysis and to valuable data we can conclude that the Albanian legislation regarding the PPP has largely followed the EU Recommendations and Directives. The Albanian model is much similar to the European countries models. The main problem we have is not the lack of legislation, but the failure to apply and implement it properly.

According to the report of the European Commission Albania 2022 Report, the Law on Concessions and Public-Private Partnerships (PPPs) is partly in line with the EU Directive on the award of concession contracts. Also according to this report, although Albania has evolved in the field of the public procurement by updating the legislation, introducing an electronic system of complaints, developing training for public procurement, making an online data base available for informing the public in relation to PPPs, efforts should be made to stop corruption in the procurement procedures. Some of the recommendations included in this report also have to do with the monitoring the implementation of the law in relation to PPPs by increasing the use of the award criterion of the most economically advantageous tender and with increasing the efforts to approximate the legislation in the field of concessions and public-private partnerships with the EU *acquis*. Finally, it is also required to improve the capacity of the PPC and the Administrative Court to deal with the large number of complaints in this field. (European Commission, Brussels 12.10.2022, final, Commission Staff Working Document, Albania 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Communication on EU Enlargement policy)

Also, the IMF reported that Albania has not yet fulfilled the recommendations of 2016 of the Public Investment Management Assessment (PIMA). According to the IMF, the value of the projects continues to be drawn up outside the budget process, while these contracts were as much as 40% of GDP in 2022, presenting high levels of risk for the economy and fiscal stability. According to the IMF, the Albanian government should strengthen the role of the Ministry of Finance



in the procedures, by increasing human capacities. The IMF has also requested transparency for the contracts concluded during the pandemic period²⁴

Unfortunately, the Albanian experience has shown that even though we have a special primary legislation with the regulation of PPPs, there have been a number of problems that have to do with corruption in the granting of PPPs. For this reason, it is recommended to strengthen the internal control in the procedures for awarding PPPs, from the very beginning, without waiting for criminal proceedings on the tenders, which according to statistics in recent years are the most numerous in number.

The weakness of institutions in the selection of projects, the management of contracts, may create risks in the future. Therefore, it is important to strengthen their role. Risks must be monitored throughout the process (IMF, 2021).

Finally, in order to carry out projects for the improvement of collective service, we need a state capable through its central, regional and local organizations, to emerge and identify the needs of citizens and businesses, to design such services, to entrust a competitive way for private people to build tangible and intangible infrastructure and their management, to draw up calls, to select competent persons in the appropriate functions with transparent competition procedures and not to recruit persons for important duties based on nepotism, to write and enforce rules, to verify results, to make rapid decisions and to follow these consequent actions. In order to achieve these results, incisive reforms and well-developed capacities are to be implemented, or modes to operate of public administrations which, when acquired, made operational, and increasingly applied, improve the quality of collective services.

Bibliography

- Bogdanowicz, P., Caranta, R. and Telles, P. (2020), Public-Private Partnerships and Concessions in the EU <https://china.elgaronline.com/display/edcoll/9781839105005/9781839105005.xml>
- Boussabaine, A. (2013), *Risk Pricing Strategies for Public-Private Partnership Projects*, Wiley-Blackwell
- Campra, M. Oricchio, G., Braja, E.M., and Esposito, P. (2014), *Sovereign Risk and Public-Private Partnership During the Euro Crisis*, Palgrave Macmillan
- Commission of the European Communities Brussels, 30.4.2004 COM(2004) 327 final Decision No. 575 dated 10.7.2013 on the approval of the rules for evaluation and awarding with Concession/Public Private Partnership amended
- Decision No. 130, dated 12.03.2014 “On the electronic performance of competitive concession/public private partnership procedures”
- Decision No. 576 dated 10.07.2013 “On the adoption of rules for the identification, evaluation and granting of concessions for hydropower plants”

²⁴ IMF Sounds Alarm over Albanian PPPs, Earthquake Spending, (15 December), <https://exit.al/en/imf-sounds-alarm-over-albanian-ppps-earthquake-spending/>, (last accessed 2 July 2023)

- Decision No. 575 dated 10.07.2013 “On the approval of the rules for evaluation and awarding by concession/public private partnership”
- Decision No. 27 dated 19.01.2007 “On the approval of the rules of evaluation and granting of concessions, amended by VKM No. 104, dated 28.02.2007, VKM No. 87, dated 16.01.2008, VKM No. 544, dated 1.5.2008, VKM No. 469, dated 16.06.2010 and VKM No. 268 dated 18.04.2012”
- Decision No. 268, dated 18.04.2012 “On the electronic performance of competitive concession awarding procedures”
- Decision No. 27, dated 19.01.2007 “On the approval of the rules of evaluation and granting of concessions” amended by VKM No. 104, dated 28.02.2007, VKM No. 87, dated 16.01.2008, VKM Nr. 544, dated 1.5.2008, and VKM No. 469, dated 16.06.2010 and VKM No. 469”
- Decision No. 27, dated 19.01.2007 “On the approval of the rules of assessment and granting of Concessions.”
- Decision No. 87, dated 16.01.2008 “On some changes and additions to decision No. 27, dated 19.01.2007 For the approval of the rules of assessment and granting of Concessions, amended.”
- Delmon, J.(2011), *Public-private partnership projects in infrastructure: an essential guided for policymakers*, Cambridge University Press
- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts
- European Commission, Brussels 12.10.2022, final, Commission Staff Working Document, Albania 2022 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Communication on EU Enlargement policy
- Il Partenariato Pubblico-Privato, normativa, implementazione metodologica e buone prassi nel mercato italiani” - Epas Studio- Linee Guida 2013 (https://www.affariregionali.it/media/169645/epas_-_studio-ppp_def090315.pdf)
- Kaluzny, A.D., O'Brien, D. M. (2016), *Managing disruptive change in healthcare: lessons from a Public-Private partnership to advance cancer care and research [1st ed.]*, Oxford University Press
- Khusainov, R.V. (2015), *Public-private partnership as a factor of innovative development of the economy*, Khusar Group
- Law No. 162 dated 23.12.2020 for Public Procurement
- Law No. 125/2013 Amended by Law No. 88/2014 Law No. 77/2015 Law No. 50, dated 18.07.2019 “On concessions and public-private partnership”
- Law No. 125/2013 amended by Law No. 88/2014 corrected “On Concessions and Public Private Partnership”
- Law No. 125/2013 “On Concessions and Public Private Partnership”



Law No. 9633, dated 18.12.2006 “On Concessions”, amended by Law No. 9995, dated 22.09.2008, Law No. 10137, dated 11.05.2009, Law No. 10157 dated 15.10.2009 and Law No. 10281 dated 20.05.2010”

Law No. 9663, dated 18.12.2006 “On Concessions”

Sneider, J. (2004), *Public Private Partnership for Urban Rail Transit: Forms, regulatory conditions, participants*, Deucher Universitätsverlag

Martijn, J. K., Sun, M. Y., Lindquist, W., Mooi, Y. N., Ozturk, E. O., Selim, H., Khachatryan, A. (2023), *The Future of PPPs in the Western Balkans*, IMF Working Papers WP/23/31

New decision of Eurostat on deficit and debt Treatment of public-private partnerships 18/2004, 11 February 2004

OECD, (2010), *Dedicated Public-Private Partnership Units. A survey of institutional and governance structure*

Ordonnance n. 2004-559 of 17 June 2004, ratified by law n. 2004-1343 of 9 December 2004

“Partenariato Pubblico Privato ed opere Pubbliche in Europa. La ricerca di un equilibrio tra regole e flessibilità” – Convegno I-Com 2008 (<http://www.itaca.org/documenti/finanza/Studi%20I-Com%20Partenariato%20Pubblico-Privato%20ed%20Opere%20Pubbliche%20in%20Europa.pdf>)

Regole comuni su investimenti e prtenariato pubblico private per le infrastrutture – Italia Europa America Latina – Congresso Internazionale CRIA,CSGLA 2017.

Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund

USAID Albania, (2012), *Partneriteti publik-privat në infrastrukturën dhe shërbimet publike* (https://pdf.usaid.gov/pdf_docs/PA00N1Z5.pdf)

Voinovich, G.V. (2017), *Empowering the public-private partnership: the future of America's local government*, Ohio University Press

Newspaper Articles

Managing PFI assets and services as contracts end, Controller and Auditor General (5 June 2020), <https://www.nao.org.uk/reports/managing-pfi-assets-and-services-as-contracts-end/> (last accessed 2 July 2023)

The Public –Private Parnership Law Review: United Kingdom (20 April 2023), <https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/united-kingdom>(lastaccessed 2 July 2023)

A general introduction to public-private partnerships in France (20 April 2023), <https://www.lexology.com/library/detail.aspx?g=71d0142a-c112-4b55-8bf4-f68d0773b371#:~:text=In%20France%2C%20public%E2%80%93private%20partnerships,activity%20each%20year%20on%20average> (last accessed 2 July 2023)

Public Private Partnership Legal Resource Center (13 January 2022), <https://ppp.worldbank.org/public-private-partnership/library/ppp-laws-concession-laws-germany> (last accessed 2 July 2023)

The Public-Private Partnership Law Review: Spain(20 April 2023),<https://thelawreviews.co.uk/title/the-public-private-partnership-law-review/spain>, (last accessed 2 July 2023)

- L'evoluzione del Partenariato Pubblico Privato tra i due Codici (1 April 2021)<http://www.salvisjuribus.it/levoluzione-del-partenariato-pubblico-privato-tra-i-due-codici/>, (last accessed 2 July 2023)
- The problem with Public-Private Partnerships and the role of the EU (e December 2018) <https://www.theparliamentmagazine.eu/news/article/the-problem-with-public-private-partnerships-and-the-role-of-the-eu>, (last accessed 2 July 2023)
- Tailor-made laws in the WesternBalkans and Turkey, <https://www.transparency.org/en/projects/laws-project/data/law-on-concessions-and-public-private-partnerships>, (last accessed 2 July 2023)
- IMF Sounds Alarm over Albanian PPPs, Earthquake Spending, (15 December) <https://exit.al/en/imf-sounds-alarm-over-albanian-ppps-earthquake-spending/>, (last accessed 2 July 2023)
- Public- Private Partnership Legal Resource Center, https://ppp.worldbank.org/public-private-partnership/PPP_Online_Reference_Guide, (last accessed 2 July 2023)
- Public- Private Partnership Legal Resource Center, (<https://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-international-monetary-fund>) (last accessed 2 July 2023)
- Skandali me tenderin për Unazën, edhe Delaware nis hetimet, (12 July 2018)<https://top-channel.tv/2018/12/07/skandali-me-tenderin-per-unazen-edhe-delaware-nis-hetimet> (last accessed 2 July 2023)
- I dha 330 mijë lekë ryshfet Sekretares së Përgjithshme të 'Shëndetësisë', ndalohet administratori dhe inxhinieri i kompanisë që fitoi tenderin, (2 July 2023) <https://shqiptarja.com/lajm/i-dha-330-mije-leke-ryshfet-sekretares-se-pergjithshme-te-shendetesise-per-nje-tender-ndalohet-administratori-dhe-inxhinieri-i-kompanise-qe-fitoi-tenderin> (last accessed 2 July 2023)
- Spak, 422 procedime për korrupsion, dominojnë tenderat – 208 të pandehur, 92 dosje për procedura prokurimi, 86 për shpërdorim detyre (22 April 2023), <https://scantv.al/spak-422-procedime-per-korrupsion-dominojne-tenderat-208-te-pandehur-92-dosje-per-procedura-prokurimi-86-per-shperdorim-detyre/>, (last
- PPPs, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266818/07_PPP_28.11.13.pdf

