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LEGAL NATURE OF CONCESSIONAIRE AND PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

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Abstract: This paper aims to analyze the legal nature of concessionaire and PPP contract in Albanian Legislation and through the perspective of European legislation analyzing mainly the Italian and French legislation and doctrine in this area. The main hypothesis that this paper aims to address is related to the fact, if it is enough to categorize these kinds of contracts with a hybrid status between public and private law, or the fact that so many countries appellate more and more to the concessionaire and PPP contracts is the momentum to create a separate law discipline as so many universities in France, USA, Japan do. Also, this paper aims to make a comparative study of Albanian legislation in the area of concessionaire and PPP contracts with the European legislation being the fact that for Albania this is a new area, and is a considerable lake of doctrine and legal studies that analyze the specifics and characteristics of such kind of contracts, putting at the last instance not only the Albanian contractual authorities but also the national courts in difficulties of implementation and interpretation.
Keywords: concessionaire contracts; PPP; administrative law; private law.

1. Introduction

In ancient Rome, law, as we well know, was divided into two large categories, public law (ius publicum) and private law (ius private). For the first time, it was the imperator Ulpian who did this classification. According to his vision, public law had as its main role the protection of public interests, i.e. the whole society, while private law was intended to protect the interests of individuals.

The norms of public law were more rigid and characterful binding not being modified through related agreements between private individuals. On the other hand,

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obviously, the norms of private law were more flexible, with a dispositive and permissive character and could be modified and changed according to the will of the parties: for example, in concluding a contract the parties were free to decide the name of the contract, its content but always within the allowed limits foreseen in the legal provisions [1].

This vision and this division between public and private has been preserved to this day in the Romano-Germanic system of which our country, Albania is a part.

The legal formula that regulates cooperation between the public sector and private sector or subjects is precisely the public-private partnership contract. Its legal regime is provided by Law No. 125/2013 "For concessions and Public Private Partnership", amended and other by-laws, where the definition is given in Article 3, point 23 of this law where we quote: "The public private partnership contract has the meaning of a public work contract or public service contract, that meets the conditions, which define it as a public private partnership, as regulated in this law and signed between the contractor authority on one side and the economic operator chosen as the bidder more successful, by the other.".

This definition is not exhaustive and the interest in defining the legal nature of the partnership public-private contract is actual and necessary and derives from the necessity that the state must ensure public property on the one hand and contractual freedom on the other hand, showing the qualities of a state dynamic and economic organism developed and adopted that takes into account the needs and changes that occur in these sectors and also different aspects of social-economic life. In these cases, there is more normal for citizens to ask the state to provide qualitatively public services as possible to satisfy the general interest as well as to protect the interest of every single individual.

Reality demonstrates that the public-private partnership contract, regardless of the sector where it is applied, has cut-off points as with public law, as well as with private law, and a clear positioning of this contract between these two main branches of law is important. For this purpose, in this paper, we aim to analyze not only the legal basis and the Albanian legislation but also the European practice and more broadly, aims to analyze, not only legislation and jurisprudence of the states belonging to the Romano-Germanic family but also analyze the legislation and practices of Anglo-Saxon family, by evidencing legal specifics and differences between these two families of law in the legal regime of public-private partnership contracts. This study will not be considered complete, if, for a clearer definition of the legal regime of the public-private partnership contract, we would avoid an analysis from the spectrum of administrative law and private law, because of the very hybrid nature that such contracts represent.

If we will be limited to categorizing the public-private partnership contract a priori as part only of the regulatory norms of administrative law, or only private law, we

would do a big mistake, because of the lack of measurement and meaning in essence the complexity presented by these types of contracts and their diverse sectors where already for years they are applied by many governments and countries of the world, including Albania.

2. Contemporary Albanian and foreign doctrine related to the nature of concessionaire and PPP contracts

Contemporary doctrine revolves around the idea that relationships of public-private partnerships are based on contracts of administrative or of civil origin. Currently, there is a lot of talk about administrative contracts, the genesis of which can be found in Rome in ancient times, when the lands occupied by the Romans were returned to Ager publicus (property of the Roman state). The state transferred these lands to other parties by means of a contract of public law but that always there was a derogatory clause from the common law in the form of a praetorian order - interdicta de precario - which guaranteed the state the opportunity to request the return of ager publicus from the parties to state, at any moment without any restrictions or sanctions [2].

The theoretical and scientific development of the administrative contract in systematized order, detailed and comprehensive, has been and remains almost non-existent in the Albanian doctrine, with the exception of some short treatments or referrals from the professors in this field such as E. Dobjani, S. Sadushi, E. Puto, E. Stavileci, etc. This developmental delay of the Albanian doctrine regarding the administrative contract is explained, first, by the fact that the administrative contract, as a juridical notion, entered Albanian administrative law very late, despite the fact that the laws on special administrative contracts are approved since 1995 in Albania, we are referring here to Law no. 7971/1995 "On public procurement" and Law no. 7973/1995 "For concessions and private sector participation in public services and infrastructure", while administrative contracts as a notion were mentioned for the first time in 1999 with the approval of Law no. 8485/1999 "Code of Administrative Procedures". While the contract as a basic notion of civil law has its roots very deep in antiquity and was well regulated since 1929 as a legal institution provided in the Civil Code of the Albanian Kingdom. Later the fact that the balance even for administrative contracts leaned more towards the civil right, made the Albanian doctrine overlook the possibility of development of a separate theory for the administrative contract, treating this contract only in the theory of the administrative act.

Public-private partnership (PPP) has been promoted globally as a solution for countries to meet their needs for improving infrastructure and public services with the participation of the private sector. As an example, currently, in most Latin American countries, the situation in which infrastructural assets given with PPP are

found to be particularly deficient, this product of the postponement of the construction of works considered essential, as well as the lack of conservation, maintenance, and improvement of existing assets. Regarding a comparison between the classic concession contract of public works and the PPP contract, the main difference consists in the fact that, in the case of the concession, work is carried out on existing state property, while in the case of PPP mainly the private contractor designs, creates, operates and maintains a new public property or work.

In this way, we can already find a difference between the PPP contract and that of the concessions, where in the PPP contract the asset, in principle, should not belong to the state and, therefore, the contractor has full ownership of the property over which he may exercise all kinds of rights and have unlimited obligations or no intervention by the public administration, which allows them a wide field of use and its financing. Moreover, one concession contract, is designed to be executed in one work that is already built, the use and maintenance of which is given for a certain time to a private entity depending on the rules and instructions issued by the public administration.

We must emphasize that while the state has grown in its role as an active agent of social promotion, concession contracts have broadened their objectives and the fundamental factor that should characterize a PPP contract lies in the balancing of the distribution of risks between the parties, i.e. between the private contractor and the state. To approach a conceptualization that allows us to distinguish public-private participation contracts from other administrative contracts, considering their origin and purpose, we will start from the hypothesis that PPP contracts are one of the ways in which the state is related to individuals (contractual relationship), usually, companies, characterized, in essence, by their technical and financial complexity, for which the state contracts the financing, construction, development, exploitation and maintenance of an infrastructure work, for a period of time sufficient for the individual/private entity to recoup its investment and obtain a reasonable profit (which may be pre-determined in the contract). In the end, the ownership of the work is returned to the state, the use of which must always be of a residual nature, that is, this contracting modality should only be used if none of the typical administrative contracts that are suitable to carry out the work needed by the state.

The proposed hypothesis forces us to consider, firstly, the nature of administrative contracts. Thus, we aim to answer the question about the identity of this cooperation after analyzing the nature of administrative contracts, features and public-private unions, in order to carry out a comparative legal study.

The nature of administrative contracts is extensively covered by the international doctrine and jurisprudence, but as we mentioned above, has been elaborated very little from the Albanian doctrine. For this reason, this time we will refer to it according to the proposed thesis, that is, if public contracting is under the incidence

of any of the already existing contracting categories or if we are dealing with a new form of a contract of a private nature between the administration and individuals and/or companies.

Basically, there are two currents regarding the nature of administrative contracts. On the one hand, there are those who claim that administrative contracts belong to the category and apply the principles of private contracts in general, with the only difference being that one of its sides is one public institution. (theory of jus privatis or negative theory) [3].

In other words, administrative contracts are nothing but private contracts of state institutions. On the other hand, there are those who consider that administrative contracts have a different nature from private contracts, constituting a type of administrative (bilateral) act. The first current seems to have its origin and development in the Italian doctrine. According to Rodolfo Barra [4], this is exactly where the idea of explaining the contractual relations of Public Administration from the perspective of private law begins to develop, that is, from the freedom of the parties with full negotiating autonomy (private thesis) with the only difference that one of the parties is an institution of public administration. However, this stream is by no means clear and homogeneous, since those who support it, in any case, accept differences, between contracts between individuals and contracts made between them and a public administration institution. In this sense, the fundamental factor that compels these authors to make such distinctions is the presence of the public interest, which, we add, is the sole, exclusive purpose that should guide all actions of the Public Administration and that, for this reason, it does not seem to be a mere "random" difference [5].

Specifically, the aforementioned goal implies and justifies the existence of the so-called public "prerogatives" from which the Public Administration cannot depart and must not ignore them, and in our opinion, this is the main objection that public-private partnership contracts can receive in the European legal reality of civil law (mainly Spanish and French). According to the Italian doctrine, the administration exercises "private activity" and, in such cases, Public Administration institutions do not follow public interests and therefore, they act in the same way and under the same rules as individuals. These "management contracts" are usually used for their internal organization. However, even in these cases, it is accepted that the activity in question is subject to the principle of publicity, given the inherent and indivisible public interest that guides all actions of the Public Administration, including its internal organization. The Italian doctrine distinguishes "that private activity from administrative activity based on private law", which, as its name indicates, is subject to the regulations of private law [6].

In these cases, the Administration follows the public or general interest. Giannini admits that, in the contracting activity, the public interest goal is protected by some

kind of mediation through the procedure (regulated activity) and through the contract (regulated activity), and what the author calls: "public evidence". In this contractual activity of the Public Administration (private activity of the Administration), Giannini, distinguishes three types of contracts: Common contracts, special and public contracts [7].

Common contracts are those that every subject, including, of course, the institutions of Public Administration can deal using their private autonomy (buying and selling, etc.) Let us consider, for example, the purchase of various supplies or the performance of professional services.

Special contracts are special in three senses: (1) in the meaning of the traditional special law, such as the contract of the railway carriage, which is a type of transport contract; (2) in so far as they are contracts that can only be agreed by a public administration, such as those of public debt, and (3) in a purely descriptive sense.

In this last sense, we find those contracts that, in fact, are formalized mainly by Public Administration institutions, although there is not only one legal reason that excludes companies from concluding this type of agreement, such as those that the administration exercises for the development of its promotional activity. The last category consists of contracts with public works and which can only be concluded by the public administration (in this respect it coincides with some special contracts), but which, unlike those, "are more or less closely related to an administrative procedure". In Giannini's classification, using concepts already developed by other social sciences such as sociology and economics, we observe the existence of a system where each of the parts or components (administrative acts) is carried out with a meaning or purpose that exceeds each of them (e.g. public service concession, public works concession) and that make sense in the assessed system as a whole.

In these cases, returning to Giannini's theory, there is a special procedure (public evidence) that aims to achieve and ensure public interest. In the rest, contracts are subject to the principle of autonomy of the will, as this principle prevails in contracts between individuals. In terms of its consistency, it requires a kind of unification of the legal regime of public procurements and private contracts under the principles and the rules, of course, of private law. This interpretation, we believe produces a tertium genii or a hybrid which, as lawyers well know and experienced by judges in their usual work, brings more problems than solutions. This brief overview of the theory of the privatization of public contracts, followed, with nuances of encountered mainly in the Spanish doctrine [8], confronts us with a series of problems raised by the analysis of administrative contracts and which we list below: (1) incidence of public interest as an essential element in the activity of the administration, including contractual activity, which means that such contracts are regulated by the principle of the autonomy of the will or by the principles of other administrative laws; (2) the possibility and feasibility of the coincidence of the will of the administration with

the will of society; (3) the existence of complete administrative acts in the formation phase and execution of the contract; (4) the legal regime of relations between these acts (autonomous and independent or as part of another contract that gives them meaning and purpose); and (5) the essence of administrative contracts [9]. The second doctrinal current, contrary to the one described above, asserts that administrative contracts do not belong to the category or genre of private contracts, but have a different nature, a "substance", framing them no longer in the general theory of private contracts (the theory of ius privata) but within the theory of administrative acts (bilateral administrative acts). On the other hand, they would not be administrative acts stricto sensu, but purely administrative contracts, framed in one of the many ways in which the public administration acts in cooperation with private individuals. Thus, for example, Bermúdez Soto affirms that the public administration not only acts unilaterally and necessarily in the fulfillment of its function but can also go to the aid of other wills, in a clear application of the principle of cooperation. In this way, it will act, for example, when it wants to build public work and does not have the proper means to do so. In this case, a contract will be concluded with third parties to meet the public need.

In our opinion, the thesis that comes closest to the reality of things, at least in the continental European legal system, is the "substantialist" thesis of administrative contracts. This happens because the Public Administration cannot act in any other way than according to the principles of public law, even when contracting with individuals, the basis of its activity is legality and not free will, being unable to act in any case for reasons other than the public interest or the common good. The inequality of the parties is not only evident but also natural in the relations between the public administration and individuals. This fact is based on the different legal positions that the administration holds within the society. The disparity between the parties is based on the superiority that the public administration possesses in the execution of the contract since it is responsible for respecting and fulfilling the public interest or fulfilling the public service mission. These prerogatives of public power, which appear mainly at the stage of conclusion and execution of the contract, include the power of direction and control by the public administration, the power of punishing the private contractor, the power of unilateral modification of the contract for reasons of public interest. In this way, the public administration can punish its contractor due to poor execution of the contract, or it can unilaterally modify the contract clauses for reasons of public interest by repairing the damage caused to the private contractor. On the other hand, the contractor receives additional compensation for additional obligations that will be required by the public administration and/or may result from unilateral decisions of the public administration [10]. While the theory according to which administrative contracts are under the incidence of private law is more stable in those countries with a legal

system of Anglo-Saxon origin, where contracts concluded by the state are given the name "government contracts", it should be borne in mind that the doctrine of administrative law in these countries does not deal with them. However, those who have studied and observed the system in question claim that such contracts are governed by a different law than that which governs contracts between private parties [11].

3. Public interest as an inherent element of administrative contracts

We have previously seen that one of the implications of the theory of privatization of administrative contracts is the incidence that public interest has on these contracts. In the previous section, we evidenced how the public interest must be present from the beginning to the end of the contract and throughout its development, it occupies all the administrative acts included in the contract. The public interest, which we identify with the concept of the common good, is not the sum or composition of separate interests. The public interest or the common good has a different nature from the group of special goods, although not contradictory, seeking the benefit of all [12]. The concept of the common good was invented by John XXIII who stated that: "The public interest consists and tends to materialize in the group of those social conditions that allow and favor the integral development of the person and human beings". Only this can be, therefore, a common good for all members of society. In a synthetic way, we can define the common good (public interest) as the totality of social conditions that allow the integral and rapid development of the person until reaching his perfection. Of course, it is not our intention here to deal exhaustively with the question of the common good, but only so far as it is relevant to political or the theory of the state and, of course, to administrative law as a legal discipline, the object of which is precisely the state. From this statement, we can conclude the consequences and the importance of the Public Administration (state) as a party to a contractual relationship, and in this way show what, in our opinion, constitutes an error in the philosophy of the theory of the private character of administrative contracts, which it is that of examining the presence of a subjective element of this contractual relationship, unable to modify - or more precisely to justify - its substance or nature.

The public interest was conceived as an ideal instrument to guarantee the fulfillment of social demands. Thus, the public interest necessarily entails the notion of the state, and with it, those of government, authority and power. Government, as political power and executive authority, is mostly identified with the notion of the State.

Saint Thomas Aquinas, in the first chapter of his pamphlet on the government of princes, allows us to have a philosophical concept of the state, and since then it has been used in every other definition that the state will develop. His argument starts from the same notion of public order, which is found in the constitutions of every

social group. The basic premise is this: "whenever we see a multitude of things ordered to the end, if there is something in them that directs them" [13]. This is so because the order is the correct arrangement of various elements in relation to an end guided by the common good. Therefore, the public interest is the leader of every contractor action and the very objective of the contracting activity of the bodies of public administration, and in the substance of public interest, including the public administration, is the existence of all. In his work, Aristotle's "Nicomachean Ethics" stated that: "It is desirable and satisfying to obtain and protect the good of the individual, but it is noble, divine and sublime to obtain and protect the Good of the Community and the State" [14].

The public interest is considered "the heart of the administrative contract" because it justifies its existence. The provisions of Article 119/1 of Law no. 44/2015 "Code of Administrative Procedures" expressly specify that the public body binds the administrative contract for the realization of a public interest that the public body serves. Administrative contracts and more specifically public-private partnership contracts allow public administration to procure works, services, supplies and goods that it needs to ensure the continuity of the public service and therefore fulfill the public interest [15].

However, in fulfillment of its activity, the public administration and the state must maintain a good balance between the public interest and that of individuals, and in this case, the provisions of Article 10 of the Code of Procedures come into force by Administrative Law of 1999 which predicts that: "Public administration, in the exercise of its functions, protects the public interest in any case, as well as the constitutional and legal rights and interests of private persons".

If we refer to the current Albanian Code of Administrative Procedures of 2015 we will not find an explicit declaration of prevalence between public and private interest, but the same spirit has been preserved in the provisions of articles 1, 4, 12, 119/1 and 123.

Public-private partnership contracts have received special attention since the 1990s as a result of the new perspective that countries began to give to the private sector, which increasingly began to attract private investment in the execution of public works. This withdrawal, in many cases, was carried out for ideological or political reasons, but in most of them, they were caused by excessive public deficits. The lack of public resources was added to society's growing demand for social goods, making the interventionist state model stop working in many sectors of the economy where the private activity took place. More specifically, this cooperation was motivated by deficits in public infrastructure. Precisely in this historical context, public-private cooperation began to attract the attention of many governments, although in reality, the cooperation in question, is done through administrative contracts such as the concession of public works or the concession of public services. As Gordillo has

shown: "Throughout human history, the good of the community has been confronted with the rights of individuals, with the unsurprising conclusion that the collective precedes and surpasses the individual, annihilating or limiting him as much as possible [16].

For Balbín, the PPP model is "a mixed framework that includes different financial modalities and legal rules, with the participation of public and private financing. This model aims to develop the public infrastructure with public and private capital [...] This model can be institutionalized in two different ways. Firstly, it can be institutionalized through the creation of a specific associative type (generally under the so-called mixed companies), and secondly, through private contracts that establish rights, obligations, risks and contributions in a specific case" [17].

The previous conceptualizations allow us to emphasize, at least the hypothesis that PPP contracts are a kind of legal hybrid, difficult to define or classify in any of the contractual categories. In this case, we note the participation of the private sector in projects that are considered to be beneficial for the whole community or, at least, have a social impact that exceeds the individual benefit, where the assumed risk of contracting with the state is minimized, mainly in the financing, preserving the economic-financial equation of the contract and the public legal regime and prerogatives, in the function of the realization of the project, through figures of private law, apparently "mixed", but with certain guarantees given as a partner of the state, with the aim of simplifying the procedures of the public contracting regime.

Beyond its attempts to classify and distinguish typical administrative contracts, with categories of the law of Continental-European roots, the essence of PPP lies in the cooperation between the public sector and the private sector to achieve common goals, albeit with different motivations.

Profit in the first case and the common good in the second case, separately as well as together, ensure a distribution of risks that are required in balance, but which brings the risk of abandonment by the Public Administration in its exercise of public powers as well as bypassing the rules of control of public finances.

On the opposite side of this cooperation, there is nationalization and privatization and as a result of both, we find the "principle of subsidiarity", which shows that everything that the individual can do himself should not be done by the state. It should act only as a " subsidy" or replacement of individuals and not in their place, and always with a single objective: the common good. Staying true to this principle, it should be emphasized that, when economic activity is troubled or in insufficient funds, another fundamental principle comes into play, which is the freedom of competition and the rules and laws of the market economy. It should not be interpreted that they are against the common good, but quite the opposite, only in a society where individual freedoms are respected and promoted, the community achieves a well-being that is shared by all and is called the public good. To

summarize, it is necessary to understand the main functions of administrative contracts as a whole and the way of classification in some countries of the world, so that we can reach the conclusion that public-private partnership contracts are not only complex. They have a well-elaborated legal framework [18], developed in-depth and in detail, best evidencing that it does not belong entirely to the regime of public law, much less the private domain.

The main functions of administrative contracts as a whole, particularly PPP contracts, consist of firstly, respecting the principle of legal certainty in the legal formalization of rights and obligations between the state party and the private party. Secondly, these types of contracts serve to organize the public service as it appears as it is an efficient solution to the complexity of the administrative political apparatus that is often inadequate to manage public affairs and horizontally delimits the responsibilities of public administration bodies. Thirdly, as demonstrated by the practice of Latin American countries, France or the United Kingdom, when they are used to a significant extent, PPP contracts turn into a valuable tool for the economic development of the country as well as a foundation of economic policies and government programs. Fourthly, by means of PPP-type administrative contracts, there is a wider participation of the public in policy-making and decision-making, limiting the rigid decisions that governments could make about public work or service or infrastructure that they could build entirely with public funds, compared to public works or services that are made possible through PPP contracts, where the state is obliged to mediate and negotiate not only in the first steps of concluding the PPP contract but to follow through to its finalization.

Thus, citizens are more involved in policy-making and implementation. They are not only involved with decision-making but also with financing, therefore, being more aware of the common public good that is obtained from the cooperation of the public and private sectors. It is worth noting, that the use of the administrative contract coincides with a new way of exercising public administration activity that is based on cooperation and not on authority [19]. Under these conditions, Professor Ermir Dobjani asserted that the administrative contract appears as an important instrument for the modernization of public administration activity and the renewal of relations between the state and society. At the same time, it serves as a powerful instrument for the development and reformation of administrative law in Albania [20].

4. Conclusions

According to its legal nature, a public-private partnership contract is an administrative contract in terms of these factors:

Firstly, the structure of the public-private partnership contract takes the form of a normative act, and we refer to the rules regarding the standard procedures and general conditions for the selection of the private partner. Secondly, one of the

parties signing the public-private partnership contract is necessarily a public authority of the central or local administration. The public authority acts on the basis of the competencies provided by the law, causing the parties to face contractual inequality. Often, the state unilaterally sets some clauses according to its will, as preconditions, not subjecting to the negotiation process with the parties. But the latter should not be conceived as a rigid axiom, since the unilateral clauses have only a guiding purpose and are foreseen in the framework contract, while the actual PPP contract is negotiated and completed in detail by the parties before signing. Thirdly, the choice of a partner or private investor is not made randomly, but on the basis of a tender organized in accordance with the legal provisions, preceded by a feasibility study, publication in official channels respecting the principle of publicity and followed by the resolution of a Commission for the selector of the winner.

Fourthly, the contractual relationship between the public authority and the private partner or investor is covered by some formalities much more complex than a simple contract between private individuals, specifically: the contractual form of the public-private partnership contract must be respected. It is precisely because of these formalities that the administration analyzes very carefully the consequences of the act it will sign. Fifth, in case of conflict, the participants in the selection tender can protect their violated rights by going to the administrative court and opposing the decision of the selection committee. The latter is in fact one of the main arguments waved by the supporters of the theory according to which public-private partnership contracts have a typical administrative nature.

On the other hand, supporters of the theory, that public-private partnership contracts are much more complex and beyond administrative law, bring a note that in most countries of the world, including Albania, after the establishment of the public-private partnership contract, the parties turn to arbitration courts for dispute resolution. We mention here the English legislation that states that the public administration, the contracting party is subject to the same rules that are subject to the private contractor. As a result, public administration enjoys the same contractual freedom enjoyed by persons of private law, and moreover, public administration does not have the prerogative to unilaterally terminate the contract. In the contract, the English administration party may have significant prerogatives in the execution phase by being able to change special clauses such as the general conditions and those which are drawn up by the treasury office of the central government. However, with or without these clauses, all contracts signed by the English public administrations are private law contracts and fall within the jurisdiction of ordinary civil courts.

From the above, we reiterate that this study puts forth a bold hypothesis, that of creating a new branch in the field of law, which regulates relations in the field of concessions and public-private partnership, justified as a necessity of the reality of

world economies which since the 1980s have appealed more and more to the use of these contracts and the inclusion of private financing in politics, infrastructure and public works, ensuring better services and quality in real-time for citizens who are the first for any public administration body anywhere in the world.

To conclude, the PPP requires not only a more precise definition of the concept but also a more careful application. According to the opinion of the International Monetary Fund, the experience of the PPP in the Latin American region does not seem to be positive, given that on some occasions this instrument was used by the government with high public deficit to avoid the control of public accounts. Moreover, it is yet to be demonstrated that none of its advantages can be found within traditional concession contracts of public works. Thus, the key would be in their design and the establishment of an institutional framework for its regulation and control.

After what we presented above, to contribute to the conceptual delimitation of PPP, we can define PPP as a contract between the Administration and a person from the private sector whose purpose is the construction, design, financing and operation of a new construction, in a privately owned property, destined for a public purpose, at the end of which the property returns to the State. Also, due to the commitments required by the latter, the complexity, the financing and the difficulty of its control must be used only in cases where typical administrative contracts such as public works contracts, public works concession contract and public service concession contract are not possible. In other words, it is about an outline with an extraordinary character. Even in practice, PPP is used to replace or on behalf of some typical forms of administrative contracting. From the conceptualization proposed previously, we can find specifics that will allow the distinction between them.

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Author Contributions

The authors contributed equally to this article.

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17. ***, Law no. 7973/1995 "For concessions and private sector participation in public services and infrastructure".
18. ***, The UNCITRAL framework law for PPP. Available on-line at: https://uncitral.un.org/en/mlpppp.
19. ***, UNECE model law - People's first PPP. Available on-line at: https://www.uneceppp-icoe.org/people-first-ppps/what-are-people-first-ppps/.

Notes:

[1] Mihalache Iu., (2012) "The private Romanian law", Chisinau: Litera, pp. 21-22.
[2] Cocos. S., (1999), The roman law, Bucharest: Scorpio 1999, pp.131- 138.
[3] Véase J. P. Hainot y R. Joliet "Les contrats de travaux et de fournitures de l'administration dans le marché commun", Bruselas: Emile Bruylant", 1963, page 70; Michel Fromont, "La répartition des competencese entre les tribunaux civils et administratifs en droit allemande", París: Librairie Générale de Droit et de Jurisprudence, 1960, p. 188. Igual solución en el derecho austríaco: Zaccharia Giacometti, Allgemeine Lehren des rechtsstaatlichen Verwaltungsrechts, t. i, Zúrich: Polygraphischer Verla, 1960, pp. 442. Por

todos, cfr. Agustín Gordillo, "Tratado de derecho administrativo y obras selectas", Buenos Aires: page, 2015.

[4] Barra R., (1989), "The administrative contractual acts. The theory of general acts", Buenos Aires: Abaco de Rodolfo de Palma. According to the author, taking at this point the statements of Gaspar Arinos, also based on Anglo-Saxon law, although poor in doctrine, in the United Kingdom these contracts are referred to as "Private Government Contracts". However, a closer look at the US system, for example, allows us to note that even these contracts do not receive the same treatment as in the case of contracts between private individuals.

[5] Carbajales M., "Public-Private Partnership Contracts. A novelty or escape from Administrative Law?" The Digital Journal related to Administrative Law, Nr. 27, First semester/2022, f. 193-224, Electronic copy: https://ssrn. com/abstract=4008361.

[6] Giannini., (1999), "Derecho administrative", vol. 1. Madrid: Instituto Nacional de Administraciones Públicas".

[7] Idem.

[8] Fernández R.T., (1989), "Course of administrative law", Madrid, Civitas, page 206.

[9] Carbajales M., (2022) "Public-Private Partnership Contracts. A novelty or escape from Administrative Law?", The Digital Journal of Administrative Law, Nr. 27, first semester /2022, f. 193-224, Electronic copy: https://ssrn.com/abstract=4008361.

[10] Dobjani E., (2017), "The administrative contracts", Tiranë: Emal, pg 29.

[11] Ortiz. G.A., (2011)," Lessons for Administration and Public Works", Valencia: Tirant Lo Blanch, Antes, "Principles of the public and business law. The model of public management and economic rules" Madrid: Comares.

[12] The common good (Latin: bonum commune) refers generally to the good (being) of all members of a community and also the public interest, as opposed to the good of private and special interest; It can also be defined as general purpose or common goals and values, for the realization of which people come together in a community. Cf. Rainer Schultze O (2014), "The common good", Herminio Sánchez de la Barquera and Arroyo, Anthology for the Study and Teaching of Political Science, Vol. 1, Foundations, Theory and Political Ideas, Mexico, pg 157.

[13] Aquino, T., (2016), "Del gobierno de los príncipes, Buenos Aires: Losada, pg 258.

[14] Dobjani, E., (2017), "Administrative Contracts", Tiranë : Emal, pg 24.

[15] Idem.

[16] Gordillo, A., (2014), "Tratado de derecho administrativo y obras selectas", t. 2, Buenos Aires: Fundación de Derecho Administrativo", pg 39.

[17] Balbín. C.F., (2014)., "Tratado de derecho administrative", t. v, 2.ª ed. , Buenos Aires: La Ley", pg 43-44.

[18] UNECE model law - People's first PPP; The UNCITRAL framework law for PPP, internationally approved methodology and standards for PPP procedures, as well as well-thought-out standards for the prevention of corruption, etc.

[19] Puto, E., (2010)., "The contracts of Public Administration", published and edited by M. Ballbe. XH. Zaganjori, C. Pablos & E. Methasani-Cani: "Issues of administrative law in comparative view", Tiranë,:Albdesign, pg 416.

[20] Dobjani, E., (2010), "The administrative contract as a developing form of activity of the Albanian public administration", Tiranë: Scientific journal Jeta Juridike, No. 3, pp. 52.