

LEGAL REGULATION AND THE PERSPECTIVE OF THE DEVELOPMENT OF THE PUBLIC-PRIVATE PARTNERSHIP IN THE REPUBLIC OF MOLDOVA

*Maria ORLOV**
*Marina GROSU***

Abstract

The public-private partnership is an instrument by which the modern state can manage with maximum efficiency the public patrimony and the public services. The essence of the public-private partnership (PPP), consists in the establishment, under different forms, between the public authorities and the business environment, in order to ensure the financing, construction, renovation and maintenance of an infrastructure, or, the provision of a service of public interest. The good practices of the states with experience in this field were also adopted by the Republic of Moldova.

The concept of PPP appeared in the legislation of the Republic of Moldova after gaining independence (1991), being enshrined, directly or indirectly, in multiple normative acts, including, in a special law. According to the legislation in force, the public-private partnership aims to carry out projects of public interest, to increase the efficiency and quality of services, public works and other activities of public interest and the efficient use of public heritage and public money.

Although, the existence and quality of the normative regulations are fundamental and have a special importance for good activity of the public authorities, however, the mechanism for the achievement of the PPP does not work automatically, automatically, or, as a result of the adoption of the corresponding normative regulations. As a result, in the Republic of Moldova, the implementation of these legal regulations has encountered multiple difficulties, so that, so far, we have no examples (practices) that PPP has succeeded.

In order to successfully achieve the PPP, both the capacity of the public authorities to clearly define that part of the public heritage and services that it can manage through state (public) economic institutions and entities, of that part, is necessary. It will train the private partners as well as the professional training of the public officials and all the actors involved in the PPP, who must know, in details, the basic rules and the principles of functioning of such a partnership.

Key Words: *public-private partnership, public heritage, public services.*

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1. Introduction

The development of the relations of the market economy has put in a new light and the concept of public property, and, the modalities of its valorisation and management.

* Associate Professor, PhD, "Alecus Russo" State University of Bălți, President of the Institute of Administrative Sciences of Moldova, email – orlovmg@yahoo.fr.

** Juristconsult, Project Coordinator in Public-Private Partnerships E-mail - grossu.marina@gmail.com.

As mentioned in the specialty literature, the initiation and realization of a public-private partnership comprises two important stages: one is related to a political process, which ends with the adoption of a decision (agreement) to initiate the creation of a partnership, and the other is the administrative procedure, which ensures the implementation of the political decision.

In the Republic of Moldova both these stages are marked by certain difficulties. Thus, the exaggerated politicization of the public administration, causes that the decision to initiate a PPP process is motivated, most of the times, by the political interests of the group, or of the party, and, less the economic-social interest of the community is taken into account, as well, the diligence with which the public patrimony must be managed within the public-private partnership. As for the procedure for the execution of the PPP, it is assimilated to the classic procedure for the execution of civil contracts, which creates confusion and procedural difficulties for both sides of the PPP. All this is due to confusing and imperfect normative regulations, as well as the institutional framework of implementation, inexperienced and political will regarding the management of public heritage.

Although, the achievement of the Public-Private Partnership depends on a number of factors of economic nature (a well-developed private economic sector), social (economic and legal education of public and private partners), politics (legislative and institutional assurance of PPP relations), however, in this paper, we will stop at the most important factors, from our point of view, namely: the existence of a consistent and exhaustive regulatory framework and, of an appropriate institutional framework, which will ensure the implementation of good development practices of PPP in the Republic of Moldova.

2. Regulatory framework of PPP

For the Republic of Moldova, international legal commitments, enshrined in the Green Card on public-private partnerships¹ and other international agreements², were used as basic premises in the development of PPP, based on which the national strategies³ regarding the policy of promoting PPP in the priority areas were adopted,

¹ The Green Paper on Public-Private Partnerships and Community Regulations on Public Contracts and Concessions of April 30, 2004, adopted by the European Commission, <https://eur-lex.europa.eu/legal-content/TXT> viewed 23.08.2019.

² Memorandum on Economic and Financial Policies for 2007 signed between the Government of the Republic of Moldova and the International Monetary Fund, www.gov.md; Directive of the European Parliament and of the Council no. 2004/17/EC of 31 March 2004 coordinating the procedures for the award of procurement contracts in the water, energy, transport and postal services sectors; Directive of the European Parliament and of the Council no. 2004/18/EC of 31 March 2004 on the coordination of the procedures for the award of works execution contracts, public supply contracts and public service contracts, <https://eur-lex.europa.eu/LexUriServ/LexUriServuri/CONSLEG:2004> viewed 30.07.2019.

³ Government Decision no.1288 of 09.11.2006 "On the approval of the Strategy for attracting investments and promoting exports for 2006-2015"; Law no.295 of 21.12.2007 "For the approval of the National Development Strategy for the years 2008-2011"; Law no.166 of 11.07.2012 "For the approval of the National Development Strategy "Moldova 2020"; Government Decision no. 685 of

such as they would be: regional development, public interest services, road infrastructure, promoting the investment climate to support small and medium-sized enterprises, etc.

With the signing of the Association Agreement with the EU, the state's responsibility in promoting the alignment with the European standards increased, so that the PPP development measures intensified, being included in the National Action Plan for the implementation of the Association Agreement Moldova - European Union for the period 2014-2016⁴, with the setting of the following priorities / actions:

- development of tools for efficient management of PPP projects;
- ensuring information transparency by developing the website of the Public Property Agency ("Public-Private Partnership" compartment);
- organization of workshops in the field of PPP at the level of central and local public authorities, involving financial institutions and the business environment, etc.

The normative framework for regulating the public-private partnership began with the Law on concessions, no. 534/1995, which was repealed, from 17.02.2019, being replaced by the Law on works concessions and service concessions Nr. 121/2018⁵. In our opinion, a serious error occurred due to the fact that, in the text of these laws, the legal nature of the concession contract was not specified, as being an *administrative* (or mixed) *contract*. It was also not mentioned that, with the advent of the concession, two centuries ago, it was born and developed, what we call today - the public-private partnership. In addition, we note that, in recent years, our legislator has moved further away from the essence of these fundamental values of the concession. Thus, if, Law no. 534/1995 gave a definition of the concession, in which the basic elements of the administrative contract and the PPP were found⁶,

13.09.2012 "On the approval of the Strategy for development of the sector of small and medium-sized enterprises for the years 2012-2020"; Government Decision no.685 of 04.09.2013 "On the approval of the National Strategy for regional development for the years 2013-2015". www.gov.md, viewed 13.05.2019.

⁴ Government Decision no.808 of 07.10.2014 "On the approval of the National Action Plan for the implementation of the Association Agreement Republic of Moldova - European Union in the period 2014-2016". www.gov.md, viewed 13.05.2019.

⁵ Law no. 121, from 05.07.2018, regarding the concessions of works and the concessions of services, Published: 17.08.2018 in the Official Gazette no. 309-320 art Nr: 470 Effective date: 17.02.2019, www.justice.md, viewed 18.05.2019.

⁶ "The concession is a contract whereby the state or the administrative-territorial units assign (transmit) to an investor (natural or legal person, including a foreigner), in exchange for a royalty, the right to carry out activity of prospecting, exploring, or restoring natural resources on the territory of the Republic of Moldova, to provide public services, to exploit the movable and immovable goods public property of the state or of the administrative-territorial units that according to the legislation are removed in whole or in part from the civil circuit, as well as the right to carry out certain types of activity, including those that constitute the state monopoly, taking over the management of the concession object, the presumptive risk and the patrimonial liability.", art. 1 (1) of the Law on concessions, Nr. 534, from 13.07.1995, Published: 30.11.1995. in the Official Gazette

then, in Law no. 121/2018, when defining the concession contract, the elements characteristic of the civil contract⁷ is used. Even from the title of the law we notice that, the concession of goods has disappeared, this referring only to works and services. At the same time, a new form of "*mixed concession contract* - including the concession of works and the concession of services" is included. The goods are taken into account only insofar as they are "*accessory goods to the works and services subject to the concession*".⁸ In turn, the object of the concession (the public good) is not transmitted only in the management of the concessionaire, as stipulated in Law no. 534/1995, but, according to art. 8 (1) of Law no. 121/2018: "The contracting authority assigns to the concessionaire, ... his rights of possession and use on the object of the concession and of the accessory goods of the works and services that are the object of the concession, reserving his right of disposition on them".

As we can see, the legislator accidentally uses a mixture of legal terms from administrative law and civil law, without taking into account the fact that the concession is not a private law contract, which is why it is not included in the Civil Code. For example, from the notions mentioned in art. 3 of Law no. 121/2018, we note that, at the works concession, the contracting authority – "*entrusts the execution of the works ... and the exploitation of the accessory goods of the works*", and at the concession of services – "*entrusts the provision and management of the services*". Therefore, this is the object of the concession, from the point of view of the administrative contract. Whereas, in article 8, mentioned above, the contracting authority "*assigns, ... its rights of possession and use over the object of the concession*", a classic formulation of civil contracts, and, valid only in the case of the concession of goods, which the new the law omitted it. Probably, this omission is not accidental, but to mask the numerous frauds in the management of public goods of the state or of the administrative-territorial units (Orlov, Belecciu, 2016). Because of these confusions and legislative ambiguities, the institution of the concession in our country has not developed in the spirit of good PPP practices.

no. 67 art Nr: 752, *Repealed from 17.02.19 through OG121 of 05.07.18, OG309-320/17.08.18 art.470*, www.justice.md, viewed 18.05.2019.

⁷ Art. 3 of Law no. 121/2018: "*works concession contract* - contract with an onerous title, concluded in writing, by which one or more contracting authorities entrust the execution of the works to one or more economic operators, as well as the exploitation of the accessory assets of the works the object of the concession, in which the consideration for the works is represented either exclusively by the right to exploit the works that are the object of the concession, or by the respective law accompanied by a payment". Note: The concept of *service concession contract* is also formulated, except that, it is: "*entrusting the provision and management of services, other than the execution of the works provided for in the concept of*" works concession contract", being replaced throughout the term of *works*, with that of *services*.

⁸ Art. 3 of Law no. 121/2018: "*accessory goods for works and services that are the object of the concession* - movable and immovable goods, public property of the state or of the administrative-territorial units, including those removed, according to the legislation, in whole or in part, from the civil circuit, which are made available to the concessionaire by the contracting authorities, provided they are necessary for the execution of the works and/or the provision of the services".

At the same time, a special law on PPP⁹ was adopted: *”in order to contribute to attracting private investments for the realization of projects of public interest, increasing the efficiency and quality of services, public works and other activities of public interest and efficient use of public heritage and public money”*. Subsequently, a Regulation was adopted for the selection of the private partner.¹⁰ As we can see from the purpose set out in the framework law, the public-private partnership was going to enhance and accelerate the development of administrative contracts, such as: the concession contracts for public goods, works and services; public procurement contracts; delegation contracts for the management of public goods or services, etc.

This goal, however, became impossible to achieve, because, our legislator, did not make a connection between the provisions of Law no.179/2008 and the other special laws, subsequently adopted, meant to achieve PPP. We refer here to the Law on public procurement (no. 131/2015)¹¹, and the Law on works concessions and service concessions (no. 121/2018). Moreover, none of the mentioned laws specified the legal nature of the contracts that they regulate, although, at the time of their adoption, the following concept was enshrined in the Law of administrative litigation¹²: *administrative contract – ”contract concluded by the public authority, by virtue of the prerogatives of public power, having as object the administration and use of public property goods, the execution of works of public interest, the provision of public services ... ”*. A concept that has emphasized all the elements characteristic of the concession and public procurement. Unfortunately, this law (no. 793/2000) was repealed by the adoption of the Administrative Code¹³, which defines the administrative contract as: *”the contract that can give birth, modify or terminate a legal report of public law, unless the law provides otherwise”*. The latter notion, rather, characterizes the legal norm

⁹ Law on public-private partnership, no. 179 of 10.07.2008, Published: 02.09.2008 in the Official Gazette no. 165-166 art Nr: 605 Effective date: 02.12.2008; www.lex.justice.md/md/328990/, viewed 13.05.2019.

¹⁰ Government Decision no. 476 of 04.07.2012, *for the approval of the Regulation regarding the standard procedures and general conditions for selecting the private partner*, Published: 13.07.2012 in the Official Gazette no. 143-148 art Nr: 530 www.lex.justice.md/index.php?action=view&view=doc&lang=1&id=344004, viewed 15.05.2019.

¹¹ Law on public procurement, no. 131 of 03.07.2015, Published: 31.07.2015 in the Official Gazette no. 197-205 art Nr: 402 Effective date: 01.05.2016. www.justice.md viewed 13.05.2019.

¹² *”administrative contract - contract concluded by the public authority, by virtue of the prerogatives of public power, having as its object the administration and use of public property goods, the execution of works of public interest, the provision of public services ... ”*, art. 2, Law on administrative litigation, no. 793, dated 10.02.2000, Published: 18.05.2000 in the Official Gazette no. 57-58 art. No: 375 Effective date: 18.08.2000, *Repealed from 01.04.19 through CA116 from 19.07.18, OG309-320/17.08.18 art.466*, www.justice.md viewed 19.08.2019.

¹³ Art. 13 of the Administrative Code of the Republic of Moldova, no. 116, of 19.07.2018, Published in the OG of the Republic of Moldova no. 309-320, from 17.08.2018, no. 466, <https://www.monitorul.md/monitor/v-2061-v/> viewed 10.07.2019.

of public law, without containing any elements (features) characteristic of the administrative contract (Ureche, 2011).

This persistence of the legislature of not recognizing and, of not clearly consecrating the institution of administrative contracts, as a means of achieving PPP and of managing in the interest of the community the public patrimony, manifested much more accentuated after 2000, regardless of the colour of political power under government. We have mentioned above only some of the confusing normative provisions, which impede the development of PPP in our country. However, we cannot overlook those that are even in the law governing the public-private partnership. Thus, in art. 18, Law no. 179/2008 the following contractual forms for the realization of the public-private partnership are consecrated: *"a) contractor /services provision agreement; b) fiduciary administration contract; c) lease/rent contract; d) concession contract; e) contract of commercial company or civil company"*. As we can see from this list, the concession is recognized as a way of achieving the public-private partnership, in common with multiple other contracts of private law (civil, commercial), while, public procurement and delegation of works management, or public services, are not included, although, by their nature, they are contracts of public law, made through public-private partnership, or, as the case may be, public-public partnership. In our opinion, civil contracts (of common / private law) are not the most suitable for the management of the goods that are the exclusive property of the state or of the administrative-territorial units, because, they cannot contain mandatory clauses, established unilaterally (specification tasks), through which the state ensures the efficient management of the public patrimony (Orlov, Belecciu, 2016). In addition, if the legislation already provides for the concession and procurement of public services, then, what is the purpose of the *"contractor/services agreement"* in the PPP? However, such a fusion of public law with private law, undermines the very essence of the concept of *"public services"*, of vital interest, which the state is obliged to provide to the population, continuously and of high quality, confusing them with *"the services"*, set up and provided by individuals according to the demand on the services market, such as: hairdressers, laundries, repairs of various objects and particular goods, etc.

As a conclusion, we mention that the public-private partnership cannot be successfully achieved, as long as it is not clear the legal nature of the report in which it is framed, whether it is a legal report of public law or a legal report of private law, whether it is a complex legal report, with elements of public law and private law, but with the clear determination of these elements. Administrative contracts are also called mixed contracts, because they contain both elements of public law (such as, unilaterally establishing, in the specifications, the object of the contract, the basic requirements and the expected results as well as, the awarding of contracts by public auction), as well as, some elements taken from private law, which can be negotiated, but which will not affect the public interest pursued by the state authorities in the management of public heritage, in the execution of public works and in the provision of public services. The extent to which the government ensures the public

interest through the PPP, that is, manages the public patrimony in the interest of the whole community, is directly proportional to the standard of living of the population. At the moment, the standard of living of the population of the Republic of Moldova is the lowest in Europe. A solution to the improvement of the situation could be PPP, if, it will be expressly provided for in the aforementioned laws (regarding concessions, public procurement and PPP), that the management of the public patrimony is subject to a regime of public law, principles of public law, unanimously recognized in democratic countries, and are made through administrative Contracts, other than those of private law.

3. The institutional framework for the achievement of the PPP

The main elements of the institutional framework for the realization of the PPP and their attributions are established in Law no. 179/2008.¹⁴ However, the

¹⁴ *"The Government approves: the projects proposed by the central public authorities, the works and services of national public interest; the objectives of public-private partnership projects of national interest; the policy documents regarding the development of the public-private partnership; normative acts and standard procedures for ensuring the functioning of the public-private partnership... The Ministry of Economy and Infrastructure elaborates the policy documents, proposes to modify and supplement the normative acts regarding the public-private partnership. The Ministry of Finance examines the proposals regarding the participation of the state budget in the realization of the public-private partnership projects, monitors the process of the execution by the public partner of the expenditures from the state budget, approving the feasibility study in the case of the public-private partnership projects, whose implementation the participation of the state budget is foreseen. The Agency of Public Property coordinates the initiation of public-private partnerships at national level, assists the public partner in identifying the objectives of the public-private partnership projects of national interest, elaborates the general requirements regarding the selection of the private partner, endorses the feasibility studies for the public-private partnerships of national interest and locally, elaborates and implements the standard documentation for the procedures for selecting the private partners, monitors and evaluates the achievement of the public-private partnerships, gives the public and private partners the necessary assistance in law enforcement, publishes informative releases and documents related to the procedure for selecting private partners on the Agency's website, keeps track of public-private partnerships and the risks related to the achievement of each partnership, grants, at application, consults in the field of public-private partnership and trains the staff of public partners, identifies deficiencies and barriers to effective public-private partnerships, presents annual reports to the Government, publishes statistical analyses on public-private partnership projects, identifies potential public - private partnerships based on the information transmitted by public partners and facilitates contacts between them and potential private partners. Local and district council: approves the list of assets owned by the administrative-territorial units, and the list of works and services of local public interest proposed for public-private partnership; approves the objectives and conditions of the public-private partnership, as well as the general requirements regarding the selection of the private partner; presents to the Agency every six months information on the implementation of public-private partnerships and on the implementation of contractual provisions; approves the tariffs for public services of communal household in accordance with the legislation; they ensured the publication of the press release; approves the projects of public-private partnership contracts. The mayor and the president of the district sign the public-private partnership contracts in the negotiated form and send their copies to the Agency for registration; ensures the monitoring and control of the implementation of public-private partnership projects within the respective administrative-*

legislative errors in this area, which are knowingly made in the interest of the ruling political class, do not ensure their proper functioning. As some authors mention, the main promoter of PPP in the Republic of Moldova has been named the Ministry of Economy. PPP being a public management tool, it concerns the development of the public sector and presents risks for local or central public finances, therefore, the authority responsible for developing this instrument and applying it must be the Ministry of Finance, which can provide viable guarantees for PPP project implementation (Budeanschi, 2012).

The role of coordinating the initiation of PPP at national level, providing assistance, consultations in the field, training the staff of public partners, as well as identifying deficiencies and barriers to the effective realization of public-private partnerships, is the responsibility of the Agency of Public Property (APP) (Article 14 of Law no. 179/2008). It is worth mentioning that, in support of achieving the established priorities, during 2013-2016, APP benefited from the assistance of foreign experts from the Twinning Project "*Strengthening the Public-Private Partnership System in the Republic of Moldova*", which was elaborated "*Handbook on the practices of implementation of public-private partnership projects and concessions*".¹⁵ Subsequently, the Agency of Public Property developed a "*Guide on the initiation and implementation of public-private partnership projects and concessions*",¹⁶ in which it is mentioned that: "The public-private partnership is institutionalized by determining the competent public authorities to ensure the initiation and implementation of PPP and establishes specific responsibilities and duties for the designated authorities".

Therefore, the legislation in force in the Republic of Moldova establishes a rather broad institutional framework for the implementation of the PPP. It remains to be seen whether these authorities and public institutions have sufficient and well-correlated powers, as well as, well-qualified personnel for PPP projects.

Without going into too much detail, we note that the Republic of Moldova has created a very complex PPP institutional framework, inspired by the practice of other states. However, the implementation of the PPP has proved to be a very cumbersome process, accompanied by errors whereby, instead of effectively protecting and valorising the public heritage, it was misappropriated and misappropriated by those in government. An eloquent example is the concession,

territorial unit. The National Council for Public-Private Partnership is a functional structure of general competence, without legal personality, set up next to the Government to evaluate the state policy in the field of public-private partnership, to define the priorities and strategies for the implementation of the public-private partnership in the Republic of Moldova." - Art. 11-16 of the Law on public-private partnership, no. 179 of 10.07.2008, Published: 02.09.2008 in the Official Gazette no. 165-166 art Nr: 605 Effective date: 02.12.2008; lex.justice.md/md/328990/, viewed 13.05.2019.

¹⁵ https://app.gov.md/sites/default/files/document/attachments/twinning_maketa-1.pdf, viewed 04.04.2019.

¹⁶ https://app.gov.md/sites/default/files/document/attachments/ghid_ppp.pdf, viewed 04.03.2019.

followed by the privatization and repeated sale of Chisinau Airport,¹⁷ which is currently being widely publicized and discussed. The erroneous interpretations and deviations from the legislation in force and, from the good practices of public-private partnership, have been present right from the beginning of this concession. Thus, in the Specification and in the concession contract, an uncertain object was established and precisely the reverse one, the one being: ***“the assets of the State Enterprise “Chisinau International Airport” and the lands related to them”***, with the concessionaire obliging to use them in the provision *air transport service*. While, in fact, the concessional object was the *air transport service*, and the Airport building, the runways, the land on which they are located, are only goods related to the air transport service. In addition, as mentioned above, by accident, or, intentionally, the legislature has amended the law on concessions, so that the regulations on the concession of public goods have disappeared. However, *the assets of the State Enterprise “Chisinau International Airport”* were nothing that public goods related to the respective service and could not be the object of the concession separately from it. The new law on works concessions and service concessions (no. 121/2018) has no retroactive action, but it does not contain provisions applicable to the situation described above. Therefore, the state is deprived of important public goods by those in government, and the legislation in force does not provide (contains) clear normative regulations, by which such errors could be removed through a fair trial¹⁸, obviously, after the friendly ways to resolve

¹⁷ After, in 2013, Chisinau International Airport was granted to SRL “UK KOMAKS” - Khabarovsk, Russian Federation, following a tender that raised multiple question marks, followed a series of changes (replacement by sales contracts) of the concessionaire. Thus, Khabarovsk Airport remained only 5 percent of Avia Invest's capital, and the remaining 95 percent came from the ownership of another Russian company, which in 2016 sold its share to a company in Cyprus. In the most recent transaction, from August 19, 2019, Avia Invest Company was bought by an investment vehicle firm NR Investments Limited. The transaction occurred while the airport concession was being investigated by a special committee of Parliament on the correctness of the concession and the possibility of terminating this contract, fraudulently drawn up. An attempt to cancel this contract was made in 2015, however, the respective commission of inquiry did not identify plausible reasons for termination of the contract, without the risk of arbitration failure. See more information in this regard: [https://moldova.europalibera.org.in-dezbatare-controversata-concesionar](https://moldova.europalibera.org/in-dezbatare-controversata-concesionar); [https://www.timpul.md.articol,\(oficial\)-raportul-privind-concesionarea](https://www.timpul.md/articol,(oficial)-raportul-privind-concesionarea); <https://diez.md> › 2019/08/19 › concesionarii-aeroportului-chisinau-si-au-sc..; <https://sputnik.md> › moldova › Decizia-CSS-Contractul-de-concesionare-a-. viewed, 27.07.2019.

¹⁸ We would like to mention the fact that the legislation in force in the field of PPP, concession and public procurement does not contain clear provisions for resolving the disputes and terminating the respective contracts, using general phrases, with different content, such as: *In the case of litigation, the parties will take all measures to resolve it amicably and may agree on mediation or arbitration as a way of resolving disputes arising in the process of achieving the public-private partnership* (art. 36 of Law no. 179/2008); *The requests regarding the execution, nullity, cancellation, resolution, termination or unilateral termination of the concession contracts are examined by the administrative litigation courts* (art. 43 of Law 121/2018). *The lawsuits and requests regarding the execution, nullity, cancellation, resolution, termination or unilateral termination of the public procurement contracts are solved by the competent court.* (art. 81 of the

the conflict. In this case, and in other similar ones, at central and local level, the institutional system of the PPP did not fulfil its mission to protect the public interest in the spirit provided by the legislation in force, but, rather, it was used as an instrument of fraudulent transfer of public goods and services into private property.

The implementation of the PPP is a complex process that requires, besides clear normative regulations, institutions with an administrative capacity (attributions, financial resources and specialized personnel) adequate to achieve the proposed objectives.

In this context, in 2016, the Court of Accounts approved the Performance Audit Report on the public-private partnership system, stating that the functionality of the PPP system depends on "the collaboration and interdependence of the structures that are part of it, in order to use as much as possible more efficient public funds".¹⁹ The basic objectives of the performance audit regarding the functionality of the PPP system were to ascertain whether: Is there a national legal framework with exhaustive provisions for ensuring the functionality of the PPP system?; Is there an appropriate institutional framework for PPP implementation in the Republic of Moldova?; Which were the state benefits resulting from PPP contracts?

- Regarding the legal framework in the field of PPP system, the audit found that, it is not clear and intelligible, because: - the regulation of the conditions of a PPP takes place through a legislative act, and, the contractual clauses of each type of PPP contract are established by other special legislative acts; - the lack of regulations regarding the modalities of PPP initiation in different fields (health and sanitation), in which the central specialized public authorities as well as the local ones will be involved; etc.
- Regarding the institutional framework for the achievement of the PPP, the mentioned audit found that, it does not ensure a sustainable management, because, the public authorities and institutions that are part of this system do not effectively fulfil the attributions given by law in their competence, in particular, those related to: evaluating state policies for defining priorities and analysing the real situation in the field of PPP, assigning risks, identifying barriers and deficiencies existing, during the development of PPP contracts, monitoring them by the Agency of Public Property, drafting feasibility studies, justification of the investment recovery term, etc.

Law on public procurement no. 131/2015, Published: 31.07.2015 in the Official Gazette no. 197-205, art. Nr: 402, Date of entry into force: 01.05.2016). As we can see, for the PPP there is no provision for judicial resolution of disputes, in the case of public procurement, reference is made to the *competent court*, and only in the case of concessions, reference is made to the *administrative litigation courts*. Paradoxically, but at the same time, the Law of the administrative litigation is repealed by the adoption of the Administrative Code, which I mentioned above.

¹⁹<https://www.rise.md/wp-content/uploads/2016/11/Curtea-de-Conturi-Raport-audit-privind-sistemul-arteneriatului-public-privat-2016-.pdf> viewed 22.07.2019.

- The findings regarding the benefits brought to the state through PPP were not encouraging either. Thus, it was mentioned in this chapter that, in some cases, there were no benefits, or, they were considerably diminished, and, the objectives initially set due to the imperfection of the legal and institutional framework for achieving the PPP were not achieved.

As we can see, in this Report there were mentioned several difficulties faced by the PPP in the Republic of Moldova. In addition, several recommendations were submitted to the authorities involved in the implementation and monitoring of PPP projects. However, in the period that followed there was no other audit to verify the implementation of the proposed recommendations, but no visible improvements regarding the legal and institutional framework in the PPP field were made.

Conclusions

From the aforementioned, we can conclude that, although, in the Republic of Moldova there is an imposing legal framework for regulating the public-private partnership, as well as, a complex institutional system for the achievement of the PPP, however, it has not gained practical applicability to ensure efficient management of public heritage in the interest of the whole community.

The public-private partnership, being a rather complex process, faces many difficulties within the European Union. The most eloquent of them are also monitored and publicized in the Reports of the European Court of Auditors.²⁰

These, as well as the difficulties mentioned in the national reports, could, to a large extent, inspire our legislator to modernize the legislation, in the field of PPP, in such a way as to avoid the errors and confusions of regulation and of public-private partnership development in the Republic of Moldova.

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