



# Legal Framework of Public-Private Partnership Contract Management: Recommendations for Türkiye

## Kamu Özel Ortaklıklarında Sözleşme Yönetiminin Yasal Çerçevesi: Türkiye için Öneriler

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### öz

Kamu özel ortaklıkları, gelişmekte olan ülkeler için kamu hizmetlerinin görülmesinde alternatif bir finansman yöntemi olarak ele alınmaktadır. Yüksek riskli ve karmaşık yapılı bu projeler için etkili sözleşme yönetimi, önemli bir unsurdur. Bu konuda yapılan çalışmalar incelendiğinde görülmüştür ki kamu özel ortaklıkları, sözleşme temelli olmalarına rağmen daha çok bir finansman yöntemi olarak ele alınmış ve incelenmiştir. Bu nedenle çalışmada, kamu özel ortaklıklarında sözleşme yönetimi konusunda literatür taraması ile detaylı bir araştırma yapılmış ve bunun sonucunda kamu özel ortaklıklarında sözleşme yönetimi için ana aktiviteler belirlenerek bir çerçeve ortaya konmuştur. Ardından gelişmekte olan ülkelerden olan Brezilya, Kenya, Kosova, Filipinler ve Türkiye'deki kanun ve yönetmelikler; çalışmada oluşturulan bu çerçeve kapsamında karşılaştırmalı olarak incelenmiştir. Türkiye'deki yasal düzenlemelerin PPP başarısı için yeterli olup olmadığı ve geliştirilmesi gereken zayıf yönlerin tespit edilmesi araştırmanın problemidir. Yapılan çalışma sonucunda; incelenen bu beş ülkede yönetim ve sözleşme yönetim ekibinin kurulması, sözleşme yönetiminin planlanması, kurulması ve yürütülmesi, sözleşme değişikliklerinin yönetilmesi, performansın yönetilmesi ve sözleşme bitişi ile varlık devri için düzenlemelere rastlanmıştır. Ancak risk yönetimi, izlenmesi ve değerlendirilmesi ile ilişkilerin yönetimi konusunda, yasal çerçevede eksiklikler olduğu sonucuna ulaşılmıştır. Her iki faaliyet de kamu özel ortaklığı projelerinde sözleşme yönetiminin başarılı bir şekilde gerçekleşmesi için kritik öneme sahiptir. Bu bağlamda, Türkiye'ye PPP mevzuatının iyileştirilmesine yönelik öneriler getirilmiştir.

**Anahtar Kelimeler:** İnşaat Sözleşmesi, Kamu Özel Ortaklığı, Kamu Özel Ortaklığı Projesi, Kamu Özel Ortaklıkları Yasal Çerçevesi, Sözleşme Yönetimi.

### ABSTRACT

Public private partnerships (PPP) are considered as an alternative financing method for public services in developing countries. Effective contract management is an important element for these high-risk and complex projects. For this reason, in the study, detailed research was conducted through literature review on contract management in PPPs and as a result, a framework was created by determining the main activities for contract management in PPPs. Then, the laws and regulations in the developing countries of Brazil, Kenya, Kosovo, Philippines and Türkiye were comparatively examined within the scope of this framework developed in the study. The problem of the research is to determine whether the current legal regulations in Türkiye are sufficient for PPP success and to identify the weaknesses that need to be improved. As a result of the study, regulations were found for the establishment of administration and contract management team, planning, establishment and execution of contract management, managing contract changes, managing performance and contract termination and

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*asset transfer, in these five countries examined. However, it has been concluded that there are deficiencies in the legal framework regarding risk management, monitoring and evaluation and relationship management, which are important criteria of contract management. Both activities are critical for successful contract management in public private partnership projects. In this context, recommendations have been made to Türkiye to improve PPP legislation.*

**Keywords:** Public-private Partnership, Public-private Partnership Project, Construction Contract, Contract Management, Legal Framework of Public-private Partnership.

## INTRODUCTION

Public private partnerships (PPP) are an issue that emerged as a result of the growing economy and the increasing and developing construction projects and activities in parallel with this situation, and the search for a solution that could provide an alternative to the use of government resources. The model is discussed and researched all over the world, as well as in Türkiye. These partnerships are long-term contracts established between a public legal entity and a private legal entity (Gözler, 2009). The contracts in question include a public institution or government as a public partner; as a private partner, it is established with the participation of a private company or consortium. In studies on the subject, the term public partner is considered as the contracting authority.

It is seen that the foundations of public private partnerships date back to the Roman period and were implemented in various upper structure projects during this period (Atasoy, 2011). Then, it was seen to be applied in canal and railway projects especially in France and England in the 16th and 17th centuries. Its applications in Europe increased with the development of liberal economies in the 19th century (Minow, 2003; Gürkan, 2013). Today, it is a subject that continues to be worked on and implemented in different countries such as the USA, Germany, Sweden, Canada and Ireland. A book called Green Book has been published by the European Union as a guide to the countries where the model is implemented. The publication date of this guide is 2004. Several European Union countries are now successfully implementing PPP policies. Countries such as the UK and France are examples. As the UK is a common law jurisdiction, it does not have a comprehensive set of laws for PPPs. Despite this, all contractual provisions are in line with the guidelines. It also has a unit authorized to supervise the PPP (Kahyaogullari, 2013). Developed countries such as the UK and Australia are concerned with balancing risk between the private and public sectors, reducing the complexity of the system and increasing accountability for PPPs projects. These issues require an emphasis on microeconomic conditions. However, developed countries see PPP as a tool for adopting PPP policy and improving public services that are related to micro policy objectives such as public satisfaction (Kahyaogullari, 2013; Hodge, 2004). As developed countries have made progress on macroeconomic issues, they are able to focus on microeconomic issues. Therefore, they aim to ensure accountability and transparency by creating robust regulatory frameworks (Kahyaogullari, 2013).

According to Shick (1998), developing countries have sought to accelerate public sector reforms using innovations such as PPP developed and implemented by developed countries (Shick, 1998; Kahyaogullari, 2013). But it cannot be argued that developing countries will follow the same path when implementing these new reforms (Kahyaogullari, 2013). For this reason, various researchers argue that the process cannot be similar between developed and developing countries for reasons such as socioeconomic and political differences (Kahyaogullari, 2013; Mitchell-Weaver and Manning, 1991; Mirafteb, 2004; Sarker, 2006; Appuhami etc., 2011).

According to Ibrahim (2024), there is a difference between PPP contract implementation in developed and developing countries. Developing countries face some challenges such as lack of effective policies, poor planning, macroeconomic situation of the country, level of corruption, etc. (Ibrahim, 2024). According to Kul (2021), the success of PPP programs requires strong and clear political support. In

such projects, the public supports the project by making various commitments. Although these state supports attract investor interest in the project, it is very important that they are provided in the right way for the success of the project and the realization of the state's objective (Kul, 2021). According to Kahyaogullari (2013), the process of adoption and implementation of PPPs differs in developing and developed countries. The most important of these differences is the government's objectives and the place of PPP policy on the political agenda. While developed countries are mainly concerned with microeconomic issues, developing countries have macro-objectives (Kahyaogullari, 2013).

It began to be widely used in Türkiye, mostly after 1980 (Uğur and Miynat, 2014). As a result of the private sector-oriented development model adopted in Türkiye in the 1980s, public investments in industry have gradually decreased and infrastructure investments have come to the forefront in the central investment budget. According to World Bank data, a total of 170 public private partnership projects were implemented in Türkiye from 1990 to 2019. The total cost is US\$102.437 million. 164 of these projects are under construction or operation (Akyel and Komurlu, 2019). According to Presidency of The Republic of Türkiye Presidency of Strategy and Budget, the total number of projects realized through public-private partnership as of 2025 is 272 (Presidency of The Republic of Turkey Presidency of Strategy and Budget, 2025). The continued rapid implementation of public private partnership projects makes it imperative that the contract management of these projects is successful. According to Teşli (2012), for successful PPP implementations, there should be a legal framework to enable the provision of financing, there should be a PPP Law that provides flexibility to create PPP models in line with the needs of the administrations and the requirements of the projects, necessary arrangements should be made to minimize project legal risks, the specifications and contract should be clear enough for the contractor to make cost calculations and should not include open-ended and uncertain obligations, and the contract should be open to public scrutiny. Therefore, contract management is of critical importance in PPP implementations. In order for public-private partnership projects to be realized successfully in Türkiye, it is important that contract management is established in a healthy manner and the contract management process is carried out effectively. The problem of the research is to determine whether the current legal regulations in Türkiye are sufficient for PPP success and to identify the weaknesses that need to be improved as a result of comparison with developing countries with similar macroeconomic conditions. In this regard, the framework created in this study aims to reveal the strengths and weaknesses of PPP contract management in Türkiye. As a result of the study, recommendations for improving weaknesses are expected to contribute to increasing the success of the PPP.

## **1. Public Private Partnership Concept and Contract Management in Public Private Partnerships**

There are various nomenclature proposals for public private partnerships in Türkiye. These are “public private cooperation”, “public- private partnership”, “public private sector partnership”, “public private partnership model”. The name that is accepted worldwide and can be found in all studies is the concept of Public Private Partnership (Boz, 2016). Within the scope of this paper, it will be referred to as public private partnership.

Contract management is the process in which the roles undertaken by the parties and the basis of communication with the private sector are determined and includes the roles of the necessary bodies and related organizations (Almarri ve Abuhijleh, 2017). Bloomfield (2006), Bloomfield pointed out that the successful implementation of long-term public private partnership projects is an issue in which local governments should invest. These include specialized expertise, effective contract management and strong governance structures (Bloomfield, 2006).

### 1.1 Main Activities of Contract Management in Public Private Partnership:

Contract management is a complex structure consisting of many activities. According to PPP Certification Guide (2016), primary activities can be discussed under 4 main headings. These main activities are “establishment of governance and contract management team”, “planning, establishing and executing contract management, “relationship management” and “performance management” (Asian Development Bank (ADB) etc., 2016).

According to PPP Reference Guide Version 3.1 (2017), the main activities of contract management can be discussed under the following 4 main headings. These are “establishing contract management structures”, “monitor and manage the delivery and risk of the public private partnership project”, “dealing with change” and “contract termination and asset transfer” (World Bank Group (WBG), 2017).

According to Almarri and Abuhijleh (2017), these main activities are “change management”, “asset transfer”, “management structure” and “includes performance management” (Almarri ve Abuhijleh, 2017).

The World Bank Group Public Private Partnership Resource Center (2007) classified these activities as follows “establishing the contract management team”, “management of relationships”, “managing service performance” and “contract administration” (The World Bank Group Public Private Partnership Resource Center, 2007).

Within the scope of the study, after the literature review above, the main activities of contract management in public private partnerships were examined in 7 components. These;

- Establishment of governance and contract management team
- Planning, establishment and execution of contract management
- Managing contract changes
- Managing performance
- Monitor and manage PPP project delivery and risk
- Managing relationships
- Contract termination and asset transfer.

Establishment of governance and contract management team: Introducing and managing projects requires good leadership, development of institutions and a good management structure (Zhang ve Tan, 2019). Communication between the contract management team and the project management team, the duties and responsibilities of these teams and their scope of work should be clearly defined (Almarri ve Abuhijleh, 2017). Although there is no definitive formula for the size and structure of the contract management team, the number of people it will consist of may vary from a few to fifty people, depending on the size and complexity of the contract and project (Global Infrastructure Hub, 2018). The contracting authority may use more than one PPP project, the contract can be managed by establishing a central team for all these projects, and this contract management team can manage the process of all these projects (The World Bank Group Public Private Partnership Resource Center, 2007).

Planning, establishment and execution of contract management: Within the scope of establishing the necessary structures for this management process, the responsibilities and duties within the structure of the contracting authority, in other words the public partner, are determined. Additionally, at this stage, it is explained how the relationship with the private party will be managed (World Bank Group,

2017). The aforementioned contract management plan includes contract management (ADB. etc., 2016).

Additionally, apart from the contract management plan, monitoring or reporting should be done when necessary for various aspects of each partner; The contract should specify a daily, weekly, monthly or quarterly frequency for these activities (Burnett, 2013). Due to the long duration of public private partnership projects, it is possible that the project will not be completed by the end of the tenure of the staff at the beginning of the contract. At this point, information management, establishing solid processes and succession planning become important. When performing succession planning, it is recommended to create an operational contract manual (The World Bank Group Public Private Partnership Resource Center, 2007).

**Managing contract changes:** One of the most important points in achieving value throughout the process in long-term public private partnership projects is being able to withstand significant changes during implementation (ADB etc., 2016). The public private partnership contract should include triggers and methodologies for the acceptance and implementation of changes made (European PPP Expertise Centre (EPEC), 2015). Procedures for public and private partner proposals, discussion, evaluation and implementation of changes to the contract are essential for change management. Afterwards, change proposals must be managed effectively (Burnett, 2013).

**Managing performance:** In order to proceed in accordance with the contract, service performance must be measured and monitored. In performance management, the ability of the service or services offered by the private partner to meet the specified standards, the effect of remedial measures and whether there is a noticeable trend in the provision of the service are examined (The World Bank Group Public Private Partnership Resource Center, 2007). In public private partnerships, effective contract management will have a supporting role in determining and monitoring the private partner's construction and operations performance. In addition, it will ensure that project risks are managed by the contracting authority throughout the public private partnership agreement (EPEC, 2015).

**Monitor and manage PPP project delivery and risk:** How project risks will be shared between the private partner and the contracting authority should be determined at the beginning of the relationship between them. This forms the basis of the relationship between the parties for risk management (ADB etc., 2016).

The risks that need to be managed by the contract management team are as follows:

- Risks related to the project that are included in the contract and are the responsibility of the parties
- Risks to be covered by the contracting authority
- Project-related risks that cannot be foreseen in the public private partnership agreement
- Risks related to differences that may arise in the contract of the public private partnership project (EPEC, 2015).

A risk management plan should be prepared by the contract manager before stepping into the contract management process in the project cycle. The risk management plan should be taken as a reference and guide throughout the contract (WBG, 2017).

**Managing relationships:** Since public private partnership projects are business partnerships between parties, relationship management and communication between the project parties are extremely important in these projects (ADB etc., 2016). The most important factors for a successful relationship are the parties' understanding of each other, the existence of open communication, information sharing and mutual recognition of goals. In order to establish successful communication, it is essential

to have proper communication channels between the public and private parties at strategic, commercial and operational levels (United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), 2011).

Contract termination and asset transfer: Provisions that will ensure the adequate return of the asset subject to the contract within the framework of the contract should be included in the contract (EPEC, 2015). The public partner must have the authority to suspend or terminate the contract against the risk that the private sector partner may fail in any aspect. In this context, without planning a strategy, the public side will focus on one transaction, which may prevent the financial response from being received (Burnett, 2013).

A public private partnership contract must include detailed provisions regarding contract termination. The issues that should be included within the scope of the contract are as follows:

- Conditions for termination of any party if the contract ends before the targeted and planned date;
  - Payment to be made to the private partner, if any, after termination by the public partner
  - The status of the assets after termination when they are delivered to the public partner (EPEC, 2015).
- The Results section is the part where the findings and data, in short, the conclusions reached as a result of the study are expressed in writing.

## 2. Material and Method

Although public private partnership projects may have national or international differences, they may include some issues that are common on a global scale. In this context, the challenges, risks, limitations and success factors can be similar (Gürgün ve Tauran, 2014). According to Sungur (2018), these common risks include deficiencies in contract design, the impartiality of responsible persons in the regulation and contract management, and the consideration of one party's interests. According to Kavishe etc. (2018), poor contract and tender information can be shown as common risks. In a study conducted by Fombad (2013) in South Africa, similar difficulties include ineffective contract management. According to all these data obtained, it can be seen that one of the most important factors affecting the success of public private partnerships is contract management. Although contract management is a very important issue in contract-based public private partnerships, it was seen in the literature review that there were few studies on this subject. Fu etc. (2023) reviewed the literature published on public private partnership between 2012 and 2021. In this study, they examined the topics of risk management, contract management, critical success factors (CSFs) and critical failure factors (CFFs), economic and financial issues, and performance management. Accordingly, there are still significant gaps in contract management in public private partnerships. It needs to be divided into more application areas and countries (Fu etc., 2023). As a result of this determination, first of all, an extended literature review was conducted within the scope of the study. Later, a framework for the structure of contract management in public private partnership projects was developed. The main activities explaining this framework for the structure of contract management in public private partnership are determined as establishment of governance and contract management team; planning, establishment and execution of contract management; managing contract changes; managing performance; monitor and manage PPP project delivery and risk; managing relationships; contract termination and asset transfer. Within the scope of the study, the laws, regulations and ordinances in Brazil, Kenya, Kosovo, the Philippines and Türkiye, selected among the developing countries, were examined within the framework of this developed structure. These are developing countries with similar macroeconomic conditions to Türkiye. The study is based on data from The World Bank Group (WBG) (WBG, 2025). In this context, developing countries where public-private partnerships are frequently used and whose data on PPPs are transparently shared by The World Bank



Group were analyzed. As a result of the analysis, Brazil, Kenya, Kosovo, the Philippines are the 4 countries whose laws and regulations on public private partnership projects can be accessed through The World Bank Group data and included in the study.

### **3. Findings: Examination of Contract Management in Public Private Partnership within the Scope of Legal Framework in Various Countries**

Within the scope of the study, developing countries where public private partnerships are implemented were examined, focusing on 5 developing countries that carry out contract management among these countries, and about their laws and regulations in this field were made literature review. The countries are Brazil, Kenya, Kosovo, Philippines and Türkiye. These countries are developing countries, and their relevant laws and regulations can be accessed transparently through World Bank data.

#### **3.1 Brazil:**

Brazil administratively consists of 26 states, a Federal District and a total of 5570 municipalities. Just as there are laws and regulations at the state level in the country, there are also laws and regulations at the federal government level. These are Federal Law No. 11.079, Law No. 11.688 in the State of São Paulo, Law No. 14.868 in the State of Minas Gerais, Law No. 9.290 in the State of Bahia and Law No. 12.765 in the State of Pernambuco.

##### **•Establishment of Governance and Contract Management Team in Brazil**

This activity is included in Federal Law No. 11.079. In addition, the relevant regulations are involved within the context of Law No. 11.688 in the State of Sao Paulo.

While Article 14 of the Federal Law No. 11.079 states the necessity of establishing a unit that will manage the public private partnership project and report and evaluate the performance of the contract, Article 3, Paragraph 8 of the Law No. 11.688 of the State of Sao Paulo states that Economy and Planning through the created unit. Secretariat to carry out operations and coordinated activities regarding the public private partnership project. The importance of the PPP Governing Council's recommendations and dissemination of the concepts and methods to be implemented in order to assist projects receiving support from the unit in question was emphasized.

##### **•Planning, Establishment and Execution of Contract Management in Brazil**

In Article 15 of Law No. 11.079, inviting tenders, sending invitations, managing the tender process, monitoring and controlling public private partnership contracts are the responsibility of Ministries and Regulatory Bodies.

##### **•Managing Contract Changes in Brazil**

Within the scope of this activity, no relevant information was found.

##### **•Managing Performance in Brazil**

According to Article 5 of Federal Law No. 11.079, when preparing a public private partnership contract, it should be prepared by including the necessary mechanisms to protect the quality of the service provided and by including objective criteria for evaluating the performance of the private party. In Article 14 of the same law, it is stated that a unit should be established to evaluate contract performance reports (Federative Republic of Brazil, 2004).

Law No. 11,868 of the State of Sao Paulo states that while public private partnership projects are carried out, they will be constantly monitored to evaluate the efficiency with the criteria previously determined by the contract (Government of the State of Sao Paulo, 2004).

- Monitor and Manage PPP Project Delivery and Risk in Brazil

Federal Law No. 11.079 states in Article 5 that public private partnership contracts should address the situation of risk sharing, including various force majeure, changes in state policy and unforeseen events.

- Managing Relationships in Brazil

Within the scope of this activity, no relevant information was found.

- Contract Termination and Asset Transfer in Brazil

There are regulations on this subject within the scope of Law No. 11.868 published in the State of Sao Paulo and Law No. 9.290 of the State of Bahia.

### 3.2 Kenya:

The Public Private Partnership Act was published in Kenya in 2013. Within the scope of the law in question, it was deemed appropriate to establish some units. These units; PPP Committee, PPP Unit and PPP Node. Additionally, the duties and responsibilities of the mentioned units are included.

- Establishment of Governance and Contract Management Team in Kenya

In Article 55 of the Legislative Supplement No. 58, published on 19 December 2014, the public partner is required to appoint a contract negotiation committee to establish the project contract (Republic of Kenya, 2014).

- Planning, Establishment and Execution of Contract Management in Kenya

The subject is covered in Section 65 of the 2013 PPP Act. It has been stated that the public partner will ensure the execution of the contract together with the private sector partner. It is the responsibility of the contracting authority to monitor the implementation of the public private partnership contract, supervise the management of the contract, prepare reports on the implementation of the contract and submit them to the public private partnership committee (Republic of Kenya, 2013).

- Managing Contract Changes in Kenya

There are regulations regarding this activity in the 2013, PPP Act. Accordingly, the public private partnership contracts should include the following;

- Extent of the public partner's right to change the terms of the project and other responsibilities imposed on the private partner
- What will be the basis of compensation for losses arising from the above-mentioned situations and similar changes and the relevant mechanisms
- Fundamentals of risk determination related to changes that may occur in the law, force majeure, unforeseen accidents, or, if any, exploration of existing structures and subsequent compensation,
- Emergency lawsuits by the public partner or lenders as a result of the delivery process and default of the private partner, which may occur due to termination or termination of the contract by any partner in the Project (Republic of Kenya, 2013).



### •Managing Performance in Kenya

Under the PPP Act, the public partner is the party responsible for measuring project output (Republic of Kenya, 2013).

### •Monitoring and Managing the Delivery and Risk of The Public Private Partnership Project in Kenya

According to World Bank Group data, in Kenya, the contract management team in public private partnerships is not obliged to establish risk management mechanisms.

### •Managing Relationships in Kenya

In accordance with Section 65 (1)(c) of PPP Act, the public partner will ensure the execution of the contract together with the sector regulators. Also, facility or service users etc. It is the responsibility of the private party to ensure communication with other stakeholders (Republic of Kenya, 2013).

### •Contract Termination and Asset Transfer in Kenya

According to the PPP Act, the public private partnership agreement must include the ownership of the project assets, the obligations of the parties regarding the transfer and delivery of the project site, early termination events in which one of the parties may terminate the contract, the delivery process of the project upon termination, and the termination of the contract (Republic of Kenya, 2013).

## 3.3 Kosovo:

The Kosovo Government issued a directive after the cabinet meeting held on 04 July 2008. According to this directive, it is stated that public private partnership projects are a tool to implement public services and encourage investment, and therefore these projects will be supported by the Kosovo Government. Various laws and regulations have been published in this direction.

### •Establishment of Governance and Contract Management Team in Kosovo

In accordance with Article 48 of Law No. 04L-045 of 2011, the public partner must identify the institutions and/or personnel responsible for the supervision and monitoring of the contract.

### •Planning, Establishment and Execution of Contract Management in Kosovo

It is stated in Article 81, Paragraph 2 of Law No. 04/L-042 that the contracting authority must decide on the management plan and that it must be signed by the parties before the implementation begins. In addition, the authority to regulate the rules regarding the contract management plan belongs to the contracting authority. The content of the contract management plan is included in the 3rd paragraph of the same law. In this context, the contract management plan should include the following;

- Name of the employee or employees of the public partner determined to be responsible within the scope of the management of the contract
- When deemed necessary, a supervisory resident or project engineer or engineers
- Number and categories of auxiliary personnel as well as employees due to contract management, including technical experts recruited and included in the project from outside the institution.
- A timeline or a project plan
- Gantt charts,
- Diagrams related to contract management activities, including the contract duration

In addition, the institution that monitors contract management is the public private partnership committee.

Under Law No. 04L-045 of 2011, if the project parties include more than one public institution, the institution's public private partnership committee must identify the public partner and partners for the contract in question and establish procedures to coordinate their responsibilities. In Article 19 of the same law, the responsibilities of the contracting authority are as follows;

- Establishing a competent project management team to carry out the selection of the private party in the procurement process and to complete the contract with the private party,
- Establishment of a professional and qualified contract management team to monitor the private partner's progress as regards the contract and implement the contract.

#### •Managing Contract Changes in Kosovo

According to the Law No. 04L-045 of 2011, Article 48, Paragraph 2, the contract provides for ways out as a result of default by any party, failure of any party to comply with an obligation contained in the contract as a result of events beyond its control, or it should include the situations in which the person may be exempt from liability in case of delay and the procedures for reviewing, changing and changing the contract terms.

#### •Managing Performance in Kosovo

Pursuant thereto Article 18 Paragraph 2 of the above-mentioned law, it is emphasized that the public private partnership department must regularly evaluate the performance and impact of the public private partnership in order to fulfil its responsibilities.

#### •Monitoring and Managing the Delivery and Risk of The Public Private Partnership Project in Kosovo

No regulation on this issue has been found in Kosovo.

#### •Managing Relationships in Kosovo

Article 18 of Law No. 04L-045, dated 2011, includes regulations on the subject. Accordingly, a Central Public-Private-Partnership Department will be creating in the Ministry of Finance. The said presidency will assist and inform the required public units. Additionally, the public private partnership department will be responsible for interacting with project stakeholders and public education campaigns to inform the public about the KMAU private partnership and coordinating public private partnership related activities in all economic sectors as well as social sectors (Republic of Kosovo, 2011).

#### •Contract Termination and Asset Transfer in Kosovo

Pursuant to Article 10 of Law No. 04L-045 of 2011, during the contract period, the public partner will temporarily transfer to the private partner the ownership of the public infrastructure and other designated public assets directly related to the content of the contract, the cancellation of the contract. In case of termination or termination, it may be transferred to be returned to the contracting authority in accordance with the circumstances specified in the public private partnership agreement. Article 48, paragraph 2 of the same law states that the contract must include the rights and obligations upon termination or expiration of the contract, the compensation calculation method, resolution mechanisms for disputes that may occur between the parties, and the conditions and procedures relevant to the transfer of the private partner.

### 3.4 Philippines:

Public private partnerships are explained in the Republic Act No. 7718 The Philippine BOT Law, Implementing Rules & Regulations, Revision 2012 Preliminary Provisions, Section 1.1. policy article. It was stated that it is a state policy to provide appropriate incentives for the construction, operation and maintenance of infrastructure and development projects financed and implemented by the Government by utilizing and supporting them from the resources of the private sector. This also brought about the recognition of the vital role of the private sector in achieving national growth and development.

- Establishment of Governance and Contract Management Team in The Philippines

According to Article 14 of the above-mentioned law, the coordination and monitoring of projects is the responsibility of the Public Private Partnership Center. According to paragraph 3 of the same article each associated LGU (local government unit) can create the PPP unit headed by a senior official and containing technical and legal personnel competent in public private partnership projects.

- Planning, Establishment and Execution of Contract Management in The Philippines

According to Chapter 11 of the above-mentioned law, it is stated that every infrastructure project undertaken must comply with the approved plans, project specifications, determined standards and anticipated costs, and in local projects, the responsibility for their monitoring and supervision lies with the institution or local government unit in question.

- Managing Contract Changes in The Philippines

According to Section 2 of the law, changes to the terms and conditions of the drafted contract may be allowed after approval by local government units. In this case, the legal advisor must be informed in writing Changes to the draft contract are not permitted, except for changes affected by the bid of the winning private partner or changes to the approved contract terms. According to Chapter 12 of the same law, changes provided by local government units are changes that do not cause a decrease in the scope of the work or performance standards, a radical change in the arrangement of the contract, or an extension of the term of the contract and do not require financial incentives or additional financing provided by the government in the context of the project.

- Managing Performance in The Philippines

According to Section 12 of Republic Act No. 7718 of 2012, local government units determine whether performance security will be published. The security of performance in operations will be regulated to ensure that the project continues in compliance with the operating variables and specifications in the context of the contract. After the completion of the project, an acceptance certificate will be issued confirming its compliance with the specified specifications and standards. Performance safety for construction works will be released after receipt of the acceptance certificate.

- Monitoring and Managing the Delivery and Risk of The Public Private Partnership Project in The Philippines

No regulation on this issue has been found in the Philippines.

- Managing Relationships in The Philippines

No regulation on this issue has been found in the Philippines.

- Contract Termination and Asset Transfer in The Philippines

Various explanations regarding contract termination are included in Chapter 9 of the Law. In the event of cancellation, termination or termination of a public private partnership by the public partner through the fault of one of the parties or by mutual agreement, said project owner will be compensated for the actual expenses incurred on the project plus a reasonable rate of return. In the same section, the conditions for termination and cancellation are included. If the private partner fails to comply with any of the terms of the contract or commits a material breach of the contract, the local government unit must notify the private partner in writing. If the necessary correction is not made within the specified period, the local government unit has the right to terminate the contract. According to Article 12 of the said Chapter 9, the place of arbitration or settlement of cases in case of dispute depends on the joint decision of the parties to the contract. However, the default location is the Philippines. According to Article 23, after the transfer of the facility in good working order, a third party is appointed to determine the residual value of the facility.

### 3.5 Türkiye:

The legal framework of public private partnerships in Türkiye has been established by some laws and regulations at different local and ministerial levels.

The responsibilities and powers of the Municipal Council are explained in Article 18 of the Municipality Law No. 5393, published in 2005. Accordingly, it was stated that the granting of privileges on behalf of the municipality and the decision to make municipal investments in the form of build-operate or build-operate-transfer model were made; This meant that the authority to decide on the implementation of public private partnership projects was given to municipalities.

In Article 10 of the Special Provincial Administration Law No. 5302 and dated 2005, granting concessions on behalf of the Special Provincial Administration and realizing investments through the build-operate or build-operate-transfer model are among the responsibilities and powers of the Provincial General Assembly, and special provincial administrations have been authorized, similar to the situation in municipalities (T.C. Law No. 5302 and dated 2005 on Special Provincial Administration, 2005).

“Law No. 6428 on the Construction, Renovation and Provision of Services of Facilities by the Ministry of Health through the Public-Private Partnership Model and Amending Certain Laws and Decree Laws” and after the "Law on Amendments to Certain Laws" dated 01/03/2014 and numbered 6527 constitutes the legal framework for projects carried out in public private partnerships in the health sector.

#### •Establishment of The Governance and Contract Management Team in Türkiye

According to Article 9 of the "Implementation Regulation on the Construction, Renovation and Procurement of Services by the Ministry of Health with the Public Private Cooperation Model" published in the Official Gazette No. 28995 dated 09/05/2014, the private partner must have a certificate proving whether it complies with the conditions specified in the tender documents for the work subject to tender. It is stated that this certificate must be issued by internationally accredited quality control organizations.

#### •Planning, Establishment and Execution of Contract Management in Türkiye

Included in Article 4 of Law No. 6428. In this context, it is the responsibility of the contracting authority to supervise the contract activities. The Ministry has the authority to constitute an audit and management system. The purpose of this is to monitor the performance of the private partner and to ensure the management of the project.

### •Managing Contract Changes in Türkiye

Pursuant to the 5th paragraph of Article 4 of Law No. 6428, the private sector partner may transfer the rights and responsibilities granted to it by contract to another private sector partner, provided that the conditions specified in the relevant law are met and under unchanging conditions. However, this requires the approval of the administration.

According to Article 11 of the implementation regulation published in the Official Gazette No. 28995 dated 9/5/2014, changes can be made in the business partnership, provided that the company has the necessary financial and technical competencies and obtains the approval of the public partner before signing the contract. According to Article 61 of this Law, amendments may be made to the contract and its annexes by the approval of the Minister. In case of extraordinary conditions, force majeure or a situation that will cause a change in execution of the contract and its annexes or if the provisions in the contract and its annexes contain contradictions, the amendments shall be for the purpose of understanding the contract and in a manner that will not cause a change in the contract price.

### •Managing Performance in Türkiye

According to Article 58 of the Implementation Regulation on the Construction, Renovation and Procurement of Services of Facilities by the Ministry of Health with the Public-Private Cooperation Model, the public partner will be able to supervise the activities within the framework of the contract throughout the project, and will also be able to establish audit and management systems that will monitor the performance and ensure the management of the project. If necessary, it will be able to purchase services from outside the organization in this context.

### •Monitoring and Managing the Delivery and Risk of The PPP Project in Türkiye

There is no information on any regulation on this issue in Türkiye.

### •Managing Relationships in Türkiye

No information regarding the activity in question could be found.

### •Contract Termination and Asset Transfer in Türkiye

In accordance with Law No. 6428, if the termination of the contract is due to the private partner, the final guarantee of the private partner is recorded as income to the Treasury in case of contract termination. The private partner cannot claim any right, fee or indemnity for this final guarantee, which is recorded as income, and cannot request that it be offset against his debt. According to Article 7 of this law, if the project was carried out in accordance with the contract and this is established, it is transferred to the contracting authority. This determination process includes the evaluation of the project by a committee appointed by the public partner at the end of the contract period, together with the private partner or the private partner's representative, and the preparation of a due diligence report. If any deficiencies or malfunctions are reported in this report, these deficiencies and malfunctions will be finalized by the private partner within the time period given by the public partner. If failure to complete, the cost required to eliminate excerpts and faults shall be offset from the payments to be made to the private sector partner, if any. If there is no payment to be made to the private sector partner, it shall be covered by the private partner's guarantee. If it cannot be covered by these means, it is compensated by the private partner.

It is mandatory to include matters regarding the transfer of the facility and other agreements as a result of mutual agreement, force majeure or unilateral termination of the contract by the public partner in both the tender documents and the contract.

#### 4. Discussion

According to the contract management framework developed in the study, the presence of main activities in the selected countries is shown in Table 1.

The presence of laws associated with main activities is indicated by (+), and the absence of laws is indicated by (-).

Table 1. Evaluation of Contract Management Main Activities in the Reviewed Countries

PPP Contract Management Main Activities	Brazil	Kenya	Kosovo	Philippines	Türkiye
Establishment of governance and contract management team	+	+	+	+	+
Planning, establishment and execution of contract management	+	+	+	+	+
Managing contract changes	-	+	+	+	+
Managing performance	+	+	+	+	+
Monitor and manage PPP project delivery and risk	+	-	-	-	-
Managing relationships	-	+	+	-	-
Contract termination and asset transfer	+	+	+	+	+

It is seen that establishment of governance and contract management team is subject included in legal regulations in all five countries. Structuring and managing PPPs requires good leadership, developed institutions and good governance structures (Zhang and Tan, 2019). There is also a need for a contract management team to ensure harmony and order among stakeholders. One of the most important elements for a smoothly functioning contract management mechanism is the establishment of a contract management team (PPP Cell, Infrastructure Division, Department of Economic Affairs, Ministry of Finance Government of India, 2015). The fact that all 5 countries examined in the study include this issue in their legislation is an important step for the effective execution of PPP contract management.

It is seen that planning, establishment and execution of contract management, is subject included in legal regulations in all five countries. There is no ideal structure for contract management. It is considered good practice to have a structural approach with staff from the contracting authority and/or the private partner who are deemed qualified with expertise (Burnett, 2013). The fact that this issue is addressed in the legislation of all 5 countries is a positive approach.

Managing contract changes is a criterion included in the legal regulations in all countries examined except Brazil. Public private partnerships are long-term processes. It is therefore normal to need changes in the process. Contract modifications can be considered as changes provided for in the contract and changes not provided for in the contract. Contractual modifications are changes that may be made to the contract as a result of foreseeable risks and are based on the contract when they occur. For issues that arise as a result of unforeseen risks, it is the responsibility of the project management team to strike a satisfactory balance (EPEC, 2011). The project management team's knowledge of contracting also comes to the fore here. When establishing the contract, outputs from previous projects can be used for changes that may arise during the project. The legal guarantee of managing



contract modifications in Brazil will be instructive for PPP practitioners and will contribute to PPP success.

It is seen that managing performance is subject included in legal regulations in all five countries. Effective contract management in public private partnerships will play a helpful role in identifying and monitoring the construction and operational performance of the private partner. It will also enable the public partner to manage project risks for the duration of the PPP contract (EPEC, 2011). Therefore, it is an important development that this issue is legally guaranteed in all five countries.

There are no legal regulations on Monitor and manage PPP project delivery and risk criteria in other countries except Brazil. The contract management process also includes risk management. Over the last 30 years, companies have increasingly been faced with these aspects of contract management (Schuhmann and Eichhorn, 2017). Potential problems need to be identified early and acted upon accordingly. If the first point of contact of the private partner does not solve the problem, the issue should be addressed at a higher level. Such promotion procedures should be included in the contract manual to be prepared (EPEC, 2011). In addition, the contract manager must prepare a risk management plan before contract management begins (International Bank for Reconstruction and Development / The World Bank, 2017). All these processes need to be included in the legislation of other countries, just like in Brazil.

No legal regulations have been found in the managing relationships criterion, except for Kenya and Kosovo. Mutual understanding, open communication, information sharing and recognition of mutual goals are the most important factors for a successful relationship. In order to build a successful relationship, it is essential to have appropriate lines of communication between the public partner and the private partner at strategic, commercial and operational levels. Open lines of communication at appropriate levels reduce confusion and help resolve any issues that may arise quickly (UNESCAP, 2011). Effective communication management in Kenya and Kosovo will increase the success of PPPs.

It is seen that contract termination and asset transfer is subject included in legal regulations in all five countries. PPPs are not only construction contracts. Depending on the model applied, it should include specific clauses for the period of use and the appropriate transfer of the asset. Asset transfer, in particular, is an issue that is carefully considered by every public partner. In addition, the public partner should have the right to suspend or terminate the contract in case the private partner fails operationally or financially (EPEC, 2011).

## 5. Limitations

The study aims to make a comparison with developed countries similar to Türkiye. However, PPPs are not yet as widespread and systematic processes in developing countries as in developed countries. Therefore, the number of developing countries to be compared is limited. This is the main limitation of the study. In addition, the legal framework of PPP contract management was aimed to be presented and the legislation in the countries to be compared was analyzed. However, countries' legislation on PPP is often not clearly accessible as it is not yet systematized. The scope of the study is limited to those countries for which legislation is explicitly available in the WBG data, as indicated in the materials and methods of the study. In addition, given that the legislation of the countries examined in the study is in their official languages, the translation process is also a limitation for the study.

## 6. Conclusion and Recommendations

As a result of the study, it was seen that public private partnership laws and regulations exist at the national level in Kenya, Kosovo and the Philippines. In Türkiye, the legal framework of public private partnerships is dispersed. There are various laws, regulations and decrees for public private

partnerships at the local or ministerial level. Although there are laws and regulations at the state level in Brazil, there is a public private partnership law at the national level that binds the state laws.

The fact that the laws published at the national level draw a general and clear framework for the preparation, realization, supervision, execution and delivery of public private partnership projects plays a role in the success of these projects.

The results and recommendations for practitioners obtained within the scope of the study can be listed as follows;

- It has been observed that the establishment of governance and contractual structures is included in all countries covered within the scope of the study. It shows that the importance of this criterion for the successful management of projects is recognized and that it is accepted as a fundamental criterion for the effectiveness of contract management of public private partnerships.
- Management structures were established as public private cooperation departments within various ministries in Türkiye. These ministries are the Ministry of Health, the Ministry of Transport and Infrastructure, and the Ministry of National Education, where public private partnership projects are frequently implemented. It has also been learned that there is a Contract Management Unit within the Ministry of Health to execute the contracts of the projects in question. In the other countries under review, namely Kenya, Kosovo, the Philippines and Brazil, there are no units operating in a national context. These units are public private partnership councils and central units. Considering these examples, the existence of a central unit is important in terms of providing guidance for subsequent projects and ensuring experience sharing.
- The relevant laws and regulations regarding contract changes have not been reached in Brazil. In the other four countries subject to the study, there are various laws and regulations on this subject. Considering that public private partnership contracts are long-term, complex and risky contracts, it is important for these contracts to be flexible against possible changes and to prevent losses in areas such as cost and duration of the project after changes to be made or requested to be made, in order to maintain the contract. For this reason, the management of contract changes is an important criterion for the successful contract management of public private partnerships, which appear as a contract-based model.
- In Brazil, it has been stated that contract provisions should include performance evaluation criteria and protection mechanisms established to protect the competence of service delivery. In addition, one of the responsibilities of the contracting authority is to evaluate contract performance reports. The responsibility of the contracting authority in this regard is emphasized. It has been observed that this is one of the issues that are the responsibility of the public partner in the Philippines, Kenya and Türkiye. The responsibility for measuring and fulfilling the performance of the project and service product is given to the public partner. Establishing a central public private partnership unit in our country will ensure significant progress in increasing performance. This unit can act as a controller to oversee performance management. Thus, it can play an important role in evaluating the performance of public private partnership agreements.
- Monitoring and managing the delivery and risk of a public private partnership project is stated in the law as a critical activity to be included in contracts in Brazil. There is no law or regulation regarding this issue in Kenya, Kosovo, the Philippines and Türkiye. Considering that it is an important and critical issue for public private partnerships, it should be guaranteed by legal regulations.
- Public private partnerships are comprehensive, long-term and complex projects that require the participation of two parties, the public partner and the private partner, as project partners, and many

stakeholders involved in the project other than these two stakeholders. Therefore, communication between stakeholders is an important issue in this multi-stakeholder process and should be included in contracts. It was also seen in the study that; In Kenya and Kosovo, the management of relations is the responsibility of the contracting authority. There are no laws or regulations on this subject in the Philippines, Brazil and Türkiye. Having a legal constraint to ensure the establishment and maintenance of communication between stakeholders within the scope of the contract will allow public private partnership projects to be carried out in a healthier and more efficient manner.

The recommendations for researchers can be listed as follows;

- In future studies, researchers can examine PPP-related legislation and contract management in other developing countries in line with the framework established in this study.
- In future studies, researchers can compare PPP contract management in developed countries with PPP contract management in developing countries to reveal the differences, disadvantages and challenges for developing countries.

### ***Compliance with the Ethical Standard***

**Conflict of Interests:** The author(s) declare that they do not have a conflict of interest with themselves and/or other third parties and institutions, or if so, how this conflict of interest arose and will be resolved, and author contribution declaration forms are added to the article process files with wet signatures.

**Ethical Approval:** Ethics committee approval is not required for this study. The wet signed consent form is attached to the article process file.

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