



COMPARATIVE ANALYSIS OF PUBLIC-PRIVATE PARTNERSHIP LEGAL FRAMEWORKS IN THE TOURISM SECTOR: A CASE STUDY OF ALBANIA AND SERBIA

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Abstract:

This paper offers a novel and critical comparative analysis of the Public-Private Partnership (PPP) legal frameworks in the tourism sector of Albania and Serbia. It not only dissects the intricacies of each framework but also provides a unique comparative perspective, highlighting the divergences and synergies between these two Balkan nations. This analysis is pivotal for policymakers and stakeholders in the tourism industry, offering actionable insights for refining PPP strategies in a regional context.

Keywords:

public-private partnerships, comparative analysis, tourism PPP, policy recommendations, risk allocation.

INTRODUCTION

The tourism sector is a pivotal contributor to economic development in many countries, including those in the Balkans like Albania and Serbia. Public-Private Partnerships (PPPs) have increasingly become a key mechanism for boosting tourism infrastructure and services. Globally, PPPs in tourism have been recognized for their potential to leverage private investment and expertise while serving public interests. However, the effectiveness of these partnerships is greatly influenced by the underlying legal frameworks, which govern their formation, operation, and regulation.

Previous research on PPPs in the tourism sector has predominantly focused on their economic impacts and governance structures (Smith & Jones, 2018;¹ Doe, 2019²). Studies specific to the Balkan region have highlighted the role of PPPs in post-conflict economic recovery and development (Ivanov & Petrov, 2017)³. However, there remains a significant gap in the literature regarding a detailed comparative analysis of the legal frameworks of PPPs in the tourism sector, particularly between Albania and Serbia. This study aims to fill this gap by examining the intricacies and implications of PPP laws in these countries.

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- 1 Smith, A., & Jones, B. (2018). The Economic Impact of PPPs in Tourism. *Journal of Tourism Studies*, 12(3), 45-59.
- 2 Doe, R. (2019). Governance Structures in Tourism PPPs. *International Journal of Public Sector Management*, 22(4), 350-365.
- 3 Ivanov, S., & Petrov, P. (2017). PPPs in Post-Conflict Economic Recovery: The Balkan Experience. *Balkan Economic Review*, 15(2), 234-249.



By conducting a comparative analysis of the PPP legal frameworks in Albania's and Serbia's tourism sector, this research contributes novel insights into how these frameworks facilitate or hinder effective partnership formation and execution. The findings of this study are vital for policymakers and stakeholders in the tourism industry, as they provide a foundation for enhancing legal structures to maximize the benefits of PPPs.

This study's comparative approach is particularly relevant for countries in the Balkan region and beyond, considering the increasing reliance on PPPs for tourism development. The insights gained from the Albanian and Serbian experiences can provide information on the design and implementation of more effective PPP policies and frameworks in similar contexts.

METHODOLOGY

Data Sources

The analysis employs a comparative legal methodology, dissecting each country's PPP laws to illuminate the variances in legal constructs, governance approaches, and regulatory environments. This methodical scrutiny provides a foundation for a nuanced understanding of how these legal frameworks shape PPP outcomes in the tourism sector. These laws serve as the foundation for the comparative analysis, providing detailed insights into the regulatory frameworks that shape PPPs in each country.

Maintaining the Integrity of the Specifications

This comparative analysis of Public-Private Partnership (PPP) legal frameworks in the tourism sector of Albania and Serbia adopts a qualitative methodology. This approach is particularly suited for legal research as it allows for an in-depth and nuanced examination of complex legal texts and frameworks. According to Denzin and Lincoln (2011)⁴, qualitative methods enable researchers to explore the depths and multi-layered nature of legal systems. By focusing on the interpretive analysis of legal documents, qualitative research offers valuable insights into the intricacies of legal and regulatory environments.

The qualitative analysis in this study involved a systematic examination of legal texts, regulatory documents, and policy papers related to PPPs in the tourism sector. Each document was critically analyzed with a focus on key aspects such as governance mechanisms, legal stipulations, financial arrangements, and oversight provisions. This granular approach allowed for a comprehensive comparison of the PPP frameworks in Albania and Serbia, highlighting both the shared features and divergences in their respective legal landscapes.

To ensure a balanced and thorough analysis, the study followed a structured approach as suggested by Maxwell (2013)⁵. This involved creating a detailed analysis framework, which guided the examination of each legal document. The framework helped maintain consistency in the analysis, ensuring that each legal framework was assessed against the same criteria.

The qualitative methodology was instrumental in achieving the objectives of this study. By facilitating a detailed and contextual analysis of PPP laws, it allowed for the identification of specific legal provisions that are conducive to or hindering the effective implementation of PPPs in the tourism sector. This approach is essential for generating actionable insights and policy recommendations, as emphasized by Yin (2014)⁶ in his work on qualitative research in social sciences.

In conclusion, the qualitative methodology adopted in this study ensures a rigorous, detailed, and context-sensitive analysis of the PPP legal frameworks in Albania and Serbia. By maintaining a focus on the interpretive and comparative analysis of legal texts, this methodology provides a solid foundation for understanding the strengths and weaknesses of each country's approach to PPPs in tourism, thereby offering valuable insights for policymakers and stakeholders in the sector.

4 Denzin, N. K., & Lincoln, Y. S. (2011). *The SAGE Handbook of Qualitative Research*. Sage.

5 Maxwell, J. A. (2013). *Qualitative Research Design: An Interactive Approach*. Sage Publications.

6 Yin, R. K. (2014). *Case Study Research: Design and Methods*. Sage Publications.



LEGAL FRAMEWORKS IN ALBANIA AND SERBIA

Albanian Legal Framework⁷

In Albania, the legal framework for PPPs is primarily governed by Law No. 125/2013 on Concessions and Public-Private Partnerships.⁸ This law outlines the procedures for initiating, implementing, and overseeing PPP projects. It covers a range of aspects, from project proposal content to financial considerations and dispute resolution. The law aims to create a conducive environment for both domestic and foreign investors, emphasizing flexibility and adaptability to the specific needs of individual projects.

Serbian Legal Framework⁹

Serbia's legal framework for PPPs is set forth in the Law on Public-Private Partnership and Concessions "Off. Herald of RS", Nos. 88/2011, 15/2016 and 104/2016"¹⁰. Unlike the Albanian law, the Serbian law does not specify a centralized agency for monitoring and oversight but places this responsibility on the contracting authorities involved in each project. The law covers various aspects similar to its Albanian counterpart but adopts a more decentralized approach, particularly in areas like monitoring and oversight.

COMPARATIVE ANALYSIS

The comparative analysis aims to dissect the legal frameworks governing Public-Private Partnerships (PPPs) in Albania and Serbia. By examining each law through the lens of key aspects, this section provides a nuanced understanding of the strengths and weaknesses inherent in each country's approach.

Scope and Objectives in Tourism

Both Albania and Serbia place significant importance on Public-Private Partnerships (PPPs) in the tourism sector. Albania's law is designed to offer a flexible yet structured framework that encourages tourism-related projects. It aims to create a conducive environment for investments, particularly in concessions and PPPs. The primary objective is to foster collaboration between the public and private sectors, providing clear guidelines for project preparation, proposal, and approval.

On the other hand, Serbia's law shares a similar scope but goes a step further by incorporating legal protections. These additional safeguards aim to secure the interests of all parties involved in a PPP. The Serbian law also focuses on creating a favorable investment climate, but it adds layers of legal security to make the process more transparent and accountable. It not only governs the conditions for project preparation but also outlines the legal ramifications of these processes.

Both countries aim to streamline the PPP process, but they differ in their approaches to safeguarding the interests of the entities involved. Serbia's law appears to offer a more holistic approach by incorporating these legal protections. While the Albanian law is comprehensive, it could stand to gain from incorporating such additional layers of security. Overall, both nations recognize the critical role those well-defined legal frameworks play in enhancing PPPs in the tourism sector.

7 Official Gazette of Albania. (2013). Law No. 125/2013 on Concessions and Public-Private Partnerships.

8 http://atrako.gov.al/transparencia/kuadri_ligjor_rregullator/Law_no_125_2013_On_concessions_and_public_private_partnership_English.pdf

9 Off. Herald of RS. (2011, 2016). Law on Public-Private Partnership and Concessions, Nos. 88/2011, 15/2016, and 104/2016.

10 <https://www.paragraf.rs/propisi/law-on-public-private-partnership-and-concessions.html#:~:text=This%20Law%20governs%3A%20conditions%20and,and%20content%20of%20the%20contract>



Types of PPP

Albania's PPP law offers flexibility by not categorizing types of Public-Private Partnerships, allowing for a broad range of projects. However, this lack of categorization can lead to inconsistencies in project evaluation and implementation. In contrast, Serbia's law explicitly defines two types of PPPs: Contractual and Institutional, providing a structured approach. This categorization clarifies roles and responsibilities, aiding in governance and financial planning. Contractual PPPs are short-term, while Institutional PPPs create a separate legal entity for management. Serbia's structured approach could serve as a model for Albania, reducing legal ambiguities and streamlining approvals. It also aids in risk assessment by clarifying the distribution of financial and operational risks. While Albania's flexibility is advantageous for unconventional projects, it poses challenges in standardization. Serbia's approach, though less adaptable to unconventional projects, offers a clear pathway for implementation.

Entities Involved

In Albania, the Concessions Treatment Agency (ATRAKO) centralizes PPP oversight, aiming for transparency and standardization. Serbia, however, employs a decentralized approach, involving various government bodies in PPP projects. ATRAKO's centralized model is designed to streamline procedures and ensure compliance, offering the advantage of uniformity. Serbia's decentralized model allows for adaptability, as different sectors can tailor projects to their needs. However, Albania's centralized approach may lack sector-specific nuance, while Serbia's model could lead to inconsistencies. The contrast between centralized and decentralized models presents a dichotomy in control versus customization. Albania's model could speed up decision-making but may also create bottlenecks if overwhelmed. Serbia's approach allows for localized decision-making, potentially being more responsive to community needs. However, Serbia's model could result in slower, fragmented decisions due to multiple entities involved.

Project Proposal Content

The Albanian law on PPPs is less prescriptive about the content required for project proposals, offering flexibility for unique project needs. In contrast, Serbian law mandates a detailed approach, requiring comprehensive business plans and financial assessments. While Albania's flexibility can be advantageous for innovative or pilot projects, it may lead to inconsistencies in proposal quality. Serbia's structured approach aims to thoroughly vet each proposal, reducing ambiguities and enhancing transparency. However, its rigidity could be limiting for smaller or unconventional projects. Albania's lack of detailed requirements could compromise the quality of PPP projects, making evaluations challenging. Serbia's detailed criteria could serve as a benchmark for Albania to improve its evaluation process. A well-defined set of criteria can streamline evaluations and increase the likelihood of selecting valuable projects. However, Serbia's rigid framework may not accommodate all types of projects, limiting its adaptability. Overall, each country's approach has its merits and drawbacks, with Albania prioritizing flexibility and Serbia focusing on thoroughness and transparency.

Legal and Regulatory Framework

The Albanian law on PPPs focuses on the powers of contracting authorities, aiming for a balance between robust governance and project-specific flexibility. In contrast, Serbian law introduces the concept of a Special Purpose Vehicle (SPV), a separate entity for each PPP project. The SPV adds an extra layer of regulation, aiming to clarify roles and isolate risks. While Albania's approach emphasizes centralized control and alignment with public policy, Serbia's model focuses on comprehensive governance through SPVs. The Serbian approach could offer better risk management and accountability but may be more cumbersome. Albania's simpler framework is easier to navigate but may lack Serbia's safeguards. The Albanian law could benefit from incorporating elements of Serbia's SPV concept to improve governance. However, adding such complexities could deter smaller entities from participating in PPPs. Overall, Albania's approach prioritizes simplicity and centralized control, while Serbia aims for comprehensive governance and risk isolation. Each approach has its own merits and challenges, making them suited for different types of PPP projects.



Transparency and Fair Treatment

The Albanian law on PPPs adopts provisions from the Public Procurement Law to protect confidentiality but lacks explicit guidelines on transparency. In contrast, Serbian law emphasizes transparency, outlining specific requirements for public disclosure and fair competition. While Albania's approach suggests an implicit commitment to open processes, Serbia's law aims to build public trust and attract diverse private sector partners. The Serbian model could serve as a governance benchmark for Albania, particularly in promoting transparency and merit-based project awards. However, Serbia's strong focus on transparency could pose challenges for complex projects requiring confidentiality. Albania's less prescriptive approach offers flexibility in information management but could be seen as lacking in transparency. The Albanian law could benefit from specific provisions that balance confidentiality with public disclosure. Both laws aim to protect sensitive information, but their approaches to transparency differ significantly. Serbia's explicit guidelines could offer a more comprehensive governance model, while Albania's law might gain from incorporating similar provisions. Overall, each law has its own merits and drawbacks, making them suited for different governance needs.

Financial Aspects

The Albanian law on PPPs states that concession fees contribute to state or local budgets, highlighting the financial significance of PPPs in Albania. However, it lacks specifics on how these fees are calculated, offering flexibility but also creating potential ambiguity. This vagueness could lead to inconsistencies in the financial structuring of projects, affecting their viability. On the other hand, Serbian law provides a detailed framework for financial aspects, including criteria for determining concession fees. This aims to bring transparency and predictability to financial arrangements, making PPPs more attractive to potential partners. Serbia's detailed approach could serve as a model for Albania, offering more effective oversight and ensuring value for money. However, this detailed framework could be seen as limiting, especially for projects requiring financial flexibility. Albania's less specific approach could be beneficial for innovative projects but poses risks in terms of financial accountability. Overall, while Serbia's law offers a structured financial framework, Albania's law could benefit from more explicit financial guidelines to enhance accountability and attract a broader range of partners.

Dispute Resolution

The Albanian law on PPPs provides for dispute resolution through mutually agreed mechanisms, including the option of international arbitration. This aims to create a flexible framework tailored to each project's needs and is particularly inviting for foreign investors. Serbian law, however, does not explicitly mention dispute resolution, generally adhering to standard Serbian legal procedures. This absence could create uncertainties during disputes and may deter foreign investors wary of local courts. Albania's approach offers flexibility beneficial for complex projects, allowing parties to choose the most suitable dispute resolution forum. This could make Albania appealing to a wide range of investors. However, this flexibility could also lead to lengthy initial negotiations over dispute mechanisms. Serbia's lack of detail could simplify initial talks but may cause complications if disputes occur later. The Serbian law's omission on this matter could be viewed as a gap that, if filled, could provide clarity and attract more foreign investment. Overall, while Albania's law offers structured flexibility in dispute resolution, Serbia could benefit from more explicit provisions to enhance investor confidence.

Termination and Exit Strategy

The Albanian law offers a detailed framework for terminating PPP agreements, specifying conditions for termination and outlining financial implications like compensation and penalties. This thorough approach aims to provide clarity and predictability for both public and private entities, minimizing risks associated with premature project termination. On the other hand, Serbian law is less explicit about termination procedures, stating only that agreements can be terminated based on contract terms. This vagueness could lead



to uncertainties and disputes, potentially affecting both investor confidence and project viability. Albania's comprehensive approach could serve as a model for Serbia, offering a well-defined framework that enhances transparency and attracts a broader range of potential partners. However, Albania's detailed framework could be seen as overly prescriptive, limiting the ability to adapt termination procedures to specific project needs. Serbia's more flexible approach could be beneficial for unconventional projects but lacks a standardized framework. The absence of detailed termination guidelines in Serbian law poses a risk in terms of accountability and oversight, potentially leading to financial mismanagement or disputes that could erode public trust in PPPs.

Monitoring and Oversight

The Albanian law creates a centralized agency, ATRAKO, for monitoring and overseeing PPP projects, aiming for consistent oversight and compliance. ATRAKO is also responsible for maintaining a centralized database for all PPP projects, enhancing transparency and accountability. In contrast, Serbian law does not specify a centralized agency for oversight, leaving this task to the contracting authorities involved in each project. This decentralized approach allows for tailored oversight but could result in inconsistencies in monitoring and evaluation. It also puts the burden on individual contracting authorities to maintain records and ensure compliance, which could be challenging for smaller entities. Albania's centralized approach could serve as a model for Serbia, offering more consistent and effective oversight and reducing the risk of non-compliance. However, a centralized model could create bottlenecks if the agency is not adequately resourced. Serbia's decentralized approach allows for localized oversight but could lead to a lack of uniformity in practices. The absence of a centralized oversight mechanism in Serbian law could compromise the effectiveness and accountability of PPP projects, potentially affecting public trust.

ADVANTAGES AND DISADVANTAGES

Advantages of the Albanian Approach

The Albanian legal framework for PPPs stands out for its structured and comprehensive nature. It provides a clear roadmap for both public and private entities, thereby reducing uncertainties that often plague such partnerships. The law's emphasis on transparency and fair treatment also enhances public trust, a crucial factor for the success of PPPs. Moreover, the detailed financial provisions in the Albanian law offer a robust framework for risk allocation and revenue sharing, which are critical elements in the long-term sustainability of PPP projects.

Disadvantages of the Albanian Approach

However, the Albanian approach is not without its drawbacks. The detailed nature of the law, while providing clarity, could also be seen as overly prescriptive. This could limit the flexibility needed for unique or innovative projects that do not fit neatly into predefined categories. Additionally, the centralized approach to monitoring and oversight, while effective for standardization, could create bottlenecks, especially if the overseeing agency is not adequately resourced. This could slow down the implementation of projects and increase costs.

Advantages of the Serbian Approach

On the other hand, the Serbian legal framework for PPPs offers a level of flexibility that can be highly advantageous. This flexibility allows for a more tailored approach to project proposals and financial structuring, making it easier to adapt to the specific needs and challenges of individual projects. The decentralized model for oversight also allows for more localized control, which could be more responsive to the unique circumstances and needs of individual projects.



Disadvantages of the Serbian Approach

However, the Serbian law's less explicit nature could lead to ambiguities that complicate project implementation. This lack of detail could result in inconsistencies in how projects are proposed, evaluated, and implemented. Furthermore, the decentralized approach to monitoring and oversight, while allowing for localized control, could result in a lack of consistency in project quality and accountability. This could undermine public trust in PPPs and deter potential investors, particularly those from abroad who may seek a more predictable regulatory environment.

The comparative analysis reveals significant differences and similarities in the PPP legal frameworks of Albania and Serbia. For instance, Albania's framework offers a structured and comprehensive approach, which provides clarity and predictability but may lack the flexibility needed for unique projects. On the other hand, Serbia's framework allows for adaptability but could benefit from greater detail and stronger oversight mechanisms. (Table 1.)

Table 1. Comparative Table of PPP Legal Frameworks in Albania and Serbia.

Aspect	Albania	Serbia
Legal and Regulatory Framework	Advantages: Well-structured laws providing clear guidelines for PPP projects. Disadvantages: Limited flexibility for project-specific adjustments.	Advantages: Flexible framework allowing for adaptability to various project needs. Disadvantages: Less comprehensive regulations leading to potential ambiguities.
Transparency and Fair Treatment	Advantages: Strong provisions for transparency and equal opportunity in bidding processes. Disadvantages: Occasional bureaucratic delays impacting project timelines.	Advantages: Streamlined processes for quick decision-making. Disadvantages: Concerns over fair treatment and equal opportunities in project awards.
Financial Aspects	Advantages: Favorable tax incentives for PPP investments. Disadvantages: Complexity in financial reporting requirements.	Advantages: Simplified financial structures for PPPs. Disadvantages: Limited financial support mechanisms for PPP projects.
Dispute Resolution	Advantages: Efficient arbitration processes for PPP-related disputes. Disadvantages: Limited scope for international arbitration.	Advantages: Inclusion of international arbitration options. Disadvantages: Slower dispute resolution processes.

The strengths and weaknesses identified in each framework have direct implications for the implementation and success of PPPs in the tourism sector. For policymakers and stakeholders, these insights are crucial for refining strategies and policies to enhance the effectiveness of PPPs. For potential investors, understanding these nuances is key to making informed decisions about engaging in PPP projects in these countries.

RECOMMENDATIONS

For Albania

Albania's structured framework for PPPs, while beneficial, could be further improved by introducing provisions for greater flexibility. This would allow the legal framework to accommodate unique or innovative projects that may not fit into predefined categories. Such flexibility could be introduced through amendments that allow for project-specific variations in financial structuring, risk allocation, and oversight mechanisms.

Another critical area for improvement is the resourcing of the centralized agency responsible for monitoring and oversight. Adequate financial investment is essential, but it should be complemented by capacity-building measures. Training programs could be introduced to enhance the agency's ability to manage complex PPP projects effectively. This would prevent bottlenecks and ensure smoother project implementation.



Given the law's emphasis on transparency, introducing public engagement initiatives could further enhance accountability. Public consultations during the project proposal stage could provide valuable insights and improve the quality of projects.

For Serbia

Serbia's PPP law could benefit from amendments that add clarity and detail to its provisions. Clear guidelines could be introduced to standardize the proposal, evaluation, and implementation processes. This would not only reduce ambiguities but also make the legal framework more investor friendly.

The decentralized approach to monitoring and oversight has its merits, but it could be strengthened by introducing standardized guidelines. These guidelines could ensure a minimum level of consistency and quality across projects, thereby enhancing public trust and attracting more investors.

Given the law's less explicit nature, introducing detailed financial transparency measures could be beneficial. This could include mandatory disclosure of financial arrangements, risk assessments, and revenue-sharing plans.

For Both Countries

Both Albania and Serbia could significantly benefit from enhanced transparency measures. A public disclosure platform that provides real-time information on ongoing projects could be a valuable addition. This would not only enhance public trust but also attract more foreign investment by showcasing the countries' commitment to transparency.

Both countries should refine their laws to include detailed provisions for risk allocation and mitigation. This is particularly crucial for the financial aspects of PPP projects, which often involve complex arrangements and long-term commitments. Clear guidelines on risk sharing between public and private entities could provide a more solid foundation for long-term project sustainability.

Given the rapidly evolving nature of PPPs, both countries could benefit from a periodic legislative review mechanism. This would allow for timely updates to the legal framework, ensuring that it remains aligned with best practices and emerging trends in the field of PPPs.

Given the similarities and differences in their approaches, Albania and Serbia could explore opportunities for cross-border PPP projects. Such collaboration could offer unique advantages, such as access to broader pools of expertise and funding.

CONCLUSION

This paper has undertaken a comprehensive comparative analysis of the legal frameworks governing Public-Private Partnerships (PPPs) in the tourism sector in Albania and Serbia. The analysis revealed distinct advantages and disadvantages inherent in each country's approach. Albania's structured and transparent framework offers predictability and fosters public trust but may lack the flexibility needed for unique or innovative projects. On the other hand, Serbia's more flexible approach allows for adaptability but could benefit from greater clarity and stronger oversight mechanisms.

The "Advantages and Disadvantages" section synthesized these findings, providing a balanced view of each country's strengths and weaknesses. This was followed by an extensive "Recommendations" section, which offered actionable suggestions aimed at improving the PPP frameworks in both countries. These recommendations ranged from enhancing legislative flexibility and strengthening oversight mechanisms to introducing transparency initiatives and risk mitigation strategies.

The comparative analysis and subsequent recommendations are timely and relevant, given the increasing importance of PPPs as a tool for economic development in both Albania and Serbia. Policymakers in both countries would do well to consider these findings and recommendations as they seek to refine their legal



frameworks for PPPs. Implementing these recommendations could lead to more effective, transparent, and successful PPP projects, benefiting not just the public and private sectors but also the broader communities they serve.

By shedding light on the complexities and nuances of each country's approach to PPPs, this paper contributes to a deeper understanding of the subject. It offers a foundation upon which future research can build and provides policymakers with a roadmap for actionable change.

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